

**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST
CLASS(O), BHUBANESWAR**

Present : Sk. Md. Quais, M.A., LL.M.
J.M.F.C(O), Bhubaneswar.

Date of conclusion
of argument : 21.05.2014

Date of Judgment : 27.05.2014

GR Case No. 4487/05
Trial Case No. 1571/09

S t a t e

vrs.

Jitendra Kumar Sahoo, aged about 31 years,
S/o. Vilash Sahoo
Vill : Luni Sahi, P.S : Nayagarh, Dist- Nayagarh,
A/P-Sitanath Basti, P.S.-C.Spur, Dist-Khurda.

... Accused

For offences punishable u/s 47 (a) of B & O Excise Act

For the Prosecution : A.P.P.

For the Defence : Sri L.K. Rath &
his Associate Advocates.

J U D G M E N T

The accused stands charged for offence punishable u/s 47(a) of B & O Excise Act for alleged possession of 25 polythene packets of Aska Forty C.S. Liquor each containing 200 ml without any authority.

2. The case of the prosecution shortly runs as hereunder ;

That on 24.12.2005 at about 7.30 PM while the then Constable of Police Chandrasekharpur P.S, Sri Kailash Chandra Pandey

was performing evening patrol duty at Sitanath Basti, Niladri Vihar found the accused namely, Jitendra Kumar Sahoo was selling C.S liquor illegally in an open field. The accused failed to produce any authority for possessing liquor. Hence, Sri Pandey brought the accused along with 25 packets of C.S Liquor and 2 numbers of glass tumbler to Chandrasekharpur P.S and produced the same before IIC, Chandrasekharpur P.S. He reported the matter in writing. Basing upon such report of Sri Pandey Chandrasekharpur P.S. Case 306/2005 was registered and the matter was investigated into. During investigation, the liquor was seized, accused was arrested. After completion of investigation, Charge-sheet U/s. 47(a) of B&O Excise Act was submitted against the accused. Hence, this case.

3. The plea of the accused is clean denial and false implication.

4. The points to be determined are as follows ;

I) Whether on 24.12.2005 at about 7.30 PM at village-Sitanath Basti, Niladri Vihar the accused was in conscious and exclusive possession of 25 numbers of Aska Forty C.S. polythene packet liquor each containing 200 ml of C.S. Liquor without any authority?

II) Whether the liquid so seized was nothing but C.S liquor ?

5. To substantiate the charge, prosecution has examined two witnesses in all out of whom PW.1, Kailash Chandra Pandey is the

Constable of Police and informant of this case. PW.2 Trinath Paikaray is the SI of Police and I.O of this case. Defence has examined none on its behalf.

6. Regarding the factum of recovery and seizure, PW.1 has stated that on 24.12.2005 at about 7.30 P.M. he was performing patrol duty at Sitanath Basti, Niladri Vihar. He found some gathering there. He proceeded to the spot and found one person sitting there and about 25 packets Aska Forty pouch each containing 200 ml of C.S. Liquor were kept near the person. On being asked the accused could not produce any valid document or license for possessing those Liquor. P.W.1 brought the accused and the Aska Forty pouches to P.S and produced the said before IIC, Chandrasekharpur P.S and lodged the FIR. P.W.2, the I.O of this case has deposed that on 24.12.2005 on the report of P.W.1, he took up investigation of this case. He seized 25 polythene packets of Aska Forty C.S Liquor each containing 200 ml. from the possession of accused.

During cross examination, PW.1 and PW.2 have admitted that the seized articles were not produced in Court during trial for investigation. No independent witness has been examined to corroborate the evidence of P.W.1 and P.W.2. It is admitted that there were many customers near the spot. But none of them has been examined on behalf of prosecution. No sale out money has also been seized. Under the above circumstances, the factum of recovery and seizure remained under the shadow of doubt.

7. Regarding the nature of liquid prosecution witnesses

have admitted that no test of whatever kind has been made over the seized liquid. The informant as well as I.O are silent about the brand name of the liquor pouch. In a catena of decision our Hon'ble Court have required the prosecution to examine the liquid through a chemical examiner which has not been done in the present case. No document providing the experience and training of official witnesses to call them as experts. Under the above circumstances, without any test the liquid so seized cannot be accepted to be nothing but C.S liquor.

In the result, I hold the accused not guilty of offence punishable u/s 47(a) of B&O Excise Act and acquit him therefrom u/s 248(1) of Cr. PC. The accused be set at liberty forthwith and he is discharged from his bail bond.

The seized article if any be destroyed after four months from the date of expiry of appeal period if no appeal is preferred and in case of appeal as per direction of Appellate Court.

J.M.F.C(O), BBSR

Dictated, corrected and pronounced in the open court on this the 27th day of May, 2014 under my hand signature and seal of this court.

J.M.F.C(O), BBSR

List of witnesses examined for prosecution

PW.1 Kailash Chandra Pandy
PW.2 Trinath Paikaray

List of witnesses examined for defence

N o n e

List of documents for prosecution

Ext.1	FIR.
Ext.1/1	Signature of PW.1 on Ext.-1.
Ext.1/2	Endorsement of IIC on Ext.-1.
Ext.2	Seizure list.
Ext.2/1	Signature of PW.2 on Ext.-2.
Ext.3	Spot Map.
Ext.3/1	Signature of P.W.2 on Ext.-3.

List of documents for defence

N I L

J.M.F.C(O), BBSR