

KAMALAMMAL  
v.  
RAJU  
NAICKER.

*Valamaramayyan v. Virappa*(1) and *Ayyappa v. Venkatakrishnamaravu*(2), and without separate assessment he is liable to have his property sold at any time for arrears accruing on the other parts of the zamindari. It is, therefore, essential that he should get separate registry at least in order that he may enjoy the fruits of the alienation. Government, in order to maintain the security for the public revenue due from the estate, apportions the revenue separately as a natural result of the alienation and this Government will do notwithstanding any arrangement between the parties as to which of them is to be responsible for the revenue. It is argued that under section 2 of Act I of 1876 the Collector cannot transfer the registry unless all the parties concur. That section relates to transfer of registry by agreement of parties on application to the Collector. It does not control or affect the power of the Civil Court under section 6 of the Act to direct separate registration. The right to registry follows the title, and under exhibit I the title is in the respondents 1 to 4. The decree of the Lower Court was, therefore, right. This appeal fails and is dismissed with costs.

Two sets of costs will be allowed—one to the respondents 1 to 4, and one to respondent 5.

---

## APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

KALIAN AND OTHERS.\*

*Penal Code—Act XLV of 1860, s. 224—Escape from lawful custody—Salt Act (Madras)—Act IV of 1889, ss. 46, 47.*

The Madras Salt Act 1889, only authorises searches for contraband salt and arrests of the parties concerned in the keeping of such salt to be made by officers of the Salt department without search warrant in cases where the delay in obtaining such search warrant will prevent the discovery of such contraband salt :

*Held*, that where the circumstances did not justify the officer in believing that the delay in obtaining a search warrant would prevent the discovery of contra-

---

(1) I.L.R., 5 Mad., 145.

(2) I.L.R., 15 Mad., 484.

\* Criminal Appeal No. 702 of 1895.

band salt, he had no power to search or arrest persons without such warrant and the escape by the persons so arrested from custody was no offence within the meaning of s. 224, Indian Penal Code.

QUEEN-  
EMPRESS  
v.  
KALIAN.

**APPEAL** under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed in Appeal Case No. 50 of 1895 by the Head Assistant Magistrate of South Arcot against the conviction and sentence passed by the Stationary Sub-Magistrate of Chidambaram.

The facts of the case are as follows :—

About 2 A.M. on the morning of 18th March a party consisting of the Salt Sub-Inspector, Mannargudi (first prosecution witness), three petty officers (witnesses 2 and 3 and another), about 32 Salt peons, the Station-house officers of Mannargudi and Komaratchi and four police constables, in all about 42, went from Mannargudi to the Cheri of Puthur, a village some few miles from Mannargudi, and searched the houses of the Pariahs for contraband salt, &c. Twenty-eight houses were thus searched and twenty-one individuals were arrested. The complaint is that while the Salt officers were taking these persons to Mannargudi station in default of their giving security, they, under the instigation of a mob of some 200 villagers headed by one Velu Pillai, made their escape from the custody of the Salt officers in spite of the efforts of the latter to retain them in custody. The Salt Sub-Inspector of Mannargudi deposed that he received information at about 9 P.M. on the night of the 17th March from his petty officers and peons with reference to the existence of contraband salt in the village of Puthur, and that having recorded his reasons for dispensing with the search warrants he proceeded to make search without them. He stated that to obtain a search warrant he would have had to wait until next morning, that he was informed the contraband goods would be destroyed by that time, and that as some 20 or 30 warrants would have to be prepared by the Sub-Magistrate's clerks the matter would certainly come out.

