



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 9<sup>TH</sup> DAY OF JUNE, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE H.P.SANDESH**

**CRIMINAL REVISION PETITION NO.332 OF 2017**

**C/W**

**CRIMINAL APPEAL NO.437 OF 2017**

**IN CRL.RP NO.332/2017:**

**BETWEEN:**

1. THE STATE BY SAKALESH PURA P.S.,  
REPRESENTED BY STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDING,  
BENGALURU-560 001.

...PETITIONER

(BY SRI. DIVAKAR MADDUR, HCGP)

**AND:**

1. K.M.MOHAN KUMAR @ DEVARAJU,  
AGED ABOUT 40 YEARS,  
KYANAHALLI VILLAGE,  
KASABA HOBLI,  
SAKALESH PURA TALUK,  
HASSAN DISTRICT-573134.

...RESPONDENT

(BY SRI. PAVAN KUMAR G., ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 1.2.2016 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN IN CRL.A.NO.129/2014 AND





ENHANCE THE SENTENCE IMPOSED BY THE LEARNED MAGISTRATE IN C.C.NO.628/2011 PASSED BY THE CIVIL JUDGE AND JMFC, SAKALESHAPURA AND IMPOSE INADEQUATE AND MAXIMUM SENTENCE UNDER SECTION 13(1)(a)(f) R/W SECTIONS 32(1) AND 38(A) OF KARNATAKA EXCISE ACT AND U/S 272 AND 273 OF ICP.

**IN CRL.A NO.437/2017:**

**BETWEEN:**

1. THE STATE BY SAKALESHPURA P.S.,  
REPRESENTED BY STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDING,  
BENGALURU - 560 001.

...APPELLANT

(BY SRI. DIVAKAR MADDUR, HCGP)

**AND:**

1. K.M. MOHAN KUMAR @ DEVARAJU,  
AGED ABOUT 40 YEARS,  
KYANAHALLI VILLAGE,  
KASABA HOBLI,  
SAKALESHPURA TALUK,  
HASSAN DISTRICT-573134.

...RESPONDENT

(BY SRI. PAVAN KUMAR G., ADVOCATE)

THIS CRL.A IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER DATED 01.02.2016 PASSED BY II ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN IN CRL.A.NO.102/2014 THEREBY GRANTING AN ORDER OF



ACQUITTAL FOR THE OFFENCES PUNISHABLE UNDER SECTION 13(1)(a)(f) R/W SECTIONS 32(1) AND 38(A) OF KARNATKA EXCISE ACT AND SECTIONS 272 AND 273 OF INDIAN PENAL CODE.

THIS CRL.RP AND CRL. APPEAL COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

**ORAL ORDER**

Heard the learned High Court Government Pleader appearing for the State and the learned counsel for the respondent in both the revision petition and appeal.

2. The revision petition as well as criminal appeal are filed against the dismissal of the appeal filed by the State questioning the inadequate sentence in CrI.A.No.129/2014 and also questioning the acquittal order passed by the Appellate Court in CrI.A.No.102/2014.

3. The factual matrix of the case of the complainant/ State before the Trial Court is that on 22.02.2011 at about 12.30 noon, on credible information, the investigating agency rushed to the spot at Kyanahalli Village and found illegal



possession of 30 litres of illicit liquor in aluminium vessel and also possessing 25 litres of fermentation of jaggery in 10 plastic pots at coffee land. The said materials are collected for preparation of illicit liquor to sell the same to the public, resulted in death of innocents, poor people in the society. The police after the investigation filed the charge-sheet and the accused person was secured and he did not plead guilty and claims the trial. The prosecution mainly relies upon the evidence of P.W.1 to P.W.4 and also relies upon the documents Exs.P.1 to 5. M.O.1 and M.O.2 are two sample bottles. The accused not led any defence evidence, however, denied the incriminating evidence. The Trial Court, considering the evidence of P.W.1 and P.W.4, who are the official witnesses and even though P.W.2 and P.W.3, who are the panch witnesses to the seizure, turned hostile, convicted and sentenced the accused. The same is challenged before the Appellate Court by the accused as well as State regarding quantum of punishment. The Appellate Court in CrI.A.Nos.102/2014 and 129/2014, re-assessed the evidence available on record and particularly in paragraph No.13, discussed regarding the evidence of P.W.2 and P.W.3, who turned hostile and though cross-examined



