

IN THE COURT OF THE PRINCIPAL JUNIOR CIVIL JUDGE CUM JUDICIAL  
MAGISTRATE OF FIRST CLASS : PARVATIPURAM

Present: Sri A.Ramesh,  
Principal Junior Civil Judge -Cum-  
Judicial Magistrate of First Class,  
Parvatipuram.

Wednesday, the 6<sup>th</sup> day of December, 2023

**Calendar Case.No.906/2023**

Between:

State represented by the Sub-Inspector of Police,  
Parvatipuram Town Police station.

..... Complainant.

And:

Sondi Suresh, S/o.late Rajarao, Age 55 years, SC Relli,  
Patharelli Veedhi, Parvatipuram.

..... Accused

This case coming on 01.12.2023 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 of Police, Parvatipuram Town Police station, filed charge sheet against the accused in Cr.No.312/2021 of Parvatipuram Town Police station 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 01.12.2021 at about 15.00 hours, G.Kaladhar, the Sub-Inspector of Police/L.W.3 along with his staff P.Udayabhaskara babu, Police constable 202/L.W.1 and U.Raghu, Police constable 1332/L.W.2 while conducting raids beside ITDA Petrol bunk in Parvatipuram Town limits, they found the accused standing there with plastic gunny bags, in suspicious state. On seeing the police, the accused tried to escape from that place. They surrounded the accused and caught him and enquired him about the reason for his escape on seeing them and about the contents of the bag. On that the accused disclosed his identity. On verification of the gunny bag they found 230 ID arrack sachets each containing 100 ml. On enquiry, the accused disclosed that he purchased

the same from unknown persons at Alamanda village of Odissa State to sell the same at higher price. After informing that possession of ID arrack is an offence, u/sec.7A r/w 8(e) of AP Prohibition Act and seized the entire property under the cover of occurrence report as no one came forward to act as mediators. He brought the accused and seized property to police station and registered mediators report as case in Cr.No.312/2021 u/sec.7A r/w 8(e) of AP Prohibition act. The accused was produced before the Court for judicial remand. He sent the samples to the Chemical analysis and obtained chemical analysis report vide C.E.No.3211/2023 wherein the Government Chemical Examiner opined that the sample at Sl.No.27140 is illicitly distilled liquor, unfit for human consumption and injurious to human health. After completion of investigation, he filed charge sheet before the court.

3. The case is taken on file by this Court against the accused for the offence u/sec.7A r/w 8(e) of AP Prohibition Act.

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 for the accusation u/sec.7A r/w 8(e) of AP Prohibition Act and charge sheet contents were read over and explained to him in Telugu language, for which he denied the offence, pleaded not guilty and claimed to be tried. Charge under section 7A r/w 8(e) of AP Prohibition Act was framed, read over and explained the accused in Telugu language.

6. In order to prove the guilt of the accused, the prosecution examined P.Ws 1 and 2 ; and got marked exhibits P.1 to P.3 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 accused for the offence punishable u/sec.7A r/w 8(e) of AP Prohibition Act beyond reasonable doubt?

**POINT:**

10. The learned Assistant Public Prosecutor submitted that the evidence of P.W.s 1 and 2 are corroborating with each other with regard to the offence committed by the accused. He further argued that there are no inconsistencies in the evidence of P.Ws 1 and 2, as such the Prosecution successfully established the case against the accused. Hence prayed to convict the accused.

11. On the other hand, the learned Counsel for the defence submitted that there are inconsistencies in the evidence of prosecution witnesses, which is fatal to the case of the prosecution, further no independent witness is examined to prove the seizure of contraband from the possession of accused, as such the Prosecution failed to prove the case against the accused. Hence he prayed to acquit the accused.

12. It is the case of the Prosecution that on 01.12.2021 at about 15.00 hours, the P.W.2, found the accused in possession of 230 ID arrack sachets near ITDA Petrol bunk, Parvatipuram. As such he took the accused into custody under the cover of occurrence report, seized the ID arrack and separated the samples. He registered Cr.No.312/2021 u/sec.7A r/w 8(e) of AP Prohibition Act. The Sub-Inspector of Police sent the samples to Chemical Examiner, Regional Excise Laboratory, Visakhapatnam and obtained analysis report. After completion of investigation, he filed charge sheet before the Court against accused.

