

The Queen Vs. Sakiya

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Court : Chennai

Decided On : Mar-03-1882

Reported in : (1882)ILR5Mad137

Judge : Innes and ;Muttusami Ayyar, JJ.

Appellant : The Queen

Respondent : Sakiya

Judgement :

1. The Second-class Magistrate convicted the accused under Section 22, Madras Act III of 1864, and imposed a fine of Rs. 7, but omitted to pass an order under Section 26B for the award in equal shares to the apprehender and the informer of the fine levied, and of the articles confiscated by the Collector under Section 17, to wit, two asses, a pack-saddle, and four bags by, on, and in which the illicit conveyance of liquor was effected.
2. The District Magistrate submits that the omission to pass an order under Section 26B is illegal, and further asks whether the value of the articles confiscated by him as Collector under Section 17 is subject to the order of the Magistrate, in whose Court the conviction was obtained, for distribution under Section 26B.
3. As the District Magistrate submits, an order must be made by the Subordinate Magistrate under Section 26B* of the Abkari Act.

4. With regard to the question on which the District Magistrate expresses a doubt, we observe that Section 23A gives the Magistrate authority to confiscate stills, liquor, vessels, packages, and coverings in certain circumstances.

5. Section 26* gives a Police Officer power to seize liquor with vessels, packages, and coverings and the animals and conveyances used in carrying it. He is then to take them before the Magistrate.

6. Section 26B authorizes the award of one-half of the fine levied to the officer or officers who apprehended the offender or seized the articles, and also one-half of the proceeds of the sale of liquor, vessels, packages, conveyances, stills, and other articles confiscated under this Act.

7. Under Section 17 animals are liable to confiscation by the Collector, and in all cases in which there has been a conviction before a Magistrate and in which also by the order of the Collector any property has been confiscated, such property would be property confiscated under the Act within the meaning of Section 26B.

8. The confiscation of animals does not appear to be within the authority of the Magistrate, having regard to the language of Section 26B. But in all magisterial cases falling for disposal under that section, the proceeds of whatever has been confiscated by the Collector, including animals, would be available for distribution in the manner therein prescribed.

9. The Second-class Magistrate is accordingly directed to make an award under Section 26B, and to include therein the value of the property confiscated by the Collector under Section 17, Madras Act III of 1864.

10. Ordered accordingly.

* Police may stop person in possession of liquor.

And seize if no valid pass.

[Section 26 : Any Police officer may stop and detain any person having possession of or carrying in any public road, street, thoroughfare or place, or in any open shop, any liquor which requires a pass, and if no valid pass be produced to him on

his demand, may seize the liquor with the vessels, packages, and coverings in which the liquor is found, and the animals and conveyances used in carrying it; and shall thereupon, without delay, take such person, together with the things so seized, before the Magistrate.]

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