

Kusal Doss and the letter produced by him and upon affidavits on the record relating to the contents of the mahazarnama prepared for the petitioner when the new dwajastambham was put up and to subsequent dealings in gold, to attempts to sell gold, and to sales of gold by the petitioner in Bombay, Bangalore and Madras, there was sufficient information before the Magistrate upon which he might issue a search warrant. It is then argued that even if the gold treasure were not found under the flagstaff, it would not follow that the petitioner is guilty of criminal misappropriation. But we consider it sufficient to observe that the nature of the property actually deposited under the flagstaff has an important and material bearing upon the accusation against the petitioner. The weight due to the statements of several persons who made affidavits is a matter which it is ordinarily for the Magistrate to determine, and unless the proceeding is either illegal or vitiated by material irregularity, we do not think we ought to interfere on revision and prevent the collection of material evidence as well in the interests of the temple as in the interests of justice.

[Their Lordships next proceeded to consider the other contentions in order, and having held them to be groundless, they dismissed the petition.]

APPELLATE CRIMINAL.

Before Mr. Justice Parker and Mr. Justice Wilkinson.

QUEEN-EMPRESS

v.

SHEREGAR.*

1889.
May 1.

Forest Act—Act V of 1882 (Madras), s. 26—Canara Forest Rules, Nos. 7, 12, 23.

The accused, not having a permit, cut certain classified trees on the *kumaki* adjoining his land and used the wood in his still as fuel; and upon these facts he was convicted of an offence against rules 7, 12 and 23.

Held, that the conviction was illegal.

CASE reported for the orders of the High Court under s. 438 of the Code of Criminal Procedure by S. H. Wynne, Acting District Magistrate of South Canara.

* Criminal Revision Case No. 73 of 1889.

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The case was stated as follows :—

“The accused, two undivided brothers, set up a sandalwood still on their land and cut wood for fuel from the adjoining ‘*kumaki*’ for feeding it without permit. One has been convicted of ‘cutting, removing and burning’ firewood for purposes of trade, namely, for ‘use of sandalwood stills without permit,’ s. 26, Forest Act, and ss. 7, 12 and 23 of Forest Rules.”*

“The rules referred to are published in *Fort St. George Gazette* of May 20, 1884, Part I, pp. 313-322. The case turns upon the interpretation of rule 7, paragraph 2, and the meaning of the words ‘for his own use.’ I am unable to see why cutting fuel for a sandalwood still placed by a man on his own land is not cutting it ‘for his own use.’ The magistrate has imported the words ‘for purposes of trade’ and (in his judgment) ‘meant for sale and not for agricultural or domestic purposes’ from the preceding paragraph of the rule which relates to unreserved land which is not *kumaki*. But even if it were mere unreserved land and not *kumaki* from which the fuel was taken, I do not think the conviction could stand. The words ‘the produce of these lands shall not be sold or in any way used for purposes of trade’ do not imply that the produce may not be used as fuel in the manufacture of an article to be afterwards sold. The land, however, was *kumaki* and not mere ordinary unreserved land.”

The provisions of Rules Nos. 7, 9, 10, 12, 23 (Canara) are as follows :—

7. In all unreserved lands the villagers shall continue to enjoy, free of charge, such privileges as they have hitherto exercised in the way of grazing cattle or of cutting, converting, and removing trees (other than reserved and classified trees) and timber and other forest produce for fuel or for building or agricultural or domestic purposes, or of burning charcoal. The produce of these lands, however,

* See as to rules 7 and 12, *Queen-Empress v. Sivanna*, I.L.R., 11 Mad., 139. The publication in the Gazette of the rules in question is headed as follows :—

Under sections 26 and 33 (b) of the Madras Forest Act (V of 1882), His Excellency the Governor in Council is pleased to make the following rules for the regulation of the use of the pasturage and of the natural produce of lands at the disposal of Government and in lands known as “*kumaki*” in the district of South Canara and not included in a reserved forest, or within the limits of a municipality. Provided, however, that they shall apply to all sholas, plantations and reserves now existing within any such municipal limits, and to all lands at the disposal of Government, which may, from time to time, be notified as lands proposed to be constituted a reserved forest under section 4 of the said Act, and until the date fixed in the notification (to be issued under section 16 of the said Act) declaring the said lands to be a reserved forest. From that date, however, these rules shall cease to apply to, or be in force in respect of, the lands specified in such notification.

shall not be sold or bartered, or in any way used for purposes of trade, nor shall any of the aforesaid privileges be in any way alienated except with the land to which they are attached.

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In "*kumaki*" lands, that is, within 100 yards of assessed land in wargs formed prior to fasli 1276, the holder of the *kumaki* shall also have the exclusive privilege of cutting, converting, and removing for his own use classified trees at will, and reserved trees on application, for which a permit shall be given free of charge, but if it is found that the concession as regards reserved trees is abused in any village, and not brought to notice by the villagers, the Collector may, in addition to prosecuting the offender, direct that the concession shall be withdrawn as regards that village.

9. The cutting of grass and the pasturing of cattle on reserved lands shall only be permitted with the consent of the Collector and on payment of the prescribed fees. It shall not be lawful for any person to cut grass or to pasture cattle upon any lands in contravention of this rule.

10. All the trees and other natural produce of reserved and unreserved lands shall vest in the Forest Department subject to the following exceptions, viz. :—

- (a) The pasturage and grass on unreserved lands.
- (b) The toddy of palmyra, date, and other palm trees on unreserved lands.
- (c) The trees growing by the side of roads (and commonly known as avenue trees) and all topes or trees belonging to Local Fund Boards, communities or individuals.
- (d) All minerals.

12. Subject to the privileges, exceptions, and reservations specified in rules 7, 9 and 10, no person shall fell, girdle, mark, lop, top, uproot, or burn or strip off the bark or leaves from, or otherwise damage, any tree growing on any reserved or unreserved land, or remove the timber or collect the natural produce of such trees or land except as hereinafter provided.

23. Any breach or infringement of rules 8, 9, 12, 15, 19, 20, 21 or 22 will render the offender liable to imprisonment for a term which may extend to one month or to fine which may extend to Rs. 200, or to both.

The Acting Government Pleader (*Subramanya Ayyar*) for the Crown.

The Court delivered the following

JUDGMENT:—We concur with the District Magistrate that the conviction was illegal. The accused cut certain classified trees in *kumaki* land and used them as firewood for his still. It is argued that the words "for his own use" in clause 2 of rule 7 must be read in conjunction with the restrictive words in clause 1, and that therefore a raiyat may not use the wood cut in *kumaki* land in any way connected with his trade. We are unable to concede this. No doubt it would be illegal for a raiyat to sell wood cut in his *kumaki* land to another person as fuel for his still, but so long as he converts the wood to his own use, he is protected by rule 7. We set aside the conviction and sentence and direct the fine to be refunded.