

KADW210101412023



IN THE COURT OF THE IV ADDITIONAL CIVIL JUDGE

AND JMFC, AT : HUBBALLI

PRESENT

Smt. Sweta Patil
BBA, LLB
IV Addl.Civil Judge & JMFC,
Hubballi.

C.C.No.7535/2023

Dated this the 18th February 2025

Complainant : The State by Excise PS,
Navanagar, Hubballi

(By A.P.P.)

Vs.

Accused : Fakkirappa S/o Dalleppa Kattimani,
Age: 22 years, R/o: Tirlapura Oni,
Tq: Navalgund, Dist: Dharwad.

(By Sri.S.M.Hebballi, Advocate for accused)

J U D G M E N T

The PI of Excise police station, Hubballi has filed the charge sheet against the accused for the offence punishable U/s.32(1) of Karnataka Excise Act.

2. The brief case of the prosecution is that;

On 06.04.2023 at 09.15 p.m the excise inspector himself and along with CW-4 in govt. vehicle bearing No. KA-63-G-0018 were on patrolling duty and upon receipt of credible information they along with two panch witnesses i.e., CW-2 and 3 had been to alleged spot Keshwapur, near shantinagar Church. They prepared search warrant as per Section 54 of Karnataka Excise Act and upon investigation they found 96 OC tetra pockets measuring 90 ml in a white bag and upon further investigation there was no pass or permit to sell the liquor. Hence, they conducted seizure panchanama on the spot and collected entire illicit liquor for chemical examination. Further, it is stated that, the excise police have seized the excisable goods from the possession of accused and returned to police station and registered the complaint against the accused person.

3. CW.1 or complainant lodged the complaint and FIR was registered in Cr.No.23/2022-23 investigating officer has visited the alleged spot and conducted spot mahazar in presence of the panchas and seized the material objects from the spot and after completion of investigation the investigating officer has filed the charge sheet against the accused person for the offence punishable U/s.32(1) of Karnataka Excise Act.

4. On receipt of charge sheet the cognizance of alleged offence was taken against the accused and registered in criminal

register and issued summons, accused appeared before this Court through his advocate and released on bail. After submission of charge sheet, copy of the prosecution papers were furnished to accused as required U/s.207 of Cr.P.C. After hearing both the sides charge was framed U/s.32(1) of KE Act for which he had pleaded not guilty and claimed to be tried.

5. In order to prove the case, prosecution has examined PW.1 to PW.5 and got marked documents at Ex.P.1 to Ex. P.7 and identified M.O.1. After completion of prosecution evidence, the statement of accused U/s.313 of Cr.P.C. is recorded by way of explaining incriminating evidence appearing against him. The accused has denied incriminating evidence appearing against him and has not lead any defence evidence.

6. Heard the arguments of both sides and perused the materials on record.

7. The following points would arise for my consideration:

POINTS

- 1) Whether prosecution proves beyond all reasonable doubt that, on 06.04.2023 at Keshwapura, Near Shantinagar Church, within the limits of Excise Police Station, accused without having valid license was in illegal possession of illicit liquor total 8.640 ltr and thereby committed an offence punishable U/s.32(1) of Karnataka Excise Act?
- 2) What order ?

8. My findings on the above points are as under:-

Point No.1 : In the "NEGATIVE"
Point No.2 : As per final order
for the following:-

REASON

9. **POINTS No.1** :- The prosecution in order to establish the guilt of the accused has examined PW.1 to PW.4 and got marked Ex.P.1 to P.7 and identified M.O.1. PW-1 who is the Excise Sub Inspector who was on duty along with his staff on said date has submitted the same to PW.5 for further investigation.

10. PW.1 has deposed in his examination-in-chief in consonance with the complaint averments, which is marked at Ex.P.4. PW.1 has deposed that on 06/04/2023 at 9.15 when he was on patrolling duty along with his staff, he received information regarding alleged crime soon he secured two pancha witnesses and reached Keshwapur, near Shantinagara Church as there was no sufficient time to obtain search warrant from the Hon'ble Court, PW.1 has complied with Sec.54 of Karnataka Excise Act and while investigating alleged spot as per information they found one suspicious person who was standing with one white bag in his hand and upon investigation of the said person he has not answered correctly and upon investigation they found 96 OC whiskey measuring 90 ml each. Upon further investigation

