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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

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GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

598/1

30th January 1879, No. 180.

Earth Salt.

Read the following papers:—

No. 138. *From W. H. COMYN, Esq., District Magistrate of South Canara, to the Acting Chief Secretary to Government, dated 28th December 1878, No. 2413.*

I have the honor to request that the Government will be pleased to obtain the opinion of the Advocate-General on the following point, viz., whether the possession of salt earth in this district for the purpose of curing fish amounts to an offence.

2. The Earth Salt Act, No. II of 1878, has not been extended to South Canara; but it seems doubtful whether, under that enactment, the possession of salt earth, for the purpose above indicated, would be punishable in a district to which it had been

extended, as it is expressly stated* that the possession to amount to an offence must be "for the purpose or with the intention of making or manufacturing the same into earth salt."

3. The only law under which offences relating to salt committed in this district are punishable is the Madras Salt Excise Act, No. VI of 1871, and though the Act is silent

as regards salt earth, the High Court have ruled in their Proceedings,† No. 2119, 18th September 1877, that the possession of salt earth for the purpose of making salt illicitly might be legally dealt with under that Act in districts to which it may have been applied. The penal Sections are 4 and 15. It appears to me to be doubtful whether the mere possession of salt earth for fish-curing purposes amounts to an offence under either of those sections. "Salt" is nowhere defined in the Act, and, unless the term can be held to include "salt earth," I do not see how the possession of salt earth—and then the possession must be fraudulent—can be treated as an offence.

4. The question is an important one as affecting the public revenue; but I make this reference more particularly because the point is one regarding which a great deal of uncertainty exists in the minds of the public and of the Magistracy; and it is, therefore, eminently desirable that an authoritative opinion on the subject should be obtained, and the law, if necessary, amended.

5. I beg to enclose copy of two decisions in which Subordinate Magistrates have held contrary opinions on the point above noted, the one convicting and the other acquitting persons charged under Section 15 of the Salt Excise Act with the possession of salt earth for the purpose of curing fish.

Calendar Case, No. 84 of 1878, on file of second-class Magistrate of Cassergode.
Calendar Case, No. 60 of 1878, on the file of second-class Magistrate of Kudapur.

ENCLOSURE No. 1.

Proceedings of the High Court of Judicature at Madras, 18th September 1877, No. 2119.

Read Register of Summary Trials held by the Deputy Magistrate of Ganjam in Cases Nos. 11 to 15 and 17 to 24 of 1877.

In Cases Nos. 17, 18, 19, and 20, the accused have been convicted of collecting salt earth from salt swamps, or of being in possession of salt earth for the purpose of making salt illicitly, and have been sentenced in three cases (Cases Nos. 17, 19, and 20) to pay fines, and in one case (Case No. 18) to be imprisoned for seven days.

The convictions purport to be under Act XVII of 1840. That Act, however, does not define what acts amount to breaches of the salt laws, but merely invests the Magistracy (as distinguished from the then Criminal Courts) with certain powers of punishment in respect of acts which, under the existing law, amounted to breaches of the salt laws. The declaratory law as to what

act's amount to breaches of the salt laws is contained in Madras Regulation I of 1805. Section 18 of that Regulation enacts that "Any person engaging in any clandestine or fraudulent transaction with respect to rawannahs or passes, smuggling, or concealing at the smuggling of salt, making, purchasing, obtaining, selling, or weighing salt in an illicit manner, shall on conviction, be liable to permanent exclusion from the service of the Company."

The High Court are of opinion that the collecting of salt earth from salt swamps or the being in possession of salt earth for the purpose of making salt does not come within any of the terms of Section 18 of Regulation I of 1805.

The Court are aware that a contrary decision was arrived at in 1869 (High Court Proceedings, 1st July 1869) when it was held that being in possession of salt earth for the admitted purpose of making salt was an "engaging in a clandestine and fraudulent transaction with respect to making salt in an illicit manner." That decision was also followed in a subsequent case decided in April 1871.

In one of the cases now under consideration (Case No. 20), the purpose for which the salt earth was collected was admitted to be the making of salt. In the other three cases, it does not appear that any evidence was given, or that any admission was made as to the purpose for which the salt earth was intended. It is not, however, sought on that ground to distinguish the cases now before the Court from the Proceedings of the 1st July 1869.

