

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF MAY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION No.909 OF 2022
(397(Cr.PC) / 438(BNSS))

BETWEEN:

1. MANJANAIIKA
S/O TOLACHANAIIKA
AGED ABOUT 32 YEARS,
OCC : LABOURER
R/O GIJIHALLI VILLAGE
ARASIKERE TALUK
HASSAN DISTRICT-573 103
2. SHANKAR
S/O MURTHY
AGED ABOUT 28 YEARS
WORKING IN CHANDRU WINES SHOP
B R PROJECT
SHNAKARA GHATTA
TARIKERE TALUK
CHIKMAGALURU DISTRICT-577 228

...PETITIONERS

(BY SRI P.B.UMESH FOR SRI. R B DESHPANDE, ADVOCATES)

AND:

THE STATE OF KARNATAKA
BY BANAVARA POLICE STATION
ARASIKERE RURAL CIRCLE
HASSAN DISTRICT-573 112

(REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU -560 001)

...RESPONDENT

(BY SMT.WAHEEDA.M.M, HIGH COURT GOVERNMENT PLEADER)

THIS CRIMINAL REVISION PETITION IS FILED UNDER
SECTION 397 R/W 401 CODE OF CRIMINAL PROCEDURE

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signed by
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Location:
HIGH
COURT OF
KARNATAKA

PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE IN C.C.NO.388/2015 DATED 13.03.2020 PASSED BY THE 1ST ADDITIONAL CIVIL JUDGE AND JMFC, ARASIKERE CONFIRMED BY THE JUDGMENT AND ORDER DATED 06.04.2022 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN IN CRL.A.NO.141/2020 (CONVICTED FOR THE OFFENCE PUNISHABLE UNDER SECTION 32 AND 34 OF KARNATAKA EXCISE ACT 1965) AND ACQUIT THE PETITIONER/ACCUSED NO.1 AND 2 OF ALL THE CHARGES LEVELED AGAINST THEM.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

CAV JUDGMENT

Accused who suffered an order of conviction in C.C.No.388/2015 for the offence punishable under Sections 32 and 34 of the Karnataka Excise Act, is the revision petitioner who has been sentenced as under:

"The accused Nos.1 and 2 are hereby sentenced to undergo SI for a period of one year and Rs.10,000/- fine each for the offence punishable u/S 32 of K.E.Act.

The accused Nos.1 and 2 are hereby sentenced to undergo SI for a period of one year and Rs.10,000/- fine each for the offence punishable u/S 34 of K.E.Act.

All the sentences shall run concurrently."

2. The Order of conviction and sentence was challenged by the accused in Criminal Appeal No.141/2020.

3. Learned Judge in the First Appellate Court after securing the records, re-appreciated the material evidence on record and dismissed the appeal.

4. Being further aggrieved by the same, accused is before this Court in this revision petition on the following grounds:

- *That the impugned judgment and order passed by the courts below are illegal, invalid and contrary to law and evidence on record.*
- *That the judgments of the courts below are illegal, arbitrary, capricious and opposed to sound principles of law.*
- *That the courts below have committed serious error in convicting the petitioners when the prosecution has failed to prove the guilt of the petitioners.*
- *That the courts below have not considered the facts and circumstances of the case in a proper perspective but have simply mislead themselves by stressing unnecessarily on the alleged act on the part of the petitioners.*
- *That the courts below ought to have taken into consideration that the prosecution has miserably failed to prove the manner in which the alleged incident took place.*
- *That the courts below have committed serious error in relying on the evidence of PW-2 to 5 who is interested and official witness and whose evidence suffers from legal infirmities.*

- *That the courts below have committed serious error in holding that there was motive on the part of the petitioners to commit alleged offence. In the facts and circumstances and evidence of prosecution witness it can be inferred that PW 2 to 5 have created and concocted a false case against the petitioners to fulfill their departmental statistics in filing the case/s etc., before court.*
- *That the courts below have committed serious error in convicting the petitioners when no any independent witnesses have been examined by the prosecution to depose with regard to the true version of the case in as much as prosecution is much interested in the case.*
- *That the courts below have erred in convicting the petitioners relying on the evidence of Pw-3 to Pw-5 who are official witnesses, interested witnesses and further their evidence is contrary to evidence of PW 1 who is panch witness and further their evidence suffers from serious legal infirmities, full of omissions, contradictions and does not corroborate each other.*
- *That the courts below ought to have acquitted the petitioners on the ground that prosecution has not followed the mandatory requirements of registration of FIR in the case and also not disclosing the credible information which leads to registration of the case. It can be seen that mahazar was drawn prior to registration of FIR which goes to roots of the prosecution case. Under these facts and circumstances it can be inferred that the trial court*

has erred in convicting the petitioners upon the evidence of official witnesses only.

