

## APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Boddam.

QUEEN-EMPRESS

1896.  
July 23.

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PUKOT KOTU AND OTHERS.\*

*Abkari Act—Act I of 1886 (Madras), ss. 31, 36—Penal Code, ss. 99, 147 and 353.*

A Sub-Inspector of Salt and Abkari attempted, without a search warrant, to enter a house in search of property, the illicit possession of which is an offence under the Madras Abkari Act and was obstructed and resisted :

*Held*, that having regard to section 99 of the Penal Code, even though the Sub-Inspector was not strictly justified in searching a house without a warrant, the persons obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of their obstruction as it was not shown that that officer was acting otherwise than in good faith and without malice.

APPEAL under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed by J. Hewetson, District Magistrate of Malabar, in criminal appeal No. 13 of 1895.

The judgment of the District Magistrate was as follows :—

“ The four appellants, together with two women who have not appealed, have been convicted of rioting and using force to a public servant while in execution of his duty. The Sub-Inspector, a petty officer and five peons went to the first appellant's house and found him, as they swear, selling toddy. Thereupon the Sub-Inspector wanted to search his house, drew his sword, and tried to effect his object by force.

“ Now, before a search could be legally made without warrant, the Abkari officer must, under section 31 of Act I of 1886, ‘ record his reasons and the grounds of his belief.’ Under section 36 he is also bound by the proceedings of the Criminal Procedure Code, *i.e.*, before commencing the search, he must secure the presence of, at least, two respectable witnesses. The Sub-Inspector did neither of these things. His procedure was therefore grossly illegal. He was not acting in the execution of his duty, and the appellants were *justified* in preventing the search until the requirements of the law were fulfilled. It does not appear that they used more force than was requisite for the purpose. The

\* Criminal Appeal No. 138 of 1896.

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“Sub-Inspector’s sword was damaged, his cap lost, and his coat torn, but no wounds or bruises are alleged. As soon as the Adhikari came, the search was made without opposition. It, therefore, seems to me that even if the appellants did all that the prosecution alleges, they committed no offence, and must be acquitted. I reverse the finding and sentence of the Lower Court and cancel the appellant’s bail bonds.”

The *Acting Public Prosecutor* (Mr. *Subramaniam*) for the Crown. The prisoners were not represented.

JUDGMENT.—The District Magistrate appears to have had no ground for his finding that the Sub-Inspector acted irregularly in making the search. But, assuming the Magistrate’s finding had been correct, the irregularity would have afforded no justification for the defendants’ acts.

When the Magistrate states that the defendants were ‘justified’ in their resistance, we presume he means by the right of private defence (for we can conceive of no other justification), but the Magistrate has overlooked the provisions of the first and second clauses of section 99 of the Penal Code, which do not allow of the exercise of that right when an act such as this is done by a public servant or under the direction of a public servant which the Sub-Inspector was.

We must therefore reverse the District Magistrate’s order of acquittal and direct that the appeal be restored to the file and heard and disposed of upon its merits. Ordered accordingly.

[Reporter’s note : See *Reg v. Vyanhatrav*, 7 B.H.C.R., Crown cases 50.]

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Shephard.*

*In re* MAKKI, APPELLANT IN S.R. No. 11703.

*In re* RAMAN, APPELLANT IN S.R. No. 13187.\*

*Court Fees Act—Act VII of 1870, sched. I—Appeal—Stamp leviable for costs.*

When apart from, and independently of, any other reliefs which an appellant seeks in an appeal from a decree, he seeks distinct relief on the ground that by

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\* Referred Case No. 1 of 1893.