

[240] APPELLATE CRIMINAL. -

The 14th November, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

The Queen

against

Kokkiligadda Thathayya and others.*

*Madras Abkari Act—Confiscation by Magistrate—Abkari Amendment Act,
Section 23.*

Neither under the provisions of the Madras Abkari Act nor under the provisions of the Abkari Amendment Act, Madras, is an order by a Magistrate confiscating a boat used for carrying liquor without a valid permit legal.

THIS case was referred by the District Magistrate of Kistna for the orders of the High Court under Section 296 of the Code of Criminal Procedure.

The accused were convicted by the Second-class Magistrate of Masulipatam under Section 22 of Act III of 1864 (Madras Abkari Act). (a)

The Magistrate proceeded to order that the boat in which the liquor was found be confiscated and sold and the liquor destroyed.

The order purported to be made under Section 23-A of act V of 1879 (The Abkari Amendment Act). (b)

No one appeared at the hearing.

The Court (INNES and MUTTUSAMI AYYAR, JJ.) delivered the following

[241] Judgment :—The Second-class Magistrate convicted five persons under Section 22 of Act III of 1864 of conveying liquor without a permit, and ordered the confiscation and sale of the boat in which the liquor was found.

* Case No. 84 of 1881 referred by the Acting District Magistrate of Kistna under Section 296 of the Code of Criminal Procedure.

(a) Any person who shall convey or attempt to convey more than one Imperial quart of liquor without a valid permit or materially differing from the description or quantity specified in the permit, and any person who shall have in his possession without a valid permit more than one Imperial quart of liquor, except such quantities of English and foreign wines, beer and spirits as may be required for private consumption shall, on proof thereof before the Magistrate, be liable to a fine not exceeding Rs. 500 for each offence.

(b) All persons not being licensed to manufacture liquor are hereby prohibited from having in their possession for the purpose of such manufacture any still or other implement intended to be used for such purpose; and all persons are prohibited from having in their possession or selling any liquor which they know or have reason to believe has been manufactured without license.

Every person not being licensed to manufacture liquor, who has in his possession any still or other implement for the purpose of such manufacture;

or any person who has in his possession or sells liquor which he knows, or has reason to believe, has been manufactured without license,

shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees;

and such still or other implement or such liquor found in the possession of such person, together with the vessels, packages, and coverings in which such liquor is found, shall be confiscated.

The confiscation in this case could only be made under the circumstances set forth in Section 17 of the Abkari Act. (a) Under that section, the Collector alone can confiscate, not the Magistrate.

The order passed is accordingly set aside.

[4 Mad. 241.]

APPELLATE CRIMINAL.

The 14th, and 18th November, 1881.

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

The Queen *against* Periannan,
and

The Queen *against* Naraina.

(Calendar Cases 128 and 129 in the Court of the Second Class
Magistrate of Vaniyambadi).*

Indian Penal Code, Section 182.

Section 182 of the Indian Penal Code† does not apply where the public servant misinformed is only competent to pass and passes on the information, and the power to be exercised by him cannot tend to and direct or immediate prejudicial to the person against whom the information is levelled.

THE facts in these cases, which were referred by the District Magistrate of Salem for the orders of the High Court under Section 296 of the Criminal Procedure Code on the ground that the proceedings therein were illegal, are sufficiently set out, for [242] the purpose of this report, in the **Judgment** of the Court (INNES and MUTTUSAMI AYYAR, JJ.).

Counsel were not instructed.

(a) *Section 17 of Act III of 1864.*—Any liquor passing through the territories under the Madras Government, beyond the limits of the Madras Abkari as prescribed by Act XIX of 1852, unaccompanied by a valid permit, or materially differing from the description or quantity specified in the permit, and all liquor, except such quantities of English or foreign wines, beer or spirits as may be required for private consumption, found without a valid permit in the possession of any person not being a licensed vendor, or officer of Government authorized to dispose thereof, shall be liable, together with the vessels, packages, and coverings in which the liquor is found, and the animals and conveyances used in carrying it to be confiscated by the Collector, subject to the orders of the Board of Revenue, who may grant such portion of the proceeds to the informer and to the person making the seizure as they may think proper.

* Case No. 79 of 1881 referred by H. J. Stokes, District Magistrate of Salem, under Section 296 of the Code of Criminal Procedure.

† [Sec. 182 :—Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.]