## APPELLATE CRIMINAL.

*Before Mr. Justice Wallace.*

1926, December 10

JAYACHANDRA CHETTI AND ANOTHER (ACCUSED 1 AND 3), PETITIONERS,

*v.*

KING-EMPEROR, RESPONDENT.*

*Madras Abkari Act (I of 1886), ss. 55 and 56—Person carrying arrack if in possession—Meaning of "possession"—Possession of illicit quantity in breach of licence, permit or rule—Offence under ss. 55 or 56—Arrest and detention of persons suspected of abkari offences—Ss. 34 and 40 confused and irreconcilable.*

"Possession" in the Madras Abkari Act has its ordinary meaning, and a person who is carrying arrack is in possession of it.

Possession of an illicit quantity of arrack in breach of a licence or permit or rule under the Act comes under section 55 (*a*) and not section 56 (*b*), and renders the possessor liable to arrest under the Act.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Subdivisional First-class Magistrate of Saidapet in Criminal Appeal No. 40 of 1926 preferred against the judgment of the Court of the Stationary Sub-Magistrate of Saidapet in C.C. No. 1378 of 1925.

The facts necessary for this report appear in the judgment.

*V. L. Ethiraj, V. Rajagopala Achariyar* and *A. S. Natarajan* for petitioners.

*R. N. Aiangar* for *Public Prosecutor* for the Crown.

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* Criminal Revision Case No. 506 of 1926.

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## JUDGMENT.

The first petitioner in this case had been convicted of escaping from lawful custody, and the second petitioner of rescuing him from lawful custody, the first petitioner having been arrested by the Abkari Sub-Inspector for being in possession of an illicit quantity of arrack, and second petitioner has also been convicted of assaulting the Sub-Inspector. The assault and the rescue have been held to have been proved as facts by both the lower Courts and that concurrent finding of fact has not been disputed, as it could not easily have been disputed, before this Court exercising its powers of revision. The facts are that the first petitioner is a servant of the second accused who holds an arrack licence for certain premises, that the first petitioner was conveying without a permit from second accused's shop to his house a quantity of arrack in excess of the amount which the second accused or any one else is permitted to hold under the rules outside licensed premises, that the first petitioner was caught by the Abkari Sub-Inspector in possession of this arrack and arrested, and that when the Sub-Inspector was taking him to the police station, accused 2 and the second petitioner came up, assaulted the Sub-Inspector and rescued the first petitioner who made good his escape.

In this Court it is pleaded that the custody of the first petitioner by the Abkari Sub-Inspector was not lawful and therefore no offence has been committed. This plea rests on three contentions, (1) that the first petitioner was not in possession, within the legal meaning of that word, of the arrack, (2) that the original offence was not one for which he could be arrested, and (3) that the action of the Sub-Inspector in taking him to the police station was contrary to law. As to the first point, the contention is that the 1st petitioner

was really "transporting" arrack and was not in possession of it within the legal meaning of the term. No authority has been cited for this position. No doubt he was transporting the arrack, but I do not see how it can be said that he was not also in possession of it. In the absence of any indication in the Abkari Act to the contrary, 'possession' has its ordinary meaning and the first petitioner was certainly in possession of the arrack when he was carrying it. I see no force in this point.

As to the second point the argument is based on a contention that the offence comes under section 56 and not section 55 of the Abkari Act, and that section 34 gives no authority to an Abkari Officer to arrest for an offence under section 56. The question is, does the present offence fall under section 56 (*b*), and if it does, does that prevent it falling also under section 55 (*a*)? The wording of section 56 (*b*) is very clumsy; "Whoever does anything in breach of the conditions of his licence not otherwise provided for in this Act." This language is, to say the least, very dubious English, but I take it to mean, "whoever does anything which amounts to a breach of the conditions of his licence, which breach is not otherwise provided for in this Act;" that the breach will be punishable under this section if it is not already designated as punishable under some other section. A breach under section 56 (*b*) is a breach distinct from those provided for under section 55. Breaches under section 56 are, apparently from the fact that they do not entail liability to arrest, of a less heinous kind than those under section 55. I have no doubt that possession of an illict quantity of arrack in breach of the licence or permit or rule under the Act comes under section 55 (*a*) and therefore does not come under section 56 (*b*). Therefore on the second point I hold that the first petitioner was lawfully liable to arrest under section 34.

As to point 3, it involves a consideration of section 40 (1) which lays down that on arrest the arrested person shall, if bail is not accepted, be forthwith forwarded to an Abkari Inspector, or, if there is no such officer within ten miles, to the nearest police station. There is no doubt that in this case there was an Abkari Inspector in Madras within ten miles of the scene of arrest. There is no doubt also that the Abkari Sub-Inspector who effected the arrest was taking the first petitioner to the police station ; he definitely says so in his evidence, and it was when the first petitioner was almost at the police station that he was rescued.

Section 40 (1) as it stands seems impracticable to work. The arresting officer and the person arrested are to start off at once on a wild goose chase after an Abkari Inspector, who is a touring officer and may be anywhere within a circle of ten miles from the scene of arrest. The section would seem to indicate that this is the proper procedure. If any attempt is to be first made to find out the whereabouts of the Inspector within the circle, it is not clear what is to be done with the arrested person while this enquiry is being made. A reference to section 34 proviso still further increases the difficulty of knowing what is the proper procedure. In that proviso, if the arresting officer is not authorized to admit to bail, he must forward the arrested person forthwith to an officer empowered to grant bail if there is such an officer within five miles. If such an officer is a Police Inspector who is at the police station, then obviously the arrested person must be sent to the police station for the purpose of admitting to bail. It follows then that if the arresting officer can admit to bail he cannot send the arrested person to the police station; but if he cannot admit to bail, then he can send the arrested person to the police station, a rather topsy-

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turvy result. Whether the Abkari Sub-Inspector in this case was empowered to grant bail, does not appear to have been put in issue in the case. Before the lower Appellate Court the petitioners argued that he was not so empowered. If so, then section 34 proviso would apply and the Abkari Sub-Inspector was in law bound to send him to an officer who could grant bail, such as the Police Inspector, and the taking of the first petitioner to the police station would then seem to be perfectly lawful. I am of opinion that if the petitioners wanted to make anything of this point, they should have done so before the trial court when it could have been put in issue whether the arresting officer had or had not power to grant bail. This was not done. There is no definite fact proved from which I can conclude that section 40 and not section 34 proviso applies to this case. Nor am I prepared at this stage to call for information.

I find therefore no case has been made out for revision and I dismiss this petition.

I would respectfully urge on Government the necessity of revising these provisions of the Abkari Act. This Court has in two other cases, namely, Crl. R.C. Nos. 515 of 1924 and 368 of 1925, pointed out how confused and irreconcilable these sections regarding arrest and detention of persons suspected of committing abkari offences are and what difficulties are put in the way of the courts which endeavour to interpret them.

B.C.S.