- *That the learned Trial Judge ought to have drawn adverse inference in the case of prosecution since petitioners are alleged to be carrying excise materials/whisky sachets which are in permissive possession and further enormous delay in sending PF/MO's list which clearly reveals that there is serious discrepancies regarding seizure of MOs 1 to 52 which goes to roots of the prosecution case. Further regarding this the evidence of PW 2 to PW 5 who are interested witnesses; their evidence is not corroborated to each other and is full of omissions, contradictions and material omissions. The trial court has erred in convicting the petitioners upon the evidence of PW 2 to PW5.*
- *That the courts below ought to have drawn adverse inference in the case of the prosecution on the ground that prosecution has failed to obtain search warrant from the jurisdictional magistrate as required under Section 54 of Karnataka Excise Act 1969 before raid. Thus without following the mandatory requirements and same vitiates the prosecution case and same goes to roots of the prosecution case. Thus taking into these facts and circumstances, petitioners should have been given benefit of doubt in the case of prosecution.*
- *That the courts below ought to have acquitted the petitioners on the ground that prosecution has not sent the alleged seized sachets to laboratory but only a sample sachets were sent which seriously doubts*

the case of the prosecution and same goes to the roots of the case.

- *That the courts below ought to have discarded the case of the prosecution observing prosecution has not rebutted the case as PW1 has not fully supported the case of the prosecution in his cross-examination and thus prosecution cannot presume the incident as per presumption under Section 40 of the Excise Act. Thus courts below have committed serious error in convicting the petitioners upon such presumption which cannot be presumed in the facts and circumstances.*
- *That the courts below ought to have seen that prosecution has not examined any independent witnesses though they are available which seriously doubts the case of the prosecution. Further the same seriously doubts the case of the prosecution regarding seizure of MO's which goes to roots of the case.*
- *That the courts below should have discarded the evidence of official witness/PW-2 to 5 on the ground that there are uncorroborated versions in their statement.*
- *That the courts below have committed serious error in shifting the burden of proving prosecution case on petitioners which is against the principles of criminal jurisprudence. Further prosecution has failed to bring home the ingredients of Section 32 of Karnataka Excise Act against the petitioners as alleged. That the courts below ought to have discarded the case of the prosecution on the ground that prima facie*

prosecution has failed to establish that petitioners had illegal possession of MOs and are being transported illegally and thus there is no contravention of Section 32 and 34 of the Karnataka Excise Act. Further under such circumstances prosecution cannot presume such acts by the petitioners as per Section 40 of Karnataka Excise Act. Hence the conviction of petitioners in the facts and circumstance of the case is liable to be set-aside.

- *That courts below have committed serious error in holding that defence has failed to prove omissions and contradictions. It is submitted that contents of Ex.P.2/intimation letter to FSL contended that seized alcohol is not fit to human consumption; but the report at Ex.P.4 clearly revealed that the same is fit to human consumption. Under these circumstances the courts below ought to have inferred that prosecution has failed to prove the allegations against the petitioners and hence ought to have acquitted the petitioners.*
- *That the courts below ought to have acquitted the petitioners on the ground that petitioners have rebutted the case as alleged against them and thus petitioners have rebutted presumption under Section 40 of Karnataka Excise Act. Further the courts below have committed serious error in relying on the evidence of PW 2 to 5 when their evidence is inconsistent with each other.*
- *That the courts below have committed serious error in convicting and sentencing the petitioners under*

Section 32 and 34 of Karnataka Excise Act which is improper and illegal.”

5. Facts in brief which are utmost necessary for disposal of the present revision petition are as under:

5.1 On 14.09.2014, upon receipt of the credible information that petitioners herein were in the process of transporting liquor for the purpose of selling it at Harapanahalli, head of the raid party along with panch witnesses and official witnesses went to the place of information and had kept a watch for the intended suspects.

5.2 At about 04.30 p.m. two suspects came on a motorcycle bearing No.KA-13/Q-3060 from Arasikere side. They possessed a plastic bag. They were intercepted by the head of the raid party and his sub-staff. On enquiry as to what is there in the said plastic bag, they revealed that it contained Raja Whiskey sachets.

5.3 On opening of the said plastic bag, they noticed 275 sachets of 90ml Raja Whiskey in one bag and same number of sachets in another bag. It was valued around Rs.13,200/-.