The High Court are of opinion that the ruling of July 1869 was erroneous, and they think that the decision then arrived at should be overruled.

An enactment (Act No. VI of 1871) is now on the statute book under which the acts, for which the accused have now been punished, might be legally dealt with. The Local Government have not, however, issued the Notification required by law to bring that Act into force in the district in which the cases now dealt with arose. Until the new Act is brought into force, convictions such as those now before the Court must be held to be illegal.

The High Court annul the convictions of the accused in Cases Nos. 17, 18, 19 and 20 on the file of the first-class Deputy Magistrate of Ganjam, and direct that the fines levied be refunded to the accused persons.

Ordered accordingly.

(Signed) T. WEIR,
Acting Registrar, Appellate Side.

ENCLOSURE No. 2.

Calendar Case, No. 60 of 1878, on the File of the Second-class Magistrate of Koudygar.
Regina et Indie Imperatrix, vs. Maku.

JUDGMENT.

Offence.—Attempt to manufacture salt fraudulently, punishable under Section 15 of the Madras Salt Excise Act VI of 1871.

Finding.—Not guilty.

Sentence.—Acquitted.

1. The defendant, a fisherman, has been found in possession of four mudas of salt earth which he admits he had collected for being used to cure his fish. He denies he ever intended to make salt out of it, and asserts that he as well as all fishermen on the coast use the earth in its natural state to cure their fish, and do not convert the earth into salt for the purpose.

First witness, Head Constable, who seized the salt in the defendant's house, states that he believes the defendant did not intend to make use of it as salt for any other purpose than that of curing fish; for the witness found in the house other good salt not manufactured from the earth, but he thinks that fishermen in curing their fish do not use the earth as it is, but use salt manufactured from the earth. He is, however, unable to procure any evidence to prove the fact, though the trial of the case was adjourned for the purpose.

The other witnesses for the prosecution have no personal knowledge of the process of curing fish with salt earth, but two of them know from hearsay that fishermen use the earth as it is and do not convert it into salt.

The defendant has examined two witnesses, both of them fishermen of the same village, who depose that men of their profession in curing their fish with salt earth use it in its natural state without any process to convert the earth into salt. They cover the cleaned fish with the earth, and wash it the next day, after which the fish is dried in the sun.

The High Court in their Proceedings of 18th September last intimated their opinion that the collection of salt earth, or being in possession of salt earth for the purpose of making salt, might be legally dealt with under the Excise Act. In the present case however the defendant has been found in possession of salt earth not for the purpose of making salt, but for using the earth as it is to cure fish. I see no provision of law under which the defendant can be punished, and I therefore acquit him of the offence accused.

The four mudas of salt earth shall be restored to the defendant after one month from this date, unless the order is stayed or annulled by a Court of Revision.

(Signed) J. M. COELHO,
Second-class Magistrate.

6th November 1878.

Date of complaint, 3rd October 1878.
" of appearance 25th October 1878.

ENCLOSURE No. 3.

Calendar Case No. 14 of 1878.

Proceedings in the Court of the Second-class Magistrate of the Cassergode Taluk, under date the 30th May 1878.

Present:

S. RAMA ROW.

Offence.—Section 15, Act VI of 1871.

Complainant.—Regina.

Accused.—Bassappa.

Witnesses.

1. Amanna, Constable.
2. Krishna Rao, Sea Customs Superintendent.
3. Perneshwara.
4. Rama Rao, Head Constable.
5. Subraya, Constable.

Date of complaint, 22nd May 1878. Date of appearance of the accused, 29th May 1878.
Date of examination of the last witness, 30th May 1878. Date of final order, 30th May 1878.

Final Order.

The Court finds that the accused Bassappa has been guilty of fraudulently making, obtaining or attempting to make or obtain salt, an offence punishable under Section 15, Act VI of 1871. The Court, therefore, directs that the said Bassappa be rigorously imprisoned for seven days.

Judgment.

In this case the accused Bassappa was found in possession of ten Madras measures of salt earth which he had collected from a paddy-field adjacent to the Bungar Manjeshwar river.

