

IN THE COURT OF JUDL. MAGISTRATE FIRST CLASS, BANPUR.

Present. : Miss Sarmistha Dash, LL.B.,  
Judl. Magistrate First Class,  
Banpur.

Date of argument. : 09.09.2014

Date of Judgment. : 20.09.2014

2(a)cc No. 17/2009

T.R. No. 770/2011

State ... ..Prosecution

-Versus-

Subash Pradhan, aged about 43 years,

S/o Late Gopi Pradhan

Vill: Saliadam, P.S: Banpur,

Dist: Khurda

..... Accused.

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Offence: U/s.47 (a) of the Bihar & Orissa Excise Act, 1915.

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For the Prosecution. :Sri Jaladhar Pradhan, APP

For the Defence : Sri B.K.Muduli & others.

### J U D G M E N T.

01. The accused stands charged for the offence punishable Under Section 47 (a) of Bihar and Orissa Excise Act, 1915.

02. The case of the prosecution in brief runs thus:

On 31.12.2010 at about 6 pm the S.I Prabhakar Acharya of Excise Balugaon and his staff performing patrolling duty at village Salliadam got reliable information that the accused was selling liquor. So they proceeded to the spot, seeing them the accused fled away from

the spot by throwing ten packets of I.D liquor each containing one liter each in a plastic jarry bag. The informant conducted various tests on it and found it to be nothing but I.D liquor. He seized the same in presence of witnesses. After completion of investigation he submitted P.R. against the accused U/s.47 (a) of Bihar and Orissa Excise Act. 1915.

03. The plea of defence denial one and false implication.

04. The point for determination in this case emerges as follows:

(a) Whether on 31.12.2010 at 7 pm 10 liters of I.D. liquor was seized from the conscious and exclusive possession of the accused?

(b) Whether the seized liquor was nothing but I.D. liquor?

05. In order to prove its case, prosecution has examined two witnesses in its favour where as defence has examined none. P.W.1 is an independent witness to the occurrence, P.W.2 is an Excise constable.

06. In order to prove a case U/s 47(a) Bihar and Orissa Excise Act, it is for the prosecution to prove not only the fact of seizure from the exclusive and conscious possession of the accused but also the seized articles to be nothing but C.S. liquor.

07. This is a case U/s 47(a) Bihar and Orissa Excise Act. In order to substantiate the case against the accused, it is necessary to scrutinize the case of prosecution. During the course of the trial P.W.1 deposed nothing has been seized by the Excise staff in his presence. P.W.2 deposed that on the alleged date he along with the informant went to Salia dam on patrolling duty they saw the accused was standing

by carrying a jerry bag in in a suspicious manner. So they detained him and on search they found 10 polythene packets of liquor. Then the informant seized it in presence of witnesses.

On perusal of the evidence it is found that the prosecution has not examined the informant and other witnesses who corroborated the prosecution story. The only independent witness who was examined by the prosecution did not support the case of the prosecution and deposed that nothing has been seized in his presence. The S.I of Excise reported to have been examined the liquor through blue litmus paper test and hydrometer test but the said S.I was not examined by the prosecution. Hence, there is no proof in the record to prove that the seized liquids were nothing but the I.D liquor. Further the fact of seizure from the conscious and exclusive possession of the accused is also not proved as none of the independent witnesses have corroborated the prosecution version. Hence in view of the above discussion and due to lack of independent corroboration, I am of the opinion that the prosecution has failed to prove its case against the accused beyond all reasonable doubts.

07. In the result, the accused is found not guilty for the offence U/s.47 (a) of Bihar and Orissa Excise Act, 1915 and acquitted thereof U/s.248 (1) of Cr.P.C. He be released from the custody forthwith.

The seized materials, if any be destroyed after four months of the appeal period, if no appeal is preferred and if preferred be dealt as per the order of the appellate court.

Enter the case as mistake of fact

Judicial Magistrate First Class,  
Banpur

This judgment typed to my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, this the 20<sup>th</sup> day of September, 2014.

Judicial Magistrate First Class,  
Banpur

List of witnesses examined for Prosecution.

PW.1        Prakash Pradhan

P.W.2        Badri Narayana Pattnaik

List of witnesses examined for the Defence.

Nil

List of Exhibits marked for Prosecution.

Ext.1        Signature of P.W.1 on the seizure list.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil.

Judicial Magistrate First Class,  
Banpur.