5.4 On further enquiry as to whether they possessed the licence or permit to transport the said liquor, they told that they don't have any such license or permit.

5.5 Accordingly, head of the raid party treated 550 sachets of 90 ml Raja Whiskey as illicit liquor and seized the same and drew the sample in each of the packets from about 52 sachets randomly, which would work out to 4.68 litres and sealed the same for the purpose of sending it to Forensic Science Laboratory.

5.6 They also seized the motorcycle bearing No.KA-13/Q-3060 and prepared the mahazar in the presence of panch witnesses.

5.7 Thereafter, petitioners were taken to custody.

6. Later on, seized illicit liquor and accused persons were handed over to Banavara Police. Police registered the case in Crime No.184/2014 for the offences punishable under Sections 32 and 24 of the Karnataka Excise Act, conducted the detailed investigation and filed a charge sheet after securing the FSL report, depicting the presence of ethanol in the seized sample sachets.

7. Thereafter, learned Trial Magistrate took cognizance of the offences alleged against the accused persons and summoned the accused and recorded the plea. Both accused persons pleaded not guilty and therefore, trial was held.

8. In order to prove the guilty of thee accused, prosecution proceeded to examine eye witnesses as PWs-1 to 5, comprising of head of the raid party, sub-staff, one of the panch witnesses and the Investigation Officer.

9. Prosecution also placed on record four documentary evidence which were exhibited and marked as Exs.P.1 to P.5 comprising of spot mahazar, FIR, FSL report and the intimation or report filed by head of raid party.

10. On conclusion of recording of evidence of the prosecution witnesses, accused statement as is contemplated under Section 313 of the Code of Criminal Procedure was recorded.

11. Both the accused persons denied all the incriminating circumstances, but did not choose to place any defence evidence on record.

12. Thereafter, learned Trial Magistrate heard the arguments of the parties and on cumulative consideration of the oral and

documentary evidence on record, convicted the accused and sentenced as referred to supra.

13. Being aggrieved by the same, accused persons have preferred the appeal before the District Court in Criminal Appeal No.141/2010.

14. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material evidence on record, dismissed the appeal, *inter alia* holding in paragraph Nos.13 to 17 as under:

"13. Having considered the rival contention of the parties, now this court has to examine whether principles laid down by Hon'ble Apex court in Lalithakumari's case are applicable to the case on hand. On perusal of Lalithakumar's case, Hon'ble Apex Court issued Guidelines in which category of cases a preliminary enquiry may be made, it is matrimonial disputes, family disputes be commercial offence, medical negligence cases, corruption cases and cases where there is an abnormal delay and laches of initiating criminal prosecution. Hon'ble Apex court after discussing, was pleased to opine what is the scope of preliminary enquiry referred to by the Hon'ble Supreme court. In para-110 of the Judgment (V), wherein Hon'ble Apex court discussed what is preliminary enquiry. The scope of preliminary enquiry is not to verify the veracity or otherwise of the information received but only

to ascertain whether the information reveals any cognizable offence. Therefore, preliminary enquiry by the Investigating Officer is to find out, there is any cognizable offence made out or not, and it do not referred to any preliminary enquiry, which may form part of the investigation. Therefore, the grounds urged by the learned counsel for the appellant that Investigating Officer cannot draw panchanama prior to the submitting the first information report is unsustainable. It is relevant to point out, it is bounden duty of the Investigating Officer to detect the crime as well as prevent the crime. When complainant being Investigating Officer received credible information of commission of offence, a duty is cost on Investigating Officer to prevent the occurrence to the best of his efforts. Therefore, in the instant case when he received the credible information, he has to rush to the spot with panchas and staff members, either to prevent the occurrence or detect the crime. When he discovered the illicit liquor in possession of the petitioners that itself is an occurrence and therefore a drawing of panchanama on the spot it cannot be considered as a preliminary enquiry i.e making an enquiry after the occurrence. Therefore, the grounds urged on behalf of counsel for the appellant is unsustainable.

14. Therefore, the grounds urged on behalf of the appellants that the procedure adopted by the Investigating Officer by making preliminary enquiry, conducting the seizure of material objects, then registering the FIR is in accordance with law laid down in Lalithakumari's case. Therefore, this ground is not available for the appellants to set-aside the impugned order.

