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GOVERNMENT OF MADRAS

Revenue. DEPARTMENT

G.O. No. 591. Press
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Dated 31-3-1875 196 .

Not to be folded or roughly handled

Abkari Act.

Read the following papers:—

No. 35. From J. H. GARSTIN, Esq., District Magistrate of South Arcot, to the Hon. D. F. CARMICHAEL, Acting Chief Secretary to Government, Fort St. George, dated Gingee, 6th February 1875, No. 15.

I have the honor to request that the Advocate-General's opinion may be taken on the following question: Can a private person arrest another whom he sees committing an offence against Section 26 of Madras Act III. of 1864?

2. Under Section 105 of the Criminal Procedure Code any private person may arrest any person, who, in his view, commits a non-bailable and cognizable offence, and the point for decision therefore is whether an offence against Section 26 of the Mofussil Abkári Act is both non-bailable and cognizable. The last part of Schedule IV. of the Criminal Procedure Code lays down that with respect to offences against other laws than the Indian Penal Code, if they are punishable with fine only, the Police shall not arrest without warrant and that they are bailable; but on the other hand Clause 2, Section 2, of the Code of Criminal Procedure lays down that a special form of procedure, prescribed by any law not expressly repealed in the first Schedule of that Act, shall not be deemed to have been impliedly repealed because of its being inconsistent with the provisions of the Criminal Procedure Code; and, as no part of the Madras Mofussil Abkári Act has been so repealed, it appears to me that the procedure provided in Section 26 thereof is still in force, and that the Police cannot only arrest without warrant persons seen committing the offence of carrying liquor without a permit which requires to be covered by one, but that the Section prevents their releasing them on bail or on their own recognizances to appear before the Magistrate, and that it, therefore, constitutes such offences both cognizable and non-bailable, and that private persons can, therefore, arrest persons seen committing such offences and hand them over to the Police. Moreover, I doubt whether it can be said that fine is the only "punishment" provided for such offences, for Section 21 of the Abkári Act authorizes the Magistrate, besides fining the offender, to order the forfeiture of his license, and though the only punishments contemplated by the Penal Code are fine, imprisonment, and whipping, I think the addition made by the Abkári Act would alone suffice to remove the offence defined in Section 26 of that Act from the category of offences punishable only with fine.

3. The point is of considerable importance especially in districts like this where there is a Foreign frontier to guard and where great opportunities for smuggling exist; and unless both the Police and private persons have the power of arresting all persons seen carrying liquor without a pass which requires to be covered by one, and as the Acting Head Assistant Magistrate differs with me as to the powers conferred by the Act, I request the reference may be made, and as early a reply as possible sent to me. The decision of the point will probably seriously affect the sale of the Abkári Farms all over the Presidency.

Proceedings of the Madras Government, Judicial Department,
9th March 1875.

Referred, through the Government Solicitor, for the early report of the Advocate-General.

FORT ST. GEORGE,
17th February 1875.

D. F. CARMICHAEL,
Acting Chief Secretary.

No. 36. From H. G. PRICHARD, Esq., Government Solicitor, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 3rd March 1875, No. 117, forwarding the following opinion of the Advocate-General:—

OPINION.

I cannot concur in the view taken by the District Magistrate of South Arcot that a private person may exercise the powers of arrest conferred on the Police by Section 26 of Madras Act III. of 1864.

2. The effect of the last heading of Schedule IV. of the Criminal Procedure Code, and of the sixth explanatory note to that Schedule is, no doubt, when read along with Section 26 of the Madras Abkári Act, to render it obligatory on the Police to take any person, whom they have found carrying or in possession of liquor without the necessary pass, without delay before a Magistrate. This renders the offence "cognizable," but I cannot agree with Mr. Garstin in regarding it as "non-bailable." Reading the whole of the last heading of the Schedule together the result, in my opinion, is that offences such as those against the Abkári Act, which are punishable in the first instance by fine without imprisonment, are bailable notwithstanding that the offender is liable to imprisonment under certain circumstances at an ulterior stage of the proceedings. In any case it is quite out of the question to suppose that it can have been the intention of the Legislature to arm private individuals with the power of stopping persons who happen to be carrying liquor demanding the pass, and, on its non-production, carrying them before the Magistrate.

3. I am of opinion, therefore, that the question put in Mr. Garstin's letter must be answered in the negative.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

2nd March 1875.

No. 37. ORDER THEREON, 9th March 1875, No. 540.

The Advocate-General's opinion will be communicated to the Collector of South Arcot.

(True Extract.)

Chief Secretary.

To all Collectors.
,, the Government Solicitor.
,, Board of Revenue.
,, Revenue Department.
Rd. J. Wright.

№ 1090
Revenue Department

Govt. of {1875} Madras.

JUDICIAL.

To

ALL COLLECTORS,

&c., &c., &c.

Dated March 9th,
Recd. 24-25.

End.

G.O., 9th March 1875, No. 540.

MARCH.
Nos. 35—37.

Madras Abkari Act III. of 1864.—Opinion of the Advocate-General as to whether a private person can arrest another whom he sees committing an offence against Section 26 of this Act, communicated to the Collector of South Arcot.

№ 591
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31: March 75