of the said person, he has told his name as Fakkirappa S/o Dalleppa Kattimani. Thereafter, entire illicit liquor was recovered for chemical examination purpose. PW.1 has got marked Report under Sec. 54 of Karnataka Excise Act at Ex.P.1 and his signature at Ex.P.1 (a). Spot panchanama at Ex.P.2, and his signature at Ex.P.2(a), Madari sheelu patra at Ex.P.3 and his signature at Ex.P.3(a), Complaint at Ex.P.4 and his signature as Ex.P.4(a). PW.1 has got marked first information report at Ex.P.5 and his signature as Ex.P.5(a) and has got marked property list at Ex.P.6 and his signature at Ex.P.6(a). He has also identified samples taken out for chemical examination which is marked as M.O.1.

11. The learned counsel for accused person has cross-examined PW.1, wherein PW-1 has admitted that, he has not mentioned regarding colour of the bag in his complaint. PW-1 has also admitted that, said pancha witnesses are not local people. PW-1 has denied the suggestion that, there is no connection between crime, accused and material object. He has also denied the suggestion that, he has filed present complaint for statistical purpose of the station. PW-1 has further denied the suggestion that, he has registered present crime by utilizing unused material objects present in their police station.

12. PW.2 who is one of the independent mahazar witness who has turned hostile and not supported the case of the prosecution. But he has identified his signature at Ex.P.2 (b). further deposed that he had signed on Ex.P.2 near shantinagara church. Further, deposed that police have not conducted any raid and have not recovered anything in his presence and he does not know what is stated in Ex.P.2. The learned APP has cross-examined PW.2 but nothing has been elicited from his mouth to support the case of the prosecution.

13. PW.3 who is another independent mahazar witness who has turned hostile and not supported the case of the prosecution. But he has identified his signature at Ex.P.2 (c). further deposed that he had signed on Ex.P.2 at near shantinagara church. Further, deposed that police have not conducted any raid and have not recovered anything in his presence and he does not know what is stated in Ex.P.2. The learned APP has cross-examined PW.2 but nothing has been elicited from his mouth to support the case of the prosecution.

14. PW.4 has deposed that on 02.02.2023 at 9.15 pm when he along with CW-1 were on patrolling duty, CW-1 received alleged information regarding commission of offense. PW-4 has further deposed that he along with other staff had secured

presence of CW-2 and 3 as pancha witnesses. Thereafter, reached spot using vehicle bearing No.KA-63-G-0018 and upon investigating one suspicious person was standing with one bag in his hand and upon investigation of the said person he has not answered correctly, as there was no sufficient time to obtain search warrant from the Hon'ble Court, CW.1 has complied with Sec.54 of Karnataka Excise Act. Thereafter, conducted raid on the alleged spot. He further deposed that, upon investigating the said alleged spot they found one white bag in which they found 96 OC tetra packets measuring 90 ml each and upon further investigating the said person he has stated that, his name as Fakkirappa S/o Dalleppa Kattimani and upon further investigating there was no pass or permit to sell the liquor. Hence, they conducted seizure panchanama on the spot and collected entire illicit liquor for chemical examination purpose and conducted panchanama on the spot and CW-1 has filed complaint after reaching the station. The learned counsel for accused has cross-examined PW.4 who has also deposed that, they were at Keshwapura when they received the information. PW-4 has also deposed that, he has not given any information for preparing panchanama. PW-4 has admitted that, said pancha witnesses are not local people. PW-4 has denied the suggestion that, he is deposing falsely as per the complaint. PW-4 has further denied the

suggestion that, there is no connection between the accused and the material object.

15. PW.5 is an Excise Inspector who has conducted further investigation in the instant case has deposed that, on 20.05.2023 he has secured the instant crime from CW-1 for further investigation, on the same day he has collected statement of CW-4. On 12.07.2023 he has received chemical examination report. and on 13.07.2023 he has collected statement of CW-5. After completion of investigation PW-5 has filed final report before this Court. PW-5 was cross examined by advocate for accused wherein he has denied the suggestion that, he has filed false final report for statistical purpose of their police station. PW-5 has denied the suggestion that, there is no connection between accused, crime and the material object.

