

“The petitioner submits that this is permissive only, and that the Magistrate ought to have issued the warrant and collected the arrears as laid down in Sections 536 and 307.

“The question is not free from doubt.”

No one appeared at the hearing.

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

Judgment.—We are of opinion that Section 538 of the Code of Criminal Procedure does not deprive the Magistrate, who has made an order for maintenance, of the jurisdiction given him by Section 536. When the defendant is beyond his jurisdiction, he may, in his discretion, exercise the jurisdiction or refer the applicant to the Magistrate having jurisdiction at the place in which the defendant is to be found.

We are not prepared to interfere with the order made in this case.

[231] APPELLATE CRIMINAL.

The 27th October, 1881.

PRESENT :

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

The Queen against Vasantappa.

Madras Abkari Acts III of 1864, Section 25, and V of 1879, Section 26-B,

The offence, under Madras Act III of 1864, Section 25, (a) of not producing, when called upon by the Police, a liquor license, is not one for which a Magistrate may proceed under Section 26-B of Madras Act V of 1879, (b)

The Second-class Magistrate, Kalliandrug, convicted the accused, a licensed arrack-seller, under section 25 (a) of the Madras Abkari Act (III of 1864) because, when called upon by first witness (a constable), he failed to produce his license on 29th July 1881, and fined him one rupee.

The first witness having produced before the Magistrate some arrack which the accused was selling in his shop, together with certain brass and other vessels found in the shop, the Magistrate ordered the arrack to be thrown away, as the Abkari contractor would not buy it, and the vessels to be kept, pending a reference to the Collector soliciting orders for their confiscation and sale by auction.

* Case No. 71 of 1881 referred by H. P. Gordon, District Magistrate of Bellary, under Section 296 of the Code of Criminal Procedure.

(a) *Act III of 1864, Section 25.*—Every person who holds a license for the sale or manufacture of liquor shall keep such license at the house or shop specified in the license, and shall show the license on the demand of any Magistrate or Police officer above the rank of Deputy Constable who shall demand to see it; and any licensed dealer who shall refuse or be unable to produce his license on such demand shall, on proof of the same before of Magistrate, be liable to a fine not exceeding 200 rupees.

(b) *Act V of 1879, Section 26 B.*—One-half of all fines levied from persons convicted of the illicit possession, carrying or sale of liquor, and one-half of the proceeds from the sale of liquor, vessels, packages, conveyances, stills and other articles confiscated under this Act shall, upon adjudication of the case, be awarded, in such proportion as the Magistrate may think proper, to the officer or officers who apprehended the offender or seized the articles.

The other half of such fines and of the sale proceeds shall be given to the informer.

If no fine or forfeiture be realized, the Board of Revenue may grant such reasonable reward, not exceeding two hundred rupees, as may seem fit; and the Board may direct by general order what class of officers shall receive rewards, and what classes shall have no title to share therein

[232] The Magistrate then recorded the following proceedings :—

“As it appears that the first witness, Head Constable Honnur Saib, arrested the accused and seized the arrack he was selling, besides other things, it is ordered that half of the fine above referred to and half of the sale proceeds of the articles sized, *viz.*, one jar, one brass chemboo, one copper plate, one brass plate, two pewter tubes, be paid to him if the Collector sanctions their confiscation and sale.

“As it appears also that the first witness, Head Constable Honnur Saib, without receiving information from others, found out the accused oselling arrack in his shop without a license, it is ordered that the other half of the fine and sale proceeds above referred to be also paid to him.

“Ordered as above under Section 26-B, Act V of 1879.

“The accused has paid his fine of one rupee.”

The District Magistrate referred the case for the orders of the High Court under Section 296 of the Code of Criminal Procedure as he considered that the provisions of Section 26-B of Act V of 1879 referred only to cases of illicit possession and not cases like this one.

No one appeared at the hearing.

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

Judgment :—In this case the accused, an arrack-seller, has been convicted of not having his license ready in his shop to show to a Head Constable who had called upon him to produce it. The Second-class Magistrate fined the defendant one rupee and confiscated the property found in his shop, and further awarded half of the fine and of the sale proceeds of the property to be paid to the Constable who had apprehended the defendant. We agree with the District Magistrate in the opinion that the offence of which the defendant was convicted was not one of those for which the Second-class Magistrate could proceed under Section 26-B of Madras Act V of 1879 to confiscate the property and to award half of the fine and of the sale proceeds to the Police. The order of the Second-class Magistrate is accordingly quashed.