treating them as hostile, nothing is elicited. The Appellate Court also taken note of that P.W.4, who is the raiding party, he himself registered the FIR and conducted the investigation and submitted the charge-sheet. The Appellate Court also taken note of the judgment reported in **2014 CrI.L.J 4683 (CHH)**, wherein it is held that investigation – police officer who registers crime cannot proceed with investigation – Investigation has to be done by another officer. The Appellate Court also taken note of the answers elicited from the mouth of P.W.1 and P.W.4, wherein they have categorically admitted that they have not seized the vessels, but only placed before the Trial Court the sample bottles and also there was a clear admission with regard to the total quantum and nothing is on record and hence, the Appellate Court given the benefit of doubt in coming to the conclusion that the prosecution has not proved the case.

4. The learned High Court Government Pleader appearing for the State would submit that the reasoning assigned by the Appellate Court is not correct and relies upon the judgment of the Apex Court in the case of **BHASKAR RAMAPPA MADAR AND OTHERS v. STATE OF KARNATAKA**



reported in **(2009) 11 SCC cases 690** and brought to the notice of this Court Head Note B, wherein discussion was made with regard to Sections 154 and 156 of Cr.P.C. Investigation by complainant – propriety – Held, there is no legal bar. Merely because the complainant conducted the investigation, that would not be sufficient to cast doubt on the prosecution version to hold that the same makes the prosecution version vulnerable. Matter has to be decided on a case-to-case basis without any universal generalization. The counsel referring this judgment would submit that the Appellate Court committed an error in coming to the conclusion that investigation done by P.W.4 and also registered by the very same person cannot be accepted. The very approach of the Appellate Court is erroneous not only on merits, but even with regard to the sentence is concerned.

5. Per contra, the learned counsel appearing for the respondent would submit that the very evidence of P.W.1 and P.W.4 available before the Court not inspires the confidence of the Court and there are material contradictions. P.W.1 says that they took the panchas from the bus stand and in all went to the spot in 8 persons and P.W.4 says that they took the



panchas from the bus stand, but in all they went to the spot in 5 persons. The evidence of P.W.1 and P.W.4 is very clear that they have not produced the material objects before the Court. P.W.1 says that they have not measured the articles, which were seized and also the seized articles are not produced before the Court and in the sample bottle also there is no liquid and further admitted that M.O.1 and M.O.2 similar bottle will be available everywhere. The counsel also brought to the notice of this Court the evidence of P.W.4. P.W.4 also gave the similar evidence and he categorically admits that material objects were not before the Court and also not measured the liquid, which were found at the spot and even the can colour also not mentioned in the mahazar. These evidence were appreciated by the Appellate Court and hence, it does not require any interference of this Court.

6. Having heard the learned High Court Government Pleader appearing for the State as well as the learned counsel for the respondent and also considering the grounds which have been urged in the revision as well as in the appeal, the points that would arise for the consideration of this Court are:



- (i) Whether the Appellate Court committed an error in allowing the appeal and reversing the judgment of conviction and also whether the Appellate Court committed an error in dismissing the appeal filed by the State and whether it requires interference of this Court by exercising the revisional powers as well as the appellate powers?
- (ii) What order?

