

IN THE COURT OF THE I ADDL.JUNIOR CIVIL JUDGE CUM I ADDL.JUDICIAL
MAGISTRATE OF FIRST CLASS : PARVATIPURAM.

Present: Smt.D.Soujanya,
I Additional Junior Civil Judge –Cum-
I Additional Judicial Magistrate of the I Class,
Parvatipuram.

Monday, the 19th day of February, 2024

Calendar Case No. 890 of 2023

Between:

State represented by the Sub Inspector,
Rural police station, Parvatipuram.

..... Complainant.

And:

Kondatamara Sobhan, S/o. Seetharam, 30 years, Kothavalasa village,
Sangamvalasa Panchayat, Parvathipuram Mandal.

..... Accused

This case coming before me on 6.2.2024 for final hearing in the presence of Assistant Public Prosecutor for complainant/State and of Sri. N.Srinivasa Rao, Advocate for the accused and having stood over for consideration to this day, the court delivered the following:

J U D G M E N T

1. The State represented by the Sub Inspector, Rural police station, Parvatipuram, filed charge sheet against the accused in Cr.No.28/2023 of Rural police station, Parvatipuram, for the offence punishable under Section 7A r/w 8(e) of AP Prohibition Act, 1995.

2. The case of the prosecution, in brief, is that:

On 04.2.2023 at about 11.00 hours, on receiving credible information Sri Y.Simhachalam, Sub-Inspector of Police/L.W.5 along with his staff Sri Y.Atchyutha Rao, Head constable/L.W.1, Sri Y.Kalyan, Police Constable/L.W.2 and Sri Kolaka Chiranjeevi/L.w.3 and Sri P.Laxmana Rao/L.W.4 went to Ravikona village, they found one person in the possession of a gunny bag in a suspicious manner. They stopped him and verified the bag and noticed 100 sachets of ID Arrack in his possession. The accused disclosed his identity and confessed that he brought the ID liquor from an unknown person of Odissa State . On that, the Sub Inspector of Police/LW5 informed him that possession and transporting of ID liquor is an offence under section 7A r/w 8(e) of the AP Prohibition Act 1995. . Thereafter, he seized the contraband under the cover of the Mediators report and separated samples for sending the same to chemical analysis. Thereafter, he brought the accused along with seized property to the police station and registered the mediators report as a case in Crime No.28/2023 under

section 7A r/w 8(e) of the AP Prohibition Act 1995. L.W.5/ Sri Y.Simhachalam, Sub Inspector of police arrested the accused and produced before the Court for judicial remand. Thereafter, the samples of seized property were sent to the Chemical examiner of the Prohibition and Excise, Regional Excise Laboratory, Visakhapatnam who issued a report that the sample was illicitly distilled liquor, unfit for human consumption, and injurious to health. After completion of the investigation, he filed the charge sheet before the court against the accused.

3. The case is taken on file against both the accused for the offence under section 7A r/w 8(e) of Andhra Pradesh Prohibition Act, 1995.

4. On appearance of the accused, case copies were furnished to the accused as required under Section 207 of Criminal Procedure Code.

5. The accused was examined under Section 239 of Criminal Procedure Code explaining the substance of the charge sheet contents in Telugu for which he denied the same, pleaded not guilty and claimed to be tried. Charge under section 7A r/w 8(e) of Andhra Pradesh Prohibition Act was framed, read over and explained to the accused in Telugu language.

6. In order to prove the guilt of the accused, the prosecution examined P.Ws 1 to 4 and got marked exhibits P.1 to P.5 documents and M.O.1.

7. After completion of the prosecution evidence, the accused was examined under Section 313 of Criminal Procedure Code, for which he denied the incriminating evidence made out against him in the evidence of prosecution witnesses and reported no defence evidence on his behalf.

8. Heard arguments on both sides.

9. Now the point for determination is:

Whether the prosecution established the guilt of the accused for the offence punishable under Section 7A r/w 8(e) of Andhra Pradesh Prohibition Act, 1995 ?