15. The 2nd ground urged was that total quantum of material objects was 52 sachets of liquor containing in 2 bags 275 each bag. As per the panchanama Investigating Officer taken 26 sachets and total 52 sachets were submitted to chemical examination. Therefore, contention of the appellants, the total material objects seized and found liquor is 4.68 liters and appellants no.1 and 2 were carrying them, even if considered that each one of them were carrying 50 each. It is permissible limits within rule 21 of Rules. It is relevant to point out absolutely there is no cross-examination of material witnesses i.e., PW.4 and 5 who conducted the investigation on behalf of the prosecution. In the cross-examination of prosecution witnesses, appellants herein did not admit that these persons were in possessing of the property, but disputed the material objects stating that appellants are nothing to do with seized material objects. If appellants would have admitted the possession and then took up said contention in the cross-examination of material prosecution witnesses, that would have been the best piece of evidence, for the appellants to rely on Rule 21 of the Rules. But in the cross-examination, absolutely, there is no material elicited from the evidence of PW.4 and 5, the material official witnesses. Therefore, this ground cannot be raised in the first appeal without there being any material evidence before the learned Magistrate. In the absence of material evidence in that regard this court cannot presume the things and come to conclusion that out of 52 sachets each of the appellant having 26 each. Therefore, this ground is also not helpful for the prosecution in any manner. For all these reasons the law laid down by Hon'ble High Court of karnataka in case of

Umakantha @ Ramakantha Nageshgowda Vs State of Special police in Crl.A.2619/20-12 dated: 18.9.2020 relied on by counsel for appellant cannot be made applicable to the case on hand.

16. Apart from above stated grounds, prosecution examined PW.4 the complainant who received the credible information about illegal transportation of liquor by persons. As per his evidence on 14.9.2015 at about 4.00 pm they received credible information. Some persons are engaged at Harapanahalli village illegally selling the liquor. He invited panchas Cw.2 and 3 took staff Cw.4 to 6 went towards Harapanahalli village in a departmental Jeep at about 4.30 pm. When they were watching , two persons on Bike no: KA 13 Q 3060 carrying two bags in the middle of the bike were travelling. They were apprehended and questioned and on interrogation, it was revealed that they were carrying 90 ml 550 Raja Whisky sachets in two plastic bags containing 275 sachets each. On interrogation they revealed their name, they were not having any permission to carry the liquor. Therefore, Investigating Officer drawn the panchanama in the presence of CW.2 and 3 under Ex.P.1 prepared the report as per Ex.P.2. Seized material objects and two wheeler apprehended the accused persons, produced before PW.5 the Investigating Officer.

17. Prosecution by way of corroboration to this evidence examined PW.2 panch witness he fully supported the case of prosecution. PW.3 another panch also supported the case of prosecution. In the cross-examination they denied the suggestions that both these witnesses are seeing accused no.1 and 2 for the first time in the court.

They do not know exactly how much quantity of liquors sachets were found in each bag. But PW.1 deposed to boundaries of the spot that accused persons were apprehended. Therefore, evidence of PW.1 and 2 coupled with evidence of PW.4 coupled with evidence of PW.3 one of the police constable accompanied the PW.4 supported the case of prosecution. In the cross-examination, except denial suggestions nothing worth is elicited. The above said material further corroborated by PW.5 Investigating Officer who registered the FIR. Sent the FIR before concerned judicial Magistrate and remanded the accused to judicial custody. Recorded the statement of witnesses Cw.2 to 6 and filed the charge sheet against accused persons. In the cross-examination, except denial suggestions nothing worth is elicited. Therefore, trial court after appreciating the oral as well as documentary evidence placed on record properly come to the conclusion and recorded findings that accused no.1 and 2 are found guilty of offence under Section. 32 and 34 of Karnataka Excise Act and sentenced them to undergo simple imprisonment of one year and also pay a fine of Rs.10,000/- which is perfectly based on material evidence available on record and do not call for any interference by this court and accordingly point no.1 and 2 are answered in the negative."

15. Being further aggrieved by the same, accused is before the Court in this revision petition.

16. Sri P.B.Umesh, learned counsel for the revision petitioners/accused, contented that in the case on hand, there is no compliance to Sections 53 and 54 of the Karnataka Excise Act. Therefore, the very order of the Trial Magistrate confirmed by the First Appellate Court needs interference, in view of the authoritative principles of law enunciated by the Hon'ble Apex Court in the case of ***K.L.Subhayya vs. State of Karnataka*** reported in ***AIR 1979 SC 711*** which was followed by the co-ordinate Bench of this Court in the case of ***Umakant @ Ramakant Nagesh Gouda and others vs. State by Special Police, Karwar***, in ***Criminal Appeal No.2619/2012 dated 18.09.2020***.

