

Andhra High Court

The Proh. And Excise Inspector, ... vs Madaparthi Srinivaslulu on 2 August, 2004

Author: P Narayana

Bench: P Narayana

JUDGMENT P.S. Narayana, J.

1. This Criminal Appeal is preferred as against the judgment recording acquittal in S.C. No. 55 of 1999 on the file of the Special Judge for trial of cases under N.D.P.S. Act.

2. The learned Additional Public Prosecutor would submit that the evidence of P.W.1 is available and Ex.P. 4, the report received from the analyst stating that the samples were mixed with 'diazepam' was also made available and hence, this material is sufficient to arrive at a conclusion that the offences with which the accused had been charged with Section 22 of the N.D.P.S. Act, 1985 and Section 37 of the A.P. Excise Act, 1968 had been proved.

3. This matter is coming up for admission.

4. The facts of the case, in brief, are that the respondent-accused is the President of T.C.S. Inamadugu and looking after the affairs of the T.C.S. Inamadugu, Kovur Mandal, Nellore District. It is also the case of the prosecution that on 08-01-1999 at 10-45 a.m. P.W.1, the Prohibition and Excise Inspector went with her staff to the scene of offence shop and while inspecting the said toddy shop, found the President in the shop doing toddy business. He was keeping 15 litres white plastic can and she deputed M. Ramakrishnaiah, A.P.S.P. No. 1022 to secure mediators and after sometime, he returned and informed as nobody to act as mediators. Then, the Excise Inspector verified the plastic can and found it containing 10 litres of toddy in it and she had taken samples from the said toddy into three 180 ml. capacity bottles for the purpose of analysis, sealed the sample bottles, affixed identity slips to them and seized them under a cover of special report drafted by N. Durga Prasad, A.P.S.P. No. 1458 and she registered the above special report as a case in P. R. No. 131/98-99 under Rule 24 of A. P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 and sent the property and connected record to the learned Additional Judicial Magistrate of First Class, Kovur. One of the sample bottles had been sent to the Government Chemical Examiner, Guntur for analysis through the learned Additional Judicial Magistrate of First Class, Kovur and after analysis, the analyst opined vide Chemical Examination Report No. 194/98-99, dated 19-02-1999 as the sample is Sl. No. 2131 is toddy free from chloral Hydrate but mixed with 'diazepam'. Then, she altered the section of law into Section 37(1) of the A.P. Excise Act read with 8 (c) and 22 of N.D.P.S. Act, 1985 and filed a memo to that effect before the Court of Additional Judicial Magistrate of First Class, Kovur. The Prohibition and Excise Inspector, Kovur took up investigation in the case and concluded as respondent/accused was selling toddy in the T.C.S. shop of Inamadugu and she arrested the accused and produced him before the Additional Judicial Magistrate of First Class Court, Kovur and filed charge sheet as against the accused.

5. The learned Judge had recorded the evidence of P.W.1 and Exs. P.1 to P.4 were marked. P.W.1 is the Prohibition and Excise Inspector. Ex. P.1 is the Special Report. Ex. P.2 is the First Information Report. Ex. P.3 is the letter of advice filed by P.W.1 to send the sample bottle to Chemical Examiner.

Ex. P.4 is the Chemical Analysis Report. The defence is one of total denial. The learned Judge, in paras 8 and 9 had recorded reasons and ultimately, acquitted the accused of all the charges. The learned Judge observed that the prosecution had failed to establish that the accused was President of T.C.S. Shop. The learned Judge also had taken note of the fact that there are Village Sarpanch, Village Elders and several others of the Village but none had been examined and at least, the person who was sent for the purpose of securing the mediators also had not been examined. Apart from this aspect of the matter, the learned Judge also had specifically recorded that Rule 24-A of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 had not been followed. Rule 24 of the said Rules reads as hereunder:

"24. Drawal of Samples:-

Any Excise Officer, not below the rank of the Sub-Inspector of Excise or Food Inspector appointed under the Prevention of Food Adulteration Act, 1954, shall be competent, any time, to take samples of arrack or toddy, in the possession of the licensee or any other person storing arrack or toddy, for the purpose of analysis. Such officer shall take three samples in the presence of the licensee or his agent or other person in-charge of the licensed premises or who is found selling toddy in the said premises, after conducting a Panchanama. The samples shall be sent to the Court with a requisition to send, one of the samples expeditiously to the Chemical Examiner of the Excise Department having jurisdiction in the region, in which licensed premises are situated, for chemical examination. If the sample sent to the Chemical Examiner is damaged, in transit or otherwise before the completion of the analysis, the court may be requested by the concerned Officer to send a second sample to the Chemical Examiner. If the licensee desires that the sample should be sent for analysis to an independent laboratory, he may apply to the Excise Superintendent within three days of the drawal of the sample. In cases where the licensee or one of his Nowkarnama holders was not present at the time of taking of sample, the licensee should apply within 7 days. The application should be accompanied by a demand draft for an amount sufficient to cover the analysis charges. If no such application is filed within the requisite time limit, the licensee shall not be entitled to seek analysis by an independent laboratory thereafter. On receipt of the application within time and with requisite demand draft, the concerned officer shall request the Court to send a sample to the independent Laboratory chosen by the licensee."

6. Rule 24-A of the said Rules reads as hereunder:

"24-A. Manner of Packing, Sealing, Labeling and Addressing the Samples:-

All samples of arrack or toddy taken under Rule 24 shall be packed, fastened and sealed in the following manner, namely:-

(a) The stopper shall first be securely fastened so as to prevent relevant leakage of the contents in transit.

(b) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive.

(c) A proper slip of the size that goes round completely from the bottom to top of the container bearing the signature and code of the inspecting officer, shall be pasted on the wrapper, the signature or the thumb impression of the person from whom the sample has been taken being affixed in such a manner that the paper slip and the wrapper both carry a part of the signature or thumb-impression;

Provided that in case, the person from whom the samples have been taken refuse to affix his signature or thumb-impression, the signature or thumb-impression of the witnesses, shall be taken in the same manner;

(d) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle, jar or other container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be atleast four distinct and clear impressions of the seal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender."

7. Rule 24-B of the said Rules reads as hereunder:

"24-B. Manner of Despatching the Samples:-

The samples after following procedure laid down in Rule 24-A shall be forwarded to the Court as specified in Rule 24 immediately after the drawal of the samples but not later than the succeeding day by any suitable means. A copy of the specimen impression of the seal, used to seal the sample shall be sent to the Chemical Examiner separately by registered post or delivered to him or to any person authorised by him".

8. From a careful reading of Rules 24, 24-A and 24-B of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969, and when the evidence of P.W.1 is carefully scrutinized, it cannot be said that the offences with which the accused had been charged with were proved beyond all reasonable doubt. Even otherwise, none except P.W.1 had been examined and no convincing explanation is forthcoming why none others had been examined. In the light of the reasons recorded in detail at paras 8 and 9 of the judgment challenged before this Court by way of appeal, this Court does not see any reason to arrive at a different conclusion and admit the appeal.

9. Accordingly, the appeal is hereby dismissed at the stage of admission.