16. Now let us analyses entire prosecution evidence together, firstly it is the case of prosecution that, on 06.04.2023 when excise police were on patrolling duty, they received information regarding alleged crime. PW-1 during his examination in chief has also deposed that, he received alleged information on 06.04.2023. On the contrary PW-4 has deposed in his examination in chief that, CW-1 received the alleged information on 02.02.2023. Both these versions of prosecution appears to be

contradictory to each other. Further PW-1 has also deposed that, after filing of complaint and submission of FIR he has transferred the crime to CW-7 on 19.05.2023. Whereas, CW-7 during his examination in chief has deposed that, he has received alleged crime from PW-1 On 20.05.2023. It is to be noted herein that, the prosecution witnesses especially the raid party have deposed clearly in contradictory to each other.

17. Another aspect to be noted herein is that, the prosecution witnesses have deposed that, they conducted raid and secured illicit liquor from the possession of accused but there is no single independent evidence in support of same. As such upon perusal of entire evidence of prosecution there is no evidence to prove the presence of the accused on the spot.

18. It is to be noted that official witness being PW.1, 4 and 5 have supported the case of the prosecution even in that PW-1 and 4 have not explained regarding raid being conducted. This being the case there arises doubt regarding the case put forth by the prosecution. It is well settled law that only on the basis of evidence of official witnesses no conviction can be given to the accused. In this point I rely upon judgment passed in *1995(3) S.C. 661 in a case between Munnial V/s State*, which reads as under;

“Evidence Act 1872, Sections 25 to 27 : No conviction should be made solely on testimony of police officials without any corroboration from any independent source.”

19. The mahazar witnesses relied upon by the prosecution side i.e. PW 2 and 3 have totally turned hostile to the case of prosecution and has clearly deposed that they have signed the panchanaama in some random place. Therefore, when there is such a deposition on the prosecution side Ex.P.2 which is a panchanama loses its sanctity. When prosecution has failed to prove the seizure panchanama at Ex.P.2 and even PW 2 and 3 are found to be of no help to the prosecution and failed to prove recovery of material objects from the possession of accused their remains nothing for the prosecution to fasten the criminal liability on the accused person. Therefore, inevitable conclusion is that, the prosecution has failed to prove beyond all reasonable doubts the charges leveled against the accused. Hence, this court proceeds to answer point No.1 **in the Negative.**

20. **Point No.2:** In view of my findings on point No.1, this court proceeds to pass the following:

ORDER

Acting under section 248(1) of Cr.P.C
accused is hereby acquitted for the offence
punishable U/s.32(1) of Karnataka Excise Act.

The bail bond and surety bond
furnished by the accused at the time of his
first appearance before this Court stands
canceled. However, the surety bond and bail
bonds executed by him in compliance of Sec.
437A of Cr.P.C., shall be valid in accordance
with law.

M.O.1 is hereby directed to be destroyed
after appeal period is over.

(Dictated to the Stenographer directly on computer, typed by her, corrected, initiated and then pronounced
in the Open Court on this the **18th day of February 2025**).

Sd/-
(Smt. Sweta Patil)
IV Addl. Civil Judge & JMFC,
Hubballi.

ANNEXURE

List of witnesses examined for prosecution:

P.W.1	: Babusab Ashok Ladagi
P.W.2	: Rudrappa Veerappa Mattur
P.W.3	: Nagaraj Mahadevappa Gosalar
P.W.4	: Gangadhar Chandrakanth Hongal

P.W.5 : Narayanasa Pawar

List of documents got marked for prosecution:

Ex.P.1 : Report Under Sec. 54 of Karnataka Excise Act .
Ex.P.1(a) : Signature of witness
Ex.P.2 : Spot panchanama
Ex.P.2(a) to 2(d) : Signature of witnesses
Ex.P.3 : Madari Seelu Patra
Ex.P.3(a) : Signature of witness
Ex.P.4 : Complaint
Ex.P.4(a) : Signature of witness
Ex.P.5 : FIR
Ex.P.5(a) : Signature of witness
Ex.P.6 : Property list
Ex.P.6(a) : Signature of witness
Ex.P.7 : FSL report
Ex.P.7(a) : Signature of witness

List of witnesses examined for accused:

Nil.

List of documents got marked for accused:

Nil

List of Material objects marked for Prosecution:

MO.No.1 : 96 OC tetra packets measuring 90 ml
each.

Sd/-

IV Addl. Civil Judge & JMFC,
Hubballi.

18-02-2025
For Judgment.

Accused present.

(Judgment pronounced in the open Court vide separate order)

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