

(1937) 02 MAD CK 0008

In the Madras High Court

In Re: Abdur Rahiman Kutty and Others

Date of Decision : 03-02-1937

Acts Referred:

Citation : (1938) ILR (Mad) 1034 : (1937) 45 LW 435 : (1937) 1 MLJ 498

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The only question in this Criminal Revision Case is whether an Additional District Magistrate is empowered u/s 8 of the Sarda

Act (Child Marriage Restraint Act XIX of 1929) to try cases under that Act. The District Magistrate took cognisance of the case but transferred it

to the Additional District Magistrate for trial; and it is contended that the District Magistrate could not do so, but was bound to try the case himself,

even though the Additional District Magistrate was given u/s 10(2) of the Code of Criminal Procedure all the powers of a District Magistrate.

2. There can be no doubt that if Section 8 of the Sarda Act makes it clear that Additional District Magistrates should not try such cases, then the

mere fact that an Additional District Magistrate is empowered with all the powers of a District Magistrate u/s (10)(2) of the Criminal Procedure

Code would not empower him to try a case under the Sarda Act; but it is a well-known canon of interpretation that two statutes should be

reconciled if they can be. I agree with Mr. Jayarama Aiyar that an Additional District Magistrate is not a District Magistrate. Section 10(3) of the

Code makes an Additional District Magistrate subordinate to the District Magistrate, so that the District Magistrate has certain powers u/s 520 of

the Criminal Procedure Code, for example, over the Additional District Magistrate. The question is, however, whether Section 8 of the Sarda Act

intended to exclude trial by Additional District Magistrates. In reading that section it has to be assumed, unless the contrary is quite clear, that it

was not intended to take away the powers given to the Additional District Magistrates u/s (10)(2) of the Code. Section 8 reads:

Notwithstanding anything contained in Section 190 of the Criminal Procedure Code, 1898, no Court other than that of a Presidency Magistrate or

a District Magistrate shall take cognisance of or try any offence under this Act.

3. It may be noted that no reference is made to Section 10 of the Criminal Procedure Code. One would have expected Section 10 to have been

coupled with Section 190 if the legislature had intended to exclude the jurisdiction of an Additional District Magistrate. If this section had been

worded positively, merely empowering District Magistrates to take cognisance of offences under the Act, the present argument would probably

never have been put forward; for nowhere in any act are Additional District Magistrates coupled with District Magistrates; so that where District

Magistrates are given any powers those of the Additional District Magistrates are presumed. A handle for the present contention is afforded by the

fact that the section reads more strongly in the negative form:

No Court other than a Presidency Magistrate or a District Magistrate shall take cognisance of or try any offence under this Act.

4. This negative form is necessitated by the opening words of the section.

Notwithstanding anything contained in Section 190 of the Criminal Procedure Code.

5. Had it not been for these words a Sub-Divisional Magistrate or a Magistrate specially empowered could have taken cognisance of the offence

u/s 190 of the Code. In order to prevent these officers from taking cognisance of an offence u/s 190, Criminal Procedure Code, it was necessary

to word Section 8 of the Sarda Act so as to limit the taking of cognisance and trial to the other Magistrates mentioned in Section 190 of the

Criminal Procedure Code, vis., Presidency Magistrates and District Magistrates. Section 8 of the Sarda Act makes no mention of Additional

District Magistrates because Section 190, Criminal Procedure Code, does not.

6. I do not therefore find any difficulty in reading Section 8 of the Sarda Act with Section (10)(2) of the Criminal Procedure Code and holding that

an Additional District Magistrate who has been given all the powers of a District

Magistrate is empowered to try a case under the Sarda Act also.

7. My attention has been drawn to the judgment of Reilly, J., in *Maria Pillai v. Gopalakrishna Aiyar* (1928) M.W.N. 633. After a trial by a Sub-

Magistrate, stolen property was handed over to the accused. An appeal was preferred by the complainant to the Sub-Divisional Magistrate, who

passed an order returning it to the complainant. In revision it was held by a Full Bench that an appeal lay only to the District Magistrate and that the

Sub-Divisional Magistrate had no jurisdiction. The case then went back to the District Magistrate, who transferred it to the Additional District

Magistrate. The matter again came before this Court in revision and Reilly, J., passed the following order:

Following the opinion of the Full Bench I must hold that the Additional District Magistrate had no jurisdiction to hear the appeal. His order is

therefore set aside. The appeal is transferred to the District Magistrate.

8. It is seen that Reilly, J., gave no reason at all for his order; but he apparently felt himself bound by the actual words used by the Full Bench that it

was only the District Magistrate who could hear the appeal. The Full Bench certainly did not decide that an Additional District Magistrate specially

empowered could have heard the appeal.

9. This petition is accordingly dismissed.