

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Benson.

EMPEROB, APPELLANT,

v.

RAVALU KESIGADU (ACCUSED), RESPONDENT.*

Madras Abkari Act—I of 1886, s. 34—Power of officer in one Circle to arrest offenders in another.

An officer of the Salt and Abkari Department belonging to Circle A, received certain information and entered Circle B, and, under section 34 of the Madras Abkari Act, arrested an offender in the latter circle. The Magistrate who, in due course, tried the offender, held that the officer's powers of arrest were restricted to his own circle, and acquitted the accused, though he believed the prosecution evidence as to an offence having been committed. Upon an appeal being preferred against the acquittal:

Held, that the order of acquittal was wrong and must be set aside; also, that the question whether the officer who effected the arrest was acting within or beyond his powers in making the arrest did not affect the question whether the accused was or was not guilty of the offence with which he was charged.

CHARGE, under section 55 of Act I of 1886, of being in possession of materials for illicit distillation. The charge was laid by the Salt and Abkari Inspector of the Kanuparti Circle. It appeared that the Assistant Inspector of the Pakala Circle received information at Kanigiri that illicit tapping and distillation was going on in the village of Mahammadapuram, situated in the Kanuparti Circle, and went there and arrested the accused, in the vicinity of a still, secreted in certain bushes. The accused was handed over to the police at the station at Gottagotta. The Second-class Magistrate, who ultimately tried the case, believed the prosecution evidence, but raised the question whether the Abkari officers of the Pakala Circle had been empowered by the Abkari Act I of 1886, or by any notification of Government, to enter a village in the Kanuparti Circle and detect a case there. He referred to the notification of 24th November 1899, published in the *Port St. George Gazette* of 28th November 1899, and held that it restricted the limits of jurisdiction, at the date when the accused was arrested, and that the proceedings of the officers of the Pakala Circle were unwarranted.

* Criminal Appeal No. 146 of 1902, under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed by C. Rama Row, Second-class Magistrate of Podili, in Calendar Case No. 55 of 1901,

He also remarked that the restriction had since been removed by the more recent notification of 18th July 1901 (G.O., Revenue, No. 606). He acquitted the accused under section 245 of the Code of Criminal Procedure.

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Against that order, the Public Prosecutor preferred this appeal. The Public Prosecutor in support of the appeal.

JUDGMENT.—The Magistrate appears to have been of opinion that the evidence showed that the accused were guilty of an offence under section 55 of the Abkari Act. He, however, acquitted them on the ground that the officer who arrested them was an officer who, under the terms of the notification of 24th November 1899, had only authority within the area of his circle and that when he arrested the accused he was acting outside that area. The notification in question did not, and could not, operate so as to limit the powers conferred upon officers by section 34 of the Act. The question whether the officer who effected the arrests was acting within or beyond his powers in making the arrest does not affect the question of whether the accused were guilty or not guilty of the offence with which they were charged.

The Magistrate had jurisdiction under section 190 of the Criminal Procedure Code to take cognizance of the offence.

We must set aside the acquittals and direct the retrial of the accused.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Moore.

KRISHNASAMI PILLAI (SECOND ACCUSED), APPELLANT,

v.

EMPEROR, RESPONDENT.*

1902.
August 11.

*Criminal Procedure Code—Act V of 1893, ss. 233, 235—Misjoinder of charges—
Objection first taken on appeal—Same transaction.*

A person was convicted on three charges, namely;—(1) of abetting the falsification of a document (an account book), (2) of fraudulently destroying and secreting documents, and (3) abetting criminal breach of trust, no objection on

* Criminal Appeal No. 259 of 1902 against a conviction and sentence by R. D. Broadfoot, Sessions Judge, South Arcot Division, in Calendar Case No. 11 of 1902.