

Queen-empress Vs. Makunda and anr.

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SooperKanoon Citation : sooperkanoon.com/455969

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1898)ILR20All70

Judge : John Edge, C.J. and ;Blair, J.

Appellant : Queen-empress

Respondent : Makunda and anr.

Judgement :

John Edge, C.J. and Blair, J.

1. This reference by the Sessions Judge of Saharanpur raises the question whether Muhammad Khan, a Sub-Inspector, was, on the 1st of November 1896, an excise officer within the meaning of Section 57 of Act No. XII of 1896. He was, before the coming into force of Act No. XII of 1896, one of the class of officers on whom had been conferred powers to act as excise officers under Sections 27, 28 and 29 of Act No. XXII of 1881. By Section 2 of Act No. XII of 1896 powers conferred under any of the repealed Acts were to be deemed to have been conferred by and granted under that Act. Now Act No. XXII of 1881 had been amended by Act No. VI of 1885, which had introduced Section 34A into the Act, a section which does not appear to have been brought to the attention of Mr. Justice Blennerhassett in the case of Queen-Empress v. Ram Charan, Weekly Notes 1896, p. 105. Section 47 of Act No. XXII of 1881 had also been amended by Act

No. VI of 1885. Under Section 27 of Act No. XXII of 1881 an excise officer under certain circumstances had power to arrest. Under Section 28 an excise officer receiving a certain monthly salary had also power to arrest. Under Section 29 certain excise officer had power to arrest. Turning to Section 32 of Act No. XXII of 1881 we find that whenever an excise officer arrests any person 'he shall within twenty-four hours thereafter make a full report of all the particulars of such arrest, seizure or search, to his official superior, and, unless acting under the warrant of the Collector, shall take the person arrested, or the article seized, with all convenient despatch to the Magistrate for trial or adjudication.'

2. It appears to us that that section contemplated that the excise officer who arrested under Section 27, Section 28 or Section 29 could, unless he was acting under the warrant of the Collector, give the Magistrate jurisdiction to act, and that section can only be read in harmony with Section 47 by treating the excise officer who had power in certain events to take the case before a Magistrate under Section 32 as an excise officer within the meaning of Section 47. Sections 36, 37 and 38 of Act No. XII of 1896, correspond generally with Sections 27, 28 and 29 of Act No. XXII of 1881 and Section 41 of Act No. XII of 1896 corresponds with Section 32 of Act No. XXII of 1881. Section 57 of Act No. XII of 1896 corresponds with Section 47 of Act No. XXII of 1881. If the attention of Mr. Justice Blennerhassett had been drawn to these sections, we think his opinion might have been otherwise.

3. We hold that the Magistrate had jurisdiction to act, and we send the case back to the Sessions Judge with directions to reinstate the case on his file and to dispose of it.