

**In Re: Maddi Sudarsanam**

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**Court :** Chennai

**Decided On :** Feb-10-1931

**Reported in :** (1931)61MLJ127

**Appellant :** In Re: Maddi Sudarsanam

**Judgement :**

ORDER

**Jackson, J.**

1. This is a petition by an under-trial prisoner in the Court of the Sub-Magistrate of Guntur seeking to set aside his order that under Section 190(b) he had lawfully taken cognizance of the offence.
2. This Court has already had occasion to remark upon the mischievous habit of Trial Courts passing interlocutory orders for which there is no provision in the Criminal Procedure Code. If the accused wishes to raise a point of law by way of defence, he should raise it when called on for his defence, and the Court should deal with it in its judgment.
3. This petition, therefore, is misconceived and might be dismissed upon that short ground. However, since the point of law has been raised, it may be answered.
4. The petitioner was charge-sheeted by the Police under Section 74(d) of the Madras Salt Act and his plea is that for offence under that Act the Police have no

power to put in a charge sheet. This plea depends upon the contention that the Salt Act entirely regulates the manner of investigating offences under that Act, and its regulation does not admit of a Police report to a Magistrate under Section 190(b), Criminal Procedure Code. Chapter VI of the Salt Act deals with the powers of public officers for the detention and punishment of offences against the salt law. It will be convenient to survey its sections as bearing upon Police powers in concise form.

Section 46.-Magistrate to issue search warrant on information. Informant not specified; presumably any one.

Section 47.-Police Officer duly empowered may search, and arrest. Person arrested must be bailed for appearance before Salt Inspector.

Section 48.-Headman to report to nearest salt factory or Police Station.

Sections 49 & 50.-Police may arrest without warrant.

Section 52.-To report such arrest to immediate official superior.

Section 53.-Person arrested to be forwarded to Salt Inspector or to nearest Police Station.

Section 54.-Bail by Police to appear before Salt Inspector.

Section 64.-Salt Inspector must send report to the Magistrate who acts as though it were a Police report under Section 190(b).

Section 67.-Police to take charge of property in crime.

Section 68.-The Police must assist other departments in carrying out provisions of the Act.

Section 69.-Police must report breaches of the Act to Salt Inspectors, and shall be bound to take all reasonable measures in their power to prevent the commission of such breaches.

Section 70.-Landowners to report offences to the Police.

5. I cannot find anything in these sections restricting the normal duty of the Police to report to the Magistracy, nor any indication that the sections taken as a whole compose a self-contained code of procedure. Section 64 seems to contemplate that the Magistrate will be familiar with Police reports, and does not say 'in like manner as if report had been made to him in respect of other offences under Section 190(b)'. And if Section 69 imposes upon the Police the duty of taking all measures in their power, one would expect some clause making that power clear, if it is a restricted power, and not the normal power of the Police. In the Indian Salt Act this clause finds place.

Section 11.-A charge of an offence under Section 9 shall not be entertained except on the complaint of a Salt Revenue Officer.

6. That the Madras Act contains no similar provision seems conclusive upon the point. Chap. VI is mainly concerned with providing special provisions in regard to arrest and bail; but as regards a mere report it is silent. In *re Yerlagadda Venkanna* (1924) 48 M.L.J. 605 is very much to the same effect as the above observations, although that ruling is concerned with the Madras Abkari Act. With all respect I would transfer the argument to this case only. I should not use the phrase 'serious lacuna' when reaching the point that, for cases where there is no arrest the Acts make no special provision. Because a lacuna suggests some gap or oversight in a regular scheme, and I do not think that the Acts intend a scheme of procedure; or intend anything more than a few special additions to the normal procedure of the Criminal Procedure Code.

7. In *In re Kuppusami Naidu* (1922) 44 M.L.J. 231, which is also upon the Abkari Act, it is found that the submission of a charge-sheet by the Police instead of by the Abkari Officers placed a considerable disability on the accused. But as observed in *In re Yerlagadda Venkanna* (1924) 48 M.L.J. 605 it is not clear that this does not refer to an arrest in which the special provisions in the Abkari Act were not observed.

8. In *Lazar Fernando v. Amirtham Fernando* I.L.R. (1928) 52 M. 613 : 57 M.L.J. 214 the learned Judge in the Chapter entitled 'Powers and Duties of Officers' finds no mention of private persons, which is not surprising. It seems at least

questionable whether, if the Abkari Act was intended to restrict the normal function of private persons, it would not have done so in terms.

9. I do not find, therefore, that the Magistrate wrongfully took cognizance of this offence, and dismiss the petition.

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