It appeared, however, that the body of police, which took part in this search was on requisition made by him almost a week before to his Inspector and by the latter to the Inspector of Police summoned for the night of March 17th for the express purpose of searching for contraband salt in villages. Witness stated that he made this requisition, as there were one or two villages in his range notorious for the existence of contraband salt, but that he had no

QUEEN-  
EMPERESS  
v.  
KALLIAN.

definite information before the 17th, on the night of which he got information of the houses in Puthur with their owners' names. The Head Assistant Magistrate came to the conclusion that the Sub-Inspector was aware of the state of things in Puthur, and intended to institute a search there some time before the night of 17th March and that the evidence of Arunachellam, a petty officer in Salt department, to the effect that he did not inform the Sub-Inspector of the existence of contraband salt in Puthur until the latter asked him for information on the night of 17th March was false. He found that the Sub-Inspector intended prior to the night of the 17th to search Puthur, that he ought therefore according to the law as it stands to have applied to the Magistrate for a warrant, that, as he failed to do so, his subsequent action was *ultra vires*, and that as the appellants were not therefore in lawful custody, their escape from that custody was not an offence.

Against this acquittal the Public Prosecutor (Mr. Powell) for the Crown appealed.

Mr. Wedderburn and *Krishnasami Ayyar* for the accused.

JUDGMENT.—The Stationary Sub-Magistrate of Chidambaram convicted eighteen Pariahs of Puthur, who had been arrested by officers of the Salt department on the 18th March 1895, of having escaped from lawful custody on the same day, an offence punishable under section 224, Indian Penal Code.

On appeal, the Head Assistant Magistrate acquitted them on the ground that the Salt officers had made the arrest unlawfully, and that escape from such custody was no offence.

Against this acquittal the Public Prosecutor now appeals on behalf of Government.

It is admitted that the Sub-Inspector of the Salt department had no other authority to make the arrests than that given by section 47 of the Madras Salt Act, 1889. The question is whether under the circumstances, his action was in accordance with the provisions of that section. It empowers an officer of the Salt department whenever he "has reason to believe that contraband salt is being . . . kept in any place and that the delay in obtaining a search warrant will prevent the discovery thereof" after certain formalities to search such place, seize any contraband salt therein, and arrest any person concerned in the keeping of such salt. The Sub-Inspector has sworn that he got information that there was contraband salt in the paracheri of Puthur about

9 P.M. on the 17th March; that he had no time to get a search warrant from the Magistrate before the next morning, and that had he waited until the next morning to obtain a search warrant the matter would undoubtedly have come out, as twenty or thirty warrants would have to be prepared by the clerks, and that the salt would have been destroyed. He admits that he applied for police aid a week previously, but says it was to aid in searching villages generally, and that there were several notorious villages in the neighbourhood. He says he only got definite information of the houses and the owner's names on the night of the 17th. These statements are not contradicted by any evidence, and we are not disposed to regard them as false. We think, however, that there can be little doubt but that the Sub-Inspector could have obtained the information sooner had he cared to do so, and that, in any case, he could have applied to the Magistrate for a search warrant even after he got the information, and was not justified, under all the circumstances, in making the search and arrest without doing so. The Sub-Inspector asked for police aid a week before the 17th. It was not, in fact, used for any search except that of Puthur. The Sub-Inspector's petty officer, Arunachella Pillai, knew that there was contraband salt in Puthur for two or three days before the 17th; but he says that he did not tell the Sub-Inspector until the night of the 17th and adds "I do not volunteer information "to my superiors, but if they ask me I inform them." It seems to us clear that the Sub-Inspector knew in a general way that there was contraband salt in the paracheri of Puthur for some days before the 17th, and that he could have learned full particulars had he chosen to enquire of his petty officer. It can hardly be believed that he was in ignorance that the latter was in possession of detailed information. The Sub-Inspector says that during the past four years he has conducted some two-hundred searches, but has never once applied to the Magistrate for a warrant. It seems to us that this indicates the existence of a system whereby the intention of the Legislature is habitually frustrated. It is clear from section 46 of the Act that it contemplates searches being ordinarily made under the authority of warrants issued by a Magistrate. Section 47 was intended to be availed of only in cases where "the delay in obtaining a search warrant" from a Magistrate would prevent the discovery of the salt. The Act does not allow a salt-officer to make a search without warrant

QUEEN-  
EMPRESS  
v.  
KALIAN.

because he fears that the *publicity* involved in asking for a warrant will prevent the discovery of the salt. He has power to make the search only when the *delay* involved in getting a warrant would prevent such discovery. Apparently, however, the system of this Sub-Inspector is never to get definite information until just before the time of the intended search, and then to make the search himself without warrant, alleging in justification that the delay in obtaining the warrant would lead to the destruction of the salt. We think that this system, if it exists, as it appears to do, is an abuse of the powers given by the Act which calls for the attention of Government and of the Superior officers of the Salt department.