13. U.Raghu, Police constable/L.W.2 is examined as P.W.1. In his evidence, he deposed that on 1.12.2021 at about 15.00 hours, himself along with the Sub-Inspector of police and other staff went to ITDA Petrol Bunk, Parvatipuram Town and found the accused with two gunny bags containing ID arrack sachets. On seeing them, he tried to escape from them. On enquiry he disclosed his identity. They seized the contraband under the cover of occurrence

report. During his cross-examination, he admitted that the scene of offence is a busy locality.

14. The investigating officer is examined as P.W.2. He deposed in his evidence following the lines of P.W.1 with regard to taking custody of accused on 01.12.2021 while he was in possession of 230 ID arrack sachets. He took the accused into his custody and seized the above said contraband under the cover of occurrence report. He further deposed that basing on the occurrence report, he registered a case in Cr.No.312/2021 under Section 7A r/w 8(e) of AP Prohibition Act. He produced the accused before the Court for remand. He sent samples to chemical analysis and received report. He filed charge sheet before the Court after completion of investigation. During cross examination, he deposed that the scene of offence is a busy locality.

15. The P.W.1 and P.W.2 who are official witnesses deposed in their evidence that they did not secure mediators from the scene of offence. No independent mediators were examined to prove the case of the Prosecution. P.W.1 and P.W.2 clearly admitted in their evidence that the scene of offence is a busy locality. Even they did not secure any persons nearby Petrol bunk or other local persons to act as mediator since the scene of offence is admitted to be a busy locality.

16. It is laid down u/sec.100(4) Cr.P.C. that while police or other Excise officials making search or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or any other locality, if no inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do. In this case, the police even did not try to secure any person in or around Parvatipuram Town or any other local person to act as mediator. This is contrary to procedure laid down under section 100(4) of Cr.P.C.

17. In our given case, though it appears that the offence was occurred near by Petrol Bunk, Parvatipuram Town, the police did not secure any witness

nor issued any notice by ordering any person to stand as a witness in order to secure them as mediator. In such a case, it is not possible to believe the version of the prosecution and the evidence of Official witnesses who are interested from outcome of this case that the accused was in the possession of the ID liquor and the same was seized by the police from out of the possession of the accused.

18. Further, the material on record reveals that the Investigation officer collected samples from the seized ID liquor on 01.12.2021. As seen from the Ex.P.3 it manifests that the Investigation officer sent the ID liquor for chemical analysis after lapse of 9 days from the date of collection. Therefore, there is a delay more or less 9 days in sending samples for analysis. There is no whisper or explanation about the said delay either in charge sheet or in the version of P.W.1 and P.W.2. There is no evidence to show that the samples were kept in proper custody without giving scope for tampering. In our present case also, approximately there is delay of 9 days but there is no explanation from the Prosecution for delay in sending the samples for chemical analysis.

19. In view of the above circumstances, the Prosecution miserably failed to establish the guilt of the accused beyond reasonable doubt. The point is answered accordingly.

20. In the result, the accused is found not guilty of the offence u/sec.7A r/w 8(e) of AP Prohibition Act and accordingly, the Accused 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. The bail bonds shall be cancelled after six months. The M.O.1, shall be destroyed after expiry of appeal time.

*Typed, to my dictation, by the Stenographer Grade III, corrected, signed and pronounced by me in the open court, this the 6<sup>th</sup> day of December, 2023.*

*Sd/-A.Ramesh,*

Principal Junior Civil Judge -Cum-  
Judicial Magistrate of the First Class,  
Parvathipuram.

Appendix of Evidence  
Witnesses examined

For Prosecution

P.W.1: U.Raghu, Police constable  
P.W.2: G.Kaladhar, the Sub-Inspector of Police

For Defence

- None -

Documents Marked

For Prosecution

Ex.P.1: FIR in Crime No.312/2021 of Parvatipuram Town Police station.  
Ex.P.2 : Occurrence report dated 1.12.2021  
Ex.P.3: Analysis report dt.1.2.2022

For Defence:  
Nil.

Material Objects

M.O.1: Sample at Sl.No.27140

Sd/-A.Ramesh,  
Principal Junior Civil Judge -Cum-  
Judicial Magistrate of the First Class,  
Parvathipuram.