

Queen-empress Vs. Palayathan

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SooperKanoon Citation : sooperkanoon.com/785059

Court : Chennai

Decided On : Aug-28-1894

Reported in : (1895)ILR18Mad48

Judge : Arthur J.H. Collins, C.J. and ;Parker, J.

Appellant : Queen-empress

Respondent : Palayathan

Judgement :

1. Section 43, Madras Act I of 1886, provides that when, by reason of default of appearance of a person bailed to appear before an Abkari Inspector, such officer is of opinion that proceedings should be had to compel payment of the penalty mentioned in the bond, he shall forward the bond to the Magistrate having jurisdiction to try the offence of which the person bailed was accused, and the Magistrate shall proceed to compel payment of the penalty in the manner provided by the Criminal Procedure Code for the recovery of penalties in the like cases of default of appearance by a person bailed to appear before his own Court.

2. The procedure which the Magistrate has to follow is laid down in Section 514, Criminal Procedure Code. The question is whether the language of Section 43 of the Madras Abkari Act makes the Magistrate a mere executing officer and takes away from him the discretion which he would be at liberty to exercise if the defaulter had failed to appear before his own Court. If the Magistrate is merely an

executing officer, the provisions of Section 514, Criminal Procedure Code, enabling him to call upon the defaulter to show cause why the penalty should not be enforced would become inapplicable, and the appeal to the District Magistrate given by Section 515, Criminal Procedure Code, would also be taken away, since there can be no ground for appeal or revision if the inferior Magistrate could not exercise any discretion, but was bound by law to pass one order only.

3. The Legislature has not provided for any revision of the orders of the Abkari Inspector, who is not bound even to call upon the defaulter to show cause why the penalty should not be enforced. If, therefore, the Magistrate has no such power, the amounts fixed by the Station-house officer under Section 40, Clause 2 of the Abkari Act would become final, since no power is given to the Abkari Inspector to reduce the penalty.

4. We are of opinion that the Legislature could not have intended such a result, and that the intention was to make all the provisions of Section 514, Criminal Procedure Code, applicable to a Magistrate enforcing a penalty on the application of an Abkari Inspector under Section 43, Madras Act I of 1886. From the fact that the Inspector is directed to send the bond to the Magistrate 'having jurisdiction to try' the offence of which the person bailed is accused, the intention of the Legislature would appear to have been that the Magistrate should proceed in the same manner and with the same powers as if the default had been made by a person bailed to appear before his own Court. This inference is strengthened by the fact that where the Legislature intended as in Section 516, Criminal Procedure Code, that the Magistrate should have no discretion, but should merely execute the orders of superior authority, the direction to levy the amount may be addressed to 'any' Magistrate.

5. Nor can we suppose that the Legislature intended to make the orders of the Station-house officers and the Abkari Inspectors final, and to take away by implication the liberty to appeal under Section 515, Criminal Procedure Code.

6. For these reasons we are of opinion that the view taken by the Second-class Magistrate as to his legal powers was correct.