In the particular case now before us, the evidence shows that the Sub-Inspector could have obtained the Magistrate's warrant without causing any delay whatever in conducting the search. The Sub-Inspector received detailed information at Mannargudi at 9 P.M. on the 17th March. He and his men did not start for Puthur until 2 A.M. the next day. He thus had five hours wherein to have gone to the Magistrate and got a warrant. The Magistrate lived only "one or two furlongs" away from where the Sub-Inspector was, so that the time that would have been required would not have been more than a few minutes. It is suggested that twenty or thirty warrants would have had to be written, and that the Magistrate could not be asked to do this at night and without the aid of his clerks. We observe that there are twenty-eight houses, and only twenty-eight, in the Puthur paracheri, and all of these were searched. The Sub-Inspector, therefore, had reason to believe that there was contraband salt in every house in the paracheri, and intended to search them all. He could, therefore, have asked for a single warrant to search all the houses in the paracheri. This could have been granted by the Magistrate and written with his own hand in a few minutes. A Magistrate is always on duty, and must be prepared to act, on urgent occasions, at other than the ordinary office hours. We think that in the present case no delay ought to, or would have resulted, had the Sub-Inspector applied to the Magistrate for a warrant. That being so, he was bound by law to have obtained the warrant before making the search, and the search without warrant, and the arrests which followed it, were both illegal. We cannot admit the contention of the Public Prosecutor that the exercise of the power given by section 47 is "left entirely to the discretion" of the

officer concerned, and that the wrongful exercise of the discretion does not make the arrest invalid. The officer has power only within the limits allowed by law, and must exercise his powers strictly in accordance with law. When he fails to do so his action is illegal, and the arrest is unlawful. If the arrest is unlawful, there is no offence under section 224, Indian Penal Code, in escaping from it. In the present case we find that the Sub-Inspector failed to comply with the law, and that his arrest of the accused was unlawful. They were, therefore, rightly acquitted, and we dismiss this appeal.

QUEEN-  
EMPRESS  
v.  
KALIAN.

---

## APPELLATE CIVIL.

*Before Mr. Justice Shephard and Mr. Justice  
Subramania Ayyar.*

JAYINILABDIN RAVUTTAN (COUNTER-PETITIONER, PLAINTIFF  
AND PURCHASER), APPELLANT,

1896.  
March 20, 23.  
April 1.

v.

VIJIA BAGUNADHA AYYARAPPA MAIKAN GOPALAR  
(DEPENDANT, PETITIONER), RESPONDENT.\*

*Civil Procedure Code—Act XIV of 1882, s. 311—Setting aside a sale on the ground  
of material irregularity—Non-disclosure amounting to fraud.*

A creditor had obtained a decree on the footing of a mortgage and in execution brought the property of his judgment-debtor to sale. At the time of sale the decree-holder, who had obtained leave to bid, entered into an agreement with P to the effect that if P would dissuade other persons from bidding, he (the decree-holder) would purchase the whole property for Rs. 83,000 and convey it on certain terms to P. P thereupon exerted his influence and succeeded in persuading would-be purchasers from bidding and in consequence the property was sold on 11th April 1891 for Rs. 83,000, which was a little more than half its actual value. The sale was confirmed on 29th June 1891 and the judgment-debtor who at the time of the sale was a minor under the Court of Wards, attained his majority on 21st April 1894 and filed this petition praying to set aside the sale on the 15th May 1894:

*Held*, that the omission on the part of the decree-holder to disclose the agreement to the Court amounted to a fraud upon the Court entitling the judgment debtor to say that in point of law no leave to bid was granted and that the

---

\* Appeal against Order No. 131 of 1895.