
(1894) 01 MAD CK 0010
In the Madras High Court

Queen-Empress

APPELLANT

Vs

Fakrudeen

RESPONDENT

Date of Decision : 25-01-1894

Acts Referred:

Police Act, 1859 — Section 10

Citation : (1894) ILR (Mad) 278

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

Best, J.—No rules sanctioned by Government u/s 10 of Act XXIV 1859 have been brought to our notice, and in the absence of such rules

the accused is liable to be prosecuted u/s 44. The mere fact of a departmental punishment having been awarded is not sufficient to exonerate from

liability u/s 44, though the circumstance may be taken into consideration in passing sentence. I would set aside the order of acquittal and direct the

Magistrate to dispose of the case on its merits.

Muttusami Ayyar, J.

2. I am also of the same opinion. In the absence of any rules framed by Government, the departmental punishment inflicted on the accused u/s 10

of Act XXIV of 1859 does not bar his prosecution u/s 44 of the same Act, unless the Magistrate thinks that the breach of duty is not grave but

trivial. It is a grave violation of duty on the part of a police officer to go to sleep whilst on guard, and I would follow the principle laid down by this

Court in its proceedings, dated the 3rd October 1878, No. 1601. Weir, p. 569. I would also set aside the order of acquittal and order a re-trial

with reference to the foregoing observations.