Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1438

Dated 9th July 1895

[Despatch Abstract.]

APPEAL AGAINST ACQUITTAL.

Directing the Government Pleader to present an appeal to the High Court against the acquittal in Criminal appeal No. 7 of 1895 on the file of the Sessions Court of South Arcot.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

[G. / 11]

12/7

ORDINARY, MS.

Judicial DEPARTMENT.
G.O., DATED 9/7/95
No. 1438.

INDEXED.

When given for copying. 9/7

[Despatch Abstract.]

Directing the Govt Pleader to present an appeal to the High Court against the acquittal in Criminal appeal No 7 of 1895 on the file of the Sessions Court of South Arcot.

BACK PAPER, NO. OF 189

FURTHER PAPER, NO. 3673/95 OF 189

947/96.

READ AGAIN ORDER OF GOVERNMENT, DATED 189 , NO. , MISCELLANEOUS.

	Govt Pleader	Bd of Rev (n B thro' the B
ENCLOSURES.		
CURRENT NO.	9	9
STATEMENT WITH DITTO.		
ORDER OF GOVERNMENT	A	A
LETTER OF GOVERNMENT.		
STATEMENT WITH DITTO.		
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL (not paged).		

send records to the Govt Pleader

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

NOTE FOR THE Head Clerk
Rev Dt

Please peruse H. M's no under cover of this G.O. I send you the printed paper referred to by him.

10/7/95

Mr N. Aiyangar.

Please see to this

10/

Seen
The printed file has been retained.

CURRENT No. 3070

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Proceedings of the Board of Revenue

(Separate Revenue.)

Dated 13th June 1895.

No. 2470 Mis.

Read letter from the Collector of South Arcot, dated 3rd May 1895. No. 0.

Resolution.

With reference to Official Memo. No. 213 dated 27th December 1894, the Board begs leave to state that the Commissioner has recently inspected the Nellikuppam Distillery and that a complete report on the subject of the Nellikuppam Abkari Case will be submitted

to

A — Copy in full.
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to Government shortly. In the meanwhile the records connected with the Criminal Case are herewith forwarded for the perusal and orders of Government, as the judgment of the Sessions Judge of South Arcot, reversing the conviction and sentence passed in the Case by the 2nd Class Magistrate, Cuddalore, involves several legal points of importance which require prompt attention.

2. On the 2nd June 1894, one Viraswami Naidu, an arrack vend farmer's depot keeper at Nellikuppam was charged before the 2nd Class Magistrate, Cuddalore, under Sections 55 and 56 of the Abkari Act, for "breaking open certain sealed

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sealed receptacles of arrack before verification by a Government Officer and being in possession of the liquor therein contained in contravention of license and permit"; and under Section 462 of the Indian Penal Code for "breaking open the same without authority with a dishonest intention". The date of the Offence was the 7th February preceding. The facts of the Case are as follows:

The Accused holds a license as person in charge of a depôt under the arrack vend monopoly renter of the Cuddalore Taluk. He is a servant, and is in the employ of the Renter who holds a license as Arrack Vend Monopoly renter of the taluk. On the 7th February 1894

1894 a permit (Exhibit B' on the file of the 2nd Class Magistrate, Cuddalore) having one day's Currency was issued to the renter by the Nellikuppam Distillery Officer authorizing him to transport three Casks of liquor from the Distillery to his depôt at Nellikuppam. The permit required the renter to have it delivered to the Revenue Inspector on or before the 7th February 1894. The renter despatched the Casks with the permit to the accused who received them at about 10.30 A.M. on the same day, and as the Revenue Inspector did not attend and verify the Consignment the accused

opened

opened the Casks and distributed the Contents to Certain shopkeepers.

3. The license issued to the accused Contains two Conditions which have been admittedly violated by him, viz "10. You shall not open any Consignments of Country spirits received at your depot from any Distillery or Warehouse before they have been gauged and proved by an authorized Officer."

"8. You shall maintain a sufficient supply of liquor at your depot". Further the permit issued to the renter for the three Casks in question Contains a direction that the Consignment should be produced before the Revenue Inspector for verification in Conformity with Condition 7 of ~~the~~ his (Renter's) license.

The renter's license Contains the following Conditions:—

"7. You shall maintain at a place or places within your rent area to be approved by the Collector a depôt or depôts to which all spirits purchased by you shall be Conveyed in the first instance for verification of the Consignment by a Government Officer before issue to shop-keepers. Depôts shall at all times be open to inspection by the Collector or any Subordinate whom he may depute for the purpose, or by any Abkari Officer not below the rank of Sub Inspector.