The accused admitted the possession, and stated that he collected the earth for the purpose of curing fish.

It is a well-known fact that the salt earth of the description now found in the possession of the accused can easily be reduced to good salt, quite fit for human consumption, by the simple process of boiling and clarification; and it was the salt so manufactured that the poorer classes and, in some instances, even rich landholders on the coast generally used for ordinary consumption up to the introduction of Act VI of 1871 in this district.

Doubtless the salt earth is also used for curing fish, but it is not the mere earth that cures fish, but it is the salt with which the earth is impregnated.

In any case it is for the sake of obtaining salt without cost that the salt earth is collected by the people, and the recent rise in the rate of salt duty has greatly increased the temptation for it. Consequently there can be no mistake as to the accused's intention to defraud the public revenue by evading payment of duty imposed by law on salt.

The collection or possession of salt earth under the circumstances had been held to be an offence under Section 18, Regulation I of 1805 (High Court's Proceedings, 1st July 1869) until 18th September 1877, on which date, however, the High Court again ruled that it could not come within any of the terms of that section, and directed that it might be legally dealt with under the provisions of Act VI of 1871 which has been in force in this district since July last.

Act II of 1878, since passed and declared by Government to be brought into operation in this district, has made special provisions for the punishment of acts of this kind; but this Act

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directs it to be read with and taken to be parts of Regulation I of 1805 and Act XVII of 1849, both of which, however, have already ceased to have any effect in this district, for they have been expressly repealed by Act VI of 1871; and Act II of 1878 does not contain any express provision for their revival, while Act VI of 1871 remains in force. Consequently any proceedings under the provisions of Act II of 1878 in this district cannot, in my humble opinion, have any force of law.

The proper course, therefore, under these circumstances is, in my opinion, to proceed under Act VI of 1871.

Collection or possession of salt earth with the object of using it in lieu of salt or as salt, intending to evade payment of duty, clearly amounts to "fraudulently obtaining" or attempting to obtain salt within the provision of Section 15 of Act VI of 1871.

I therefore hold the accused guilty of an offence punishable under that section, and resolve to sentence him to seven days' rigorous imprisonment.

I further resolve to direct that the salt earth be thrown into the river.

(True Copy.)

(Signed) K. RAMA RAO,
Second-class Magistrate.

No. 116.

Referred for the opinion of the Advocate-General through the Government Solicitor.

FORT ST. GEORGE,
17th January 1879.

(Signed) C. G. MASTER,
Acting Chief Secretary.

To the Government Solicitor.

No. 139. From E. BARCLAY, Esq., Government Solicitor, to the Acting Chief Secretary to Government, dated Madras, 21st January 1879, No. 43, forwarding the following Opinion of the Advocate-General:—

OPINION.

I think, with Mr. Comyn, that the mere possession of salt earth for fish-curing purposes is not an offence under Madras Act VI of 1871 or Madras Act II of 1878. But whenever doubts are entertained on the subject—they cannot be set at rest by any opinion of mine—the matter should in such case be set in motion so as to elicit a ruling by the High Court, which is empowered to pronounce an authoritative opinion.

MADRAS,
20th January 1879.

(Signed) P. O'SULLIVAN,
Advocate-General.

No. 140. ORDER THEREON, 30th January 1879, No. 180.

The opinion will be communicated to the Magistrate. It would appear to be a matter for decision in the circumstances of each case, whether the salt earth in possession of the accused has been *bona fide* gathered by him for rubbing into fish, or for illegally extracting salt from it. It is conceded that in the latter case an offence is committed; but there is no prohibition in the former case.

(True Extract.)

[Signature]
Acting Chief Secretary.

To the District Magistrate, South Canara.
.. Government Solicitor.
.. Revenue Department.

Esq. J. Wright.

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Revised my report

pro 1 Jan 1959
Comm. of H.C.C. 1959

JUDICIAL.

THE DISTRICT MAGISTRATE OF
SOUTH CANADA.

Dist. Justice, S.C.

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11 Feb 64

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JANUARY,
1959. 190-199.

To be sent, 5 - Remitting copies of
the Affidavits on the question of
whether the person is a citizen
or not, on which

1959

Commenced to the
Board of Review.

13.2.59 *S.H.F.*

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