17. *Per contra*, Smt.Waheeda M.M, learned High Court Government Pleader opposes the revision grounds and submits that the contentions urged on behalf of the petitioners cannot be countenanced in law inasmuch as, the liquor sachets were in the possession of the accused persons who were travelling on a motorcycle.

18. Therefore, there was no necessity to comply Sections 53 and 54 of the Karnataka Excise Act. Hence, the revision is to be dismissed.

19. She would also submit that there cannot be any dispute as to the principles of law enunciated in the case of ***K.L.Subhayya*** supra and ***Umakant*** supra.

20. But facts of those cases would differ from the facts that is available on record and thus sought for dismissal of the revision petition.

21. Having heard the arguments of both sides, this Court perused the material on record meticulously.

22. On such perusal of the material on record, in the case on hand, seizure of illicit liquor stands established by placing cogent and convincing evidence on record.

23. Pertinently, neither the head of the raid party nor remaining members of the raid party including the sub-staff did not nurture any previous enmity or animosity against the petitioners to falsely implicate them in the case.

24. One of the witness to Exhibit P-1 mahazar has supported the case of the prosecution in *toto*. When head of the raid party and one of the panch witnesses who did not nurture any previous enmity and animosity against the accused, why would

they depose falsely against the accused persons is a question that remains unanswered on behalf of the revision petitioner.

25. Further, no explanation whatsoever is forthcoming from the accused at the time of recording the accused's statement for the seizure of huge quantity of the liquor packets amounting to 550 sachets of 90 ml of Raja Whiskey for which the accused persons did not possess any licence/pass or permit.

26. Further, if the head of the raid party wanted to falsely implicate the accused persons why would he implant such huge number of Raja Whiskey packets is a question again which remains unanswered on behalf of the accused.

27. Taking note of these aspects of the matter, the seizure of illicit liquor stands established by the prosecution by placing overwhelming material evidence on record.

28. Insofar as the technical defence that there is no compliance to Sections 53 and 54 of the Karnataka Excise Act is concerned, it is just and necessary for this Court to cull out those sections for ready reference.

53. Power of magistrate to issue a warrant

If a magistrate, upon information and after such enquiry (if any) as he thinks necessary, has reason to believe that an offence under section 32, section 33, section 34, section 36 or section 37 has been, is being, or is likely to be, committed, he may issue a warrant,-

(a) for the search of any place in which he has reason to believe that any intoxicant, still, utensil, implement, apparatus or materials which are used for the commission of such offence or in respect of which such offence has been, is being, or is likely to be, committed, are kept or concealed, and

(b) for the arrest of any person whom he has reason to believe to have been, to be, or to be likely to be, engaged in the commission of any such offence.

54. Power to search without warrant.

- Whenever the Excise Commissioner or a Deputy Commissioner or any police officer not below the rank of an officer in charge of a police station or any Excise Officer not below such rank as may be prescribed, has reason to believe that an offence under section 32, section 33, section 34, section 36 or section 37 has been, is being, or is likely to be, committed, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, after recording the grounds of his belief,-

(a) at any time by day or by night enter and search any place and seize anything found therein which he has

reason to believe to be liable to confiscation under this Act; and

(b) detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid.

29. On careful reading of the above provisions, it is crystal clear that a moving vehicle cannot be equated either to the house or the vessel.

30. In the case on hand, it is the motorcycle on which the accused persons were possessing the illicit liquor and were transporting. Therefore, non-compliance of Sections 53 and 54 of the Karnataka Excise Act is not fatal to the case of the prosecution. As such, the principles of law enunciated in the decision relied on by learned counsel for the revision petitioner is not applicable to case on hand on account of difference in factual matrix.

31. Further in the cross-examination, no such questions are put to the prosecution witnesses and for the first time before this Court, that too in revision, this aspect is pressed into service. Therefore, same cannot be countenanced in law.

32. View of this Court in this regard is fortified by the co-ordinate Bench decision of this Court in the case of **Anasuya and others vs. The State of Karnataka** reported in **MANU/KA/3176/2018**.

33. Now coming to the question of appropriate sentence, the learned Trial Magistrate has imposed minimum sentence which has been upheld by the learned Judge in the First Appellate Court.

34. Thus, this Court does not find any infirmity whatsoever in the impugned orders.

35. Accordingly, the following:

ORDER

- i. Revision petition is meritless and is hereby **dismissed**.
- ii. Petitioners are directed to surrender before the Trial Court for serving the sentence on or before **05th June 2026**.

**Sd/-
(V SRISHANANDA)
JUDGE**

kcm