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No such depôt shall be opened without a license from the Collector" and

"8. In Cases in which depôts are established at places where there is no resident Revenue Officer above the rank of Revenue Inspector. You shall not ordinarily transport to such depôts less than a months' supply of spirits at a time but you will be allowed to supplement your stocks, when absolutely necessary, and with the previous sanction of the Collector, by less than a months' supply."

The Sub-Magistrate held that the foregoing three Conditions Contained in the permit and the license issued to the renter were binding on the accused and that the latter had broken them all in addition to the Conditions (8) and (10) of his own license noted above and had thereby Committed the Offences punishable under Sections 55. Clauses (a) and (b), and Section 56 Clause (b) of the Abkari Act (extracted in the margin for ready reference) The Sub-Magistrate accordingly sentenced the accused to suffer six months' rigorous imprisonment and to pay a fine of 100 rupees, or in default to undergo further like imprisonment for four weeks.

rigorous

> 55. Whoever, in Contravention of this Act, or of any Rule or order made under this Act or of any license or permit obtained under this Act,
> (a) imports, Exports, transports or possesses any liquor or any intoxicating drug; or ....
> (b) Sells liquor or any intoxicating drug shall, on Conviction before a Magistrate be punished for each such Offence with fine which may extend to one thousand rupees or with imprisonment which may extend to six months or with both.
>
> 56. Whoever, being the holder of a license or permit granted under this Act,
> (b) does any act in breach of any of the Conditions of his license or permit not otherwise provided for in this Act - - - - - - - - - - - -
> shall, on Conviction before a Magistrate, be punished for each such Offence with fine which may extend to two hundred rupees, or with imprisonment which may extend to three months or with both.

As for the Offence under Section 462 of the Indian Penal Code, no charge was framed by the Magistrate (vide para 187 of his judgment) and the accused was discharged on this Count.

4. The Sessions Judge of South Arcot, to whose file the High Court, on application made to it, ordered the transfer of the appeal preferred by the accused before the District

Magistrate finds that there has been no breach of any Conditions of any license or permit and has accordingly acquitted the accused. He bases his judgment as regards the accused's license, on the ground that the Depôt-Keeper's license has not been approved by Government and is therefore invalid, and as regards the permit and the renters' license on the ground that the accused was not responsible for the misfeasance of his master.

5- The Sessions Judge's reasons for Considering the Depôt-Keeper's license to be invalid are Contained in para 27 of his judgment. He Comes to the Conclusion that "the Public Prosecutor

admits

admits that the terms of this license have not been sanctioned either by the Governor in Council or by any authority to whom the Governor in Council has made a valid delegation of his powers in his behalf. It is therefore of no validity whatever (vide Section 24) and breach of its Conditions is not an offence". The license in question was first printed by the Board in 1887 to be brought into use from the Official Year 1887-88. and it is true that the form of the license has not been formally approved by Government. The question is whether formal sanction is necessary under the following Circumstances - The

Conditions to be found in the Depôt-Keeper's license were all included in the Abkari notices approved by Government in 1886. (Vide Government Order dated 8th December 1886 No. 1074 Revenue). In Board's Proceedings dated 14th November 1887 No. 634, para ~~14~~ 18 the Board observed "The notifications are not sent up as they will be in substantially the same forms as in the Current Year". The Government approved (Vide Government Order dated 22nd November 1887 No. 1097 Revenue) and practically delegated to the Board the power to frame licenses similar to those of 1887-88 and substantially in the same form. On this authority the Judge holds the renter's license to be valid. (Vide para 22 of his judgment) The

The Conditions approved by Government for the renter's license prescribe acts to be done by the renter himself as also those which he should cause his Employés to do. To bring together those portions of the Conditions which relate to the renter's Depôt-Keeper and embody them in a separate license seems to be a mere matter of form quite within the legal competency of the Board as conceded by the Notification of Government under Section 4 Clause (g), of the Abkari Act, as it then stood. Vide Notification Extracted in the margin.* If as the Judge holds, the renter's license is valid, it is not

* No. 76. Under Section 4 (g) of the Madras Abkari Act, 1886, the Right Honorable the Governor in Council hereby delegates to the Commissioner of Salt and Abkari Revenue the following powers viz:—

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15 Jan '90

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IV Power, under Sec 24, to direct

from time to time as he shall see fit in the case of licenses and permits granted under the Act.