POINT:

10. The learned Assistant Public Prosecutor advanced his arguments. He argued that though the independent witnesses turned hostile and did not support the case of the prosecution, the evidence of the other witnesses discloses that the accused was found in the possession of the contraband and so the Prosecution proved the case against the accused and prayed to convict the accused.

11. Per contra, the learned defence counsel argued that there are contradictions in the testimony of P.Ws 1 and 4. He argued that the mediators totally turned hostile and did not support the case of the prosecution. He further argued that the accused was falsely implicated in this case only for statistical purpose. Hence, prayed to acquit the accused.

12. P.W.1 testified that on 4.2.2023 at about 11.00 hours, on receiving credible information he along with the Sub-Inspector of Police and the mediators went to Ravikona village, they found one person in the possession of a gunny bag in a suspicious manner. They stopped him and verified the bag and noticed 100 sachets of ID Arrack in his possession. They lifted the samples at the scene of offence. They seized the contraband under the cover of mediators report. They brought the samples and the seized contraband to the police station.

13. P.W.2 and P.W.3 are the mediators, they totally turned hostile and did not support the case of the prosecution. Their signatures on the mediators report are marked as Ex.P.1 and Ex.P.2. P.W.4 testified in the same lines of P.W.1 and further testified that he registered case basing on the mediators report. He arrested the accused and produced before this court for judicial remand. He sent the samples for chemical analysis, received report and filed the charge sheet before the Court after completion of the investigation.

14. Coming to the appreciation of evidence on hand, the case of the Prosecution is that the accused were found in possession of the contraband which was seized by the Investigating Officer. The evidence of P.W. 1 and 4 reveals that the contraband was seized from the accused under the cover of mediators report ie., Ex.P.1. Ex.P.5 is the Chemical Analysis report which prima facie reveals that the sample of the contraband is " Illicitly distilled liquor". So, the burden heavily lies on the Prosecution to prove that the seizure is beyond all reasonable doubt.

15. As per section 23 of AP Prohibition Act, 1995, P.Ws 1 and 4 are bound to follow the procedure laid down under the Code of Criminal Procedure relating to search. As per Section 100 of Criminal Procedure Code, the Investigation Officer is bound to conduct search in the presence of two respectable inhabitants of the locality.

16. It is the argument of the learned defence counsel that the investigating Officer has not followed the procedure as contemplated u/sec.100 (4) Cr. P.C. properly and it cannot be said that contraband was recovered from the possession of accused under the cover of Ex.P.3/ Mediators report and it is clear that the prosecution has failed to observe the norms initiated u/sec.100(4) Cr.P.C. to create confidence in the mind of the public at large in respect of the acts of the officials as such a serious doubt is created on the case of the prosecution. P.W.2 and P.W.3 are the mediators, they totally turned hostile and did not support the case of the prosecution. Their signatures on the Occurrence report are marked as E.x.P.2 and E.x.P.3 and though they were cross examined by the learned APP, nothing worthwhile could be elicited from their cross examination to support the case of the prosecution. Hence, the entire story of the Prosecution has to be suspected.

17. This aspect further creates doubt as to whether the I.O followed the procedure as contemplated under section 100 of Cr.P.C and also with regard to the seizure of the alleged contraband from the possession of the accused due to the absence of any corroboration from the independent witnesses. Even the seizure list was also not prepared by the investigating officer to show that the procedure prescribed for seizure is followed by him. In view of the aforementioned discussion it can be concluded that registering the crime and securing the chemical analysis report in favour of the prosecution by itself does not prove the case of the prosecution.

18. The absence of corroboration from the independent witnesses creates doubt about the version of the prosecution witnesses which effects the roots of the case of the Prosecution. Further, a reasonable doubt is also created in favour of the accused with regard to the seizure. When the accused is not proved to be in possession of the contraband beyond reasonable doubt, the question of proving either transporting, selling or buying of the same does not arise. Hence, in view of the foregoing discussion, this Court finds that the Prosecution proved the contraband is Indian liquor, however, the seizure of the contraband from the possession of the accused is not proved, beyond all reasonable doubt. In these circumstances, this Court finds that the Prosecution failed to prove the seizure of the contraband and thereby failed to prove the case against the accused, beyond all reasonable doubt.

