

**The Queen Vs. Chakrasahu**

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**Court :** Chennai

**Decided On :** Oct-12-1883

**Reported in :** (1883)ILR7Mad185

**Judge :** Kindersley and ;Hutchins, JJ.

**Appellant :** The Queen

**Respondent :** Chakrasahu

**Judgement :**

**Kindersley, J.**

1. In this case one Chakrasahu was convicted under Madras Act, III of 1884, Section 21, and was fined Rs. 200. Of that sum, Rs. 47-8-0 were recovered by distress and sale of his movable property; and, as no more could be so recovered, he was sentenced to imprisonment for five months under Section 32 of the same Act.

2. The Senior Assistant Magistrate set aside the sentence of imprisonment, being of opinion that Section 32 of Act III of 1864 did not authorise a sentence of imprisonment, when it appeared by actual distress and sale, as in the present case, that such penalty could not be levied in full. The Magistrate of the District refers the case for revision by this Court. The first case in which imprisonment is authorised by Section 32 of the Act is, 'if upon the return of such warrant it shall

appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid.' This is exactly that case. There has been a distress, but the result has not satisfied the penalty. Therefore, a sentence of imprisonment for five months was lawful in the circumstances of the case. The Senior Assistant Magistrate remarks that, if the section were construed otherwise than as he has construed it, it would authorise a sentence of six months' imprisonment if even one anna of the Rs. 200 remained unpaid. This is, of course, an extreme case, and the legislature in Section 32 repose confidence in 'the discretion' of the officer passing the sentence.

3. The order of the Senior Assistant Magistrate in the case must be reversed, and the sentence of the Second-class Magistrate restored.

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