- - - - - - - - - - - - - - - - - -

(b) Subject to what restrictions and conditions such permits and in what forms such licenses and permits shall be granted.

not clear why he is of opinion that the depôt-keeper's license, the conditions of which are all included in those of the renters' license, is invalid. Further the Sessions Judge holds that the Act read together with Government Notification No. 58 published on page 99 of the Fort Saint George Gazette dated 4th February 1890, Part I, implies that Government must prescribe all conditions and restrictions appearing in a license and that the Commissioner has only power

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to

to clothe them in suitable language. The Board does not deny that this is probably correct, but if so, it does not affect the matter in hand. According to Clause IV of the Notification referred to above and in force at the time when the license in question was framed, the power of directing the particular form a license has to take had been delegated to the Board, and in the instance now under reference the conditions inserted in the license had received the prior sanction of the Government, though, it is true, prior to the passing of the Abkari Act of 1886. The substance of the particular condition (no 10) in question is contained in para 5 of Government Order No 570 Revenue dated 30th April 1884, in Condition No 7 of the renter's license and in Board's Proceedings dated 22nd ~~November~~ October 1886, No 2325. a Copy of which was submitted to Government and approved by it. In these circumstances, the Board inclines to the opinion that all legal requirements in respect of the Condition in question have been fulfilled, that there was nothing invalid either in the form or substance of the license issued to the accused and that the latter was legally punishable under Section 56 (b) for breach of the Condition of his

license

license. But granting for the sake of argument that the Depôt Keeper's license is really invalid as held by the Sessions Judge the Board considers that the Judge should, in virtue of Section 537 of the Code of Criminal Procedure have confirmed the conviction on the ground that by his own finding the Depôt-Keeper had no legal license at all and was acting in contravention of Sections 13 and 15 of the Abkari Act and was therefore liable under Section 55 (a) and (b) thereof.

6. With reference to the charge of breaking Conditions (7) and (8) of the renter's license, the Sessions Judge's arguments are contained in paras 14 & 16 of his judgment.

He first maintains the grotesque position that Condition 7 of the renter's license has not been broken at all. He considers that the renter has fully complied with the terms of his license by establishing a storehouse open to inspection by the Collector and his subordinates. He overlooks the fact that the depôt which the renter has to maintain is not merely a "Storehouse" but a place for distribution of liquor to the shops after verification by a qualified Government Officer. In other words, the storage of liquor at the depôt is not the object for which it exists but a mere accident resulting from the fact that liquor has to be examined there before distribution.

tribution

tribution. The Judge's view in this respect is clearly opposed to the wording of Condition No.(7) which says "all spirits purchased by you (Renter) shall be conveyed in the first instance for verification of the Consignment by a Government Officer before issue to the shopkeepers".

7. Admitting, however, that Condition 7 of the renter's license has been broken, the Judge next maintains that the accused is not responsible, but only the renter. This involves another important point of law. Section 64 of the Abkari Act runs thus:—

" In prosecutions under Section 55, it shall be - - - -

- - - - - - - - - - - - -

Satisfactorily; and the holder of a license or permit under this Act shall be punishable, as well as the actual offender, for any offence committed by any person in his employ and acting on his behalf under Section 55 or Section 56 or Section 57 or Section 58 as if he had himself committed the same, unless he shall &c". Now under sections 56 and 57 of the Act, the only persons who can be "actual offenders" are persons holding a license or permit under the Act. The Sessions Judge practically solves the difficulty by assuming that Section 64 does not apply to

Sections

Sections 56 and 57 being redundant. The High Court (Justices Muthusami Iyer and Brandt), however, held a different view in Criminal Revision Cases No. 639 and 630 of 1886 (vide Board's Proceedings dated 11th January 1888 No. 17, a copy of which is submitted herewith). They observed that "Section 56 and Section 64 of the Abkari Act must be read together, and if, as suggested by the District Magistrate no offence could be committed under Section 56 but by the holder of the license, the words 'for any offence committed by any person in his employ and acting on his behalf under Section 56' would be insensible. The words 'being the holder of a license' in section 55

page 3 /

(Sect 56)

must be taken to include any person in his employ and acting on his behalf for the time being". Under this interpretation of section 56 the accused would certainly be liable to punishment under Section 56 as being a person included by the words "being the holder of a license."