**Point No.(i):**

7. Having heard the respective learned counsel and also on perusal of the material available on record, the specific case of the prosecution is that on the particular date i.e., on 22.02.2011 at about 12.30 noon on a credible information, the investigating agency rushed to the spot and found the illegal possession of 30 litres of illicit liquor in aluminium vessel and also possessing 25 litres of fermentation of jaggery in 10 plastic pots at coffee land. The said materials are collected for preparation of illicit liquor to sell the same to the general public. No doubt, P.W.1 and P.W.4 are the raiding parties and P.W.2 and P.W.3 are the mahazar witnesses. Having perused the material on record, P.W.2 and P.W.3 turned hostile and



even after treating them as hostile witnesses, nothing is elicited. The very seizure is not proved by examining the independent witnesses. This Court has to take note of that the very evidence of P.W.1 and P.W.4 and the same not inspires the confidence of the Court to rely upon the same for conviction. The Appellate Court having considered the material on record, taken note of that the evidence of P.W.1 and P.W.4 is very clear that they have not measured the illicit liquor. It is important to note that though P.W.1 and P.W.4 says that they took the panchas from the bus stand, but their evidence is contrary to each other. P.W.1 says that they all went in 8 persons to the spot, but P.W.4 says that they all went to the spot in 5 persons. This is the material contradiction with regard to the raiding is concerned. Apart from that, though articles seized at the spot, the very articles were not placed before the Court and material objects are not produced and though sample bottles are produced and marked as M.O.1 and M.O.2, they categorically admitted that in M.O. sample bottle there is no such samples. When such being the case and when the measurement is not done, the specific allegation of the prosecution is that the accused is in illegal possession of 4 litres



of illicit liquor, 25 litres of fermentation of jaggery in 30 litres aluminium vessel and the same are not placed before the Court. Even when the evidence of the prosecution witnesses is that fermentation of jaggery in 10 plastic pots are found, the same are also not placed before the Court, except the samples. The evidence of P.W.1 and P.W.4 not inspires the confidence of the Court with regard to conducting of the raid as well as seizure and no measurement of illicit liquor found at the spot. Under the circumstances, the Appellate Court rightly re-appreciated the evidence available on record in paragraph Nos.13 and 14 and rightly comes to the conclusion that the prosecution failed to prove the case and there is no supporting independent seizure mahazar witnesses before the Court. The Trial Court ought to have taken note of the evidence available on record, particularly while assessing the evidence of interested witnesses P.W.1 and P.W.4, whether the same inspires the confidence of the Court and the same was not done by the Trial Court. However, only believed the evidence of P.W.1 and P.W.4 and the same was re-appreciated by the Appellate Court and hence, I do not find any error on the part of the Appellate Court in reversing the finding of the Trial Court



in acquitting the accused. There is no any cogent evidence before the Court to comes to a conclusion with regard to the seizure, as P.W.2 and P.W.3 have turned hostile and P.W.1 and P.W.4 are the interested witnesses and their evidence ought to have been assessed with due care and caution and the same was not done and the evidence of P.W.1 and P.W.4 also not inspires the confidence of the Court.

8. No doubt, the learned High Court Government Pleader relied upon the judgment of the Apex Court in the case of **Bhaskar Ramappa Madar** (supra) with regard to the investigation by the complainant as well as the Investigating Officer. But in the case on hand, even though P.W.4 is the complainant as well as the Investigating Officer, the evidence available before the Court not inspires the confidence of the Court and hence, I do not find any error on the part of the Appellate Court in reversing the finding of the Trial Court and acquitting the accused on factual aspects. Under the circumstances, no ground is made out to entertain the revision petition as well as the appeal filed by the State. Hence, the points are answered in the negative.



**NC: 2026:KHC:27547**  
**CRL.RP No. 332 of 2017**  
**C/W CRL.A No. 437 of 2017**

**Point No.(ii):**

9. In view of the discussions made above, I pass the following:

ORDER

The criminal revision petition as well as criminal appeal are dismissed.

Sd/-  
**(H.P.SANDESH)**  
**JUDGE**

MD  
List No.: 1 Sl No.: 46