19. In the result, the accused is found not guilty for the offence under Section 7A r/w 8(e) of Andhra Pradesh Prohibition Act, and accordingly, he is acquitted under Section 248(1) of Criminal Procedure Code. The accused is directed to execute bond for Rs.10,000/- (Rupees ten thousand only) under Section 437-A Criminal Procedure Code to appear before the Appellate Court, if any appeal is preferred. M.O.1 shall be destroyed after expiry of appeal time.

Typed to my dictation by the Stenographer Grade III i corrected, signed and pronounced by me in the open court, this the 19th day of February, 2024.

Sd/-Smt.D.Soujanya,
I Additional Junior Civil Judge -Cum-
I Additional Judicial Magistrate of the First Class,
Parvathipuram.

Appendix of Evidence
Witnesses examined

For Prosecution.

P.W.1: Sri Y.Kalyan, Police Constable
P.W.2: Sri K.Chiranjeevi.
P.W.3: Sri P.Laxmana rao.
P.W.4: Sri Y.Simhachalam, the Sub-Inspector of Police

For Defence

- None -

Documents Marked

For Prosecution

Ex.P.1 : Signature of P.W.2 on the mediators report dated 4.2.2023.
Ex.P.2 : Signature of P.W.3 on the mediators report dated 4.2.2023.
Ex.P.3 : Mediators report dated 4.2.2023.
Ex.P.4: FIR in Crime No.28/2023 of Rural police station, Parvatipuram.
Ex.P.5: Chemical analysis report dated 28.03.2023

For Defence:

Nil.

Material Objects

M.O.1 : One sample bottle.

Sd/-Smt.D.Soujanya,
I Additional Junior Civil Judge -Cum-
I Additional Judicial Magistrate of the First Class,
Parvathipuram.

CALENDAR AND JUDGMENT

Calendar case tried by the Court of the I Addl. Junior Civil Judge cum I Addl. Judicial Magistrate of the First Class, Parvatipuram.

Date of Offence	: 04.02.2023
Date of report or Complaint	: 04.02.2023
Date of apprehension of accused	: 04.02.2023
Date release on bail, if any	: 20.02.2023
Date of commencement of trial	: 21.09.2023
Close of trial	: 03.01.2024
Date of sentence or other order	: 19.02.2024
Explanation of delay and remarks	: The matter under went several adjournments as prosecution did not produce the witnesses.

Calendar and Judgment in **C.C.No.890 of 2023** on the file of the I Addl. Junior Civil Judge cum I Addl. Judicial Magistrate of the First Class, Parvatipuram

Complainant : State represented by the Sub Inspector of Police, Rural police station, Parvatipuram, in Crime No.28/2023 u/s. 7A r/w 8(e) of AP Prohibition Act.

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Name of the accused, Father/Husband, Age, Calling, Religion, Village and Mandal.

Kondatamara Sobhan, S/o. Seetharam, 30 years, Kothavalasa village, Sangamvalasa Panchayat, Parvathipuram Mandal.

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Offence : Section 7-A r/w 8(e) of A.P. Prohibition Act: Producing, manufacturing, storing, possessing, collecting, purchasing, selling and transporting of arrack contravening section 7A of AP Prohibition Act, under which the above are prohibited.

Finding : Accused is found not guilty for the offence under Section 7-A r/w 8 (e) of A.P. Prohibition Act, 1995.

Sentence : Accused is acquitted under Section 248(1) of Cr.P.C. The accused is directed to execute bond for Rs.10,000/- (Rupees Ten thousand only) under Section 437-A Cr.P.C., to appear before the Appellate Court, if any appeal is preferred. M.O.1 shall be destroyed after expiry of appeal time.

Sd/-Smt.D.Soujanya,
I Additional Junior Civil Judge –Cum-
I Additional Judicial Magistrate of the First Class,
Parvathipuram.