7. As regards the charge of breaking the Conditions of the permit the responsibility of the accused depends on the decision of the legal point stated in the last paragraph. The Sessions Judge clearly misunderstood the nature of this charge inasmuch as he argues that the permit being Current only for one day it was physically impossible for the

Appellant

Appellant to procure the attendance of the Revenue Inspector within that time. (Vide para 28 of his Judgment) - The Judge was, evidently, not aware that the Currency of the permit refers to the time within which the Consignment should reach the depôt and has nothing whatever to do with verification, the limit of time for the latter being "before issue to the shop keepers". There was nothing "physically impossible" in the Depôt-keeper abstaining from breaking the seals on the Casks. The permit had accomplished its object as soon as the Consignment had reached the depôt. It rendered the Conveyance thereto lawful. It was the duty of the Consignee not to break the seals and issue liquor before the verification was effected.

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8. The Sessions Judge further takes objection to the trial of the case by the 2nd Class Magistrate, Cuddalore, who, he considers, had no local jurisdiction. He further says that the procedure of the District Magistrates in having "directed that the case should be tried by the Stationary 2nd Class Magistrate of Cuddalore" was irregular. He does not, however, seem to be correctly informed on this point. The Panrutti Sub-Magistrate had only 3rd class powers, and the case was a 2nd Class one in as much as the offence under section 462 of the Indian Penal Code was one of the charges

against

against the Accused. The Court of the Stationary Sub Magistrate, Cuddalore, was the Court of lowest jurisdiction having power to try the case. The direction given by the District Magistrate was not to the 2nd Class Magistrate for the trial of the case, as surmised by the Sessions Judge but to the District Superintendent of Police to lay a complaint of the facts. There are several other points in the Session Judge's Judgment open to comment but they are not material to the question at issue and the Board does not propose to touch upon them in detail.

9. The Board concurs with the Session Judge's remarks on the excessive severity of the penalty imposed by the 2nd Class Magistrate and considers that a small

fine would have been sufficient. In the Board's Opinion the institution of a Criminal prosecution under the Act for an offence which was Committed four months before, and which the Collector had more than ample power to deal with departmentally, was injudicious. But in view of the several important legal points involved in the Case in regard to which it is essential that an authoritative ruling should be obtained, the Board recommend that the ~~Government Pleader~~ Public Prosecutor be instructed to move the High Court to set aside the decision of the Sessions Judge and to award a suitable, if only nominal, punishment to the accused. [illegible]

(True Extract)

Edmund Willett

Assistant Secretary

To The Secretary to Government, (Revenue Department) with the records connected with the case and with a copy of Board's Proceedings No. 17 dated 11 January 1888.

REVENUE BOARD OFFICE MADRAS

Proceedings of the Board of Revenue

(Separate Revenue),

Dated 22nd June 1895.

No. 2604 Mis

Read the following Proceedings of the Sessions Court of South Arcot dated 13 June 1895 No 252 to the Stationary Magistrate Cuddalore through the District Magistrate, South Arcot.

"Read Proceedings of the High Court of Judicature at Madras dated 18 May 1895, No 1141 Judicial, calling for the records in Criminal Appeal No 7 of 1895 on the file of this Court.

The Stationary Magistrate Cuddalore, is requested to submit direct to the High Court the material part of the record in Calendar Case No 581 of 1894 on his file together with the record of other proceedings, if any, connected with this Case.

The Distillery Inspection

Remark

Remarks book (Exhibit Y in the above Case) is herewith returned the receipt of which is requested to be acknowledged."

Read also the following Endorsement thereon of the District Magistrate South Arcot dated 14th June 1895, No. $\frac{1401}{Mag}$ of 1895.

"Submitted to the Board of Revenue, Separate Revenue, for favour of Compliance.

2 The Distillery Inspection Remarks book is herewith submitted, for being forwarded to the High Court with other records."

Resolution

The records Connected with the Nellikuppam Abkari Case have been forwarded to the High Court as requested.

2. The Public Prosecutor is requested to inform the High Court, when the Case Comes on before it for revision, that Government has been requested by the Board to file an appeal against the decision of the Session Judge of South Arcot in C. A. No. 7 of 1895 on his file.

C. No. 4415 of 95

3. A Copy of these proceedings will be submitted to Government for information in continuation of Board's Proceedings dated 13 June 1895, No. 2470 Mis. and for favor of the issue of necessary orders at an Early date.

(True Copy and Extract)

Edmund Willett

Assistant Secretary

To The Secretary to Government,
Revenue Department.

Para 1 to the District Magistrate
South Arcot

Para 2 to the Public Prosecutor
Madras.

X $\frac{88/4}{24/6}$

4,000 copies.
20-3-~~94~~.

Revenue 1895. Deptt.

Board of Revenue

(Separate Revenue),

MADRAS.

~~Current Number 4545~~

To

The Secretary to Government,
Revenue Department

1895
Jud Dep
Pros. No. 6
To
No. 3070

Recd 26 June.

Proceedings, dated 22nd June 1895,
No. 2604 Mis.

Subject.

Informing the District Magistrate South Arcot that the records connected with the Nellikuppam Abkari Case have been forwarded to the High Court and requesting the Public Prosecutor, Madras to bring to the notice of the High Court when the case comes on before it for revision that Government has been requested to institute an appeal against the decision of the Session Judge of South Arcot in C.A. No. 7 of 1895 on his file; and submitting a copy of these proceedings to Government for information & favor of the issue of necessary orders at an early date.

Jud! DEPARTMENT.

G./25.

Urgent

4,000 copies.
20-3-94.

Revenue 1895) Dept

Board of Revenue
(Separate Revenue),
MADRAS.

~~Current Number 4415~~

To Ct Nº 2997/95 1097, 22 Nov 87 1074 Rev/86 RP 14 Nov 87 Nº 634

The Secretary to Government
Revenue Department

20 JUN 95

Recd 20 June.

Proceedings, dated 13° June 1895,
No. 2470 Mis Recd 1 file

Subject. To Recd Sent Separately = Enc 5.

Submitting to Government certain records connected with the Nelli Kuppam Abkari Case and requesting that the Government Pleader be instructed to move the High Court to set aside the decision of the Sessions Judge, South Arcot in Criminal Appeal No 7 1895 on his file

P. T. O.

Ct-Nº 2997/95 Jud (also
G.O 39: 15.1.90 S.C. (Rev)
1097: 22 Nov. 87 S.C. "
1074: 8 Decr 86 S.C. "
1362: 10 Decr 85 " "
570: 30 April 1884 S.C. Rev
Judicial Dept

CURRENT NO. 3070

Read C. Nos 4415 & 4545 of 95

CHIEF SECRETARY
27 JUN. 1895

Endorsement Mis No. 2538.

Transferred to the Judicial Department

L. Gibson.

Secretary to Govt. R.D.

Ootacamund
26° June 1895.

Regd 27" } June 95.
Recd 28° }
Encs 6.

R.D. 20/6.

1/7

Papers received & printed as 6/vii

Jud! DEPARTMENT.

[G. 25.]

C. No. 3070

FOR ORDERS.

In connection with this case, I put up a file of printed papers which I have found in my room. I have no idea how it came there, but I fancy Mr. Shaw must have left it when he came to speak to me one day about the case. It had better be transferred to the R.D.

WB

~~Submit~~ to H.G.
R.D. 10/7

as to whether an appeal may be preferred in this case. The Board's Procgs. sets out the case clearly which involves the decision of several important points of law. The High Court has called for the records of the case in exercise of its revisional powers and the Board has instructed the Govt. Pleader to inform the Court that the Govt. has been moved to prefer an appeal against the decision of the Sessions Judge. The following order may perhaps issue?

order
Mis
dd 19th July 1895 No. 14

The Govt. Pleader will be requested under sec 417, C.C.P. to present

WB
8/7/95

8/7/95

appeal to the High Court
against the acquittal in
Crim. appeal No 7 of 1895
on the file of the Sessions
Court of S. Arcot.

D
6-7-95

JD
6/7/95

JD
6/5/95
To the Govt. Pleader
with records when received
.. Bd. of Rev (S.P)
Chief. the R.D.

Desp'd
9/7

te.
part from the important legal points
ed is a sufficient reason for appealing:
submitted, is found in the
the Sessions Judge, after find
license to be invalid & acquitt
used on the ground that it was consequently
offence to commit a breach of the
of the license, neglects to convict him
admitted possession of liquor
that a [valid] license

Quite so

JD
6/7/95

D
6/7/95

Appeal against
acquittal

FOR ORDERS.

A. M.

Sent to B.D.
8/7
10/7

C8/7

Time given for copying
When copied
When examined
When signed
189 .

Read again G.O., No. 189 , Dated

Current No.

Enclosures to C. No

Order of Government .. .. .. A A A A A A A

Letter of Government.

Statement with ditto.

Papers not filed up, being meant for despatch in original.

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