



The Jammu and Kashmir Kuth Act, 1921

Act 1 of 1921

Keyword(s):

Magistrate, Kuth Offence, State Territory, Forest Officer

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THE KUTH ACT, 1978 (192) A. D.)

ACT NO. 1 OF 1978

CONTENTS

Preamble.

Section

1. Extent, commencement.
2. Interpretation clause.
3. Presumption that Kuth is State property.
4. Acts prohibited.
5. Penalties for acts in contravention of section 4.
6. Presumption that unaccounted for Kuth is the Kuth in respect of which offence committed.
7. Power to prevent commission of offence.
- 7-A. The same.
8. Power to arrest without warrant.

9. Application for confiscation.
10. Procedure thereupon.
11. Confiscation, Kuth, tools, etc., when liable to confiscation.
12. Disposal on conclusion of trial for forest offence of produce in respect of which it was committed.
13. Procedure when offender not known or cannot be found.
14. Appeals from orders under sections 11, 12 and 13.
15. Property when to vest in State.
16. Saving of power to release property seized.
17. Punishment for wrongful seizure.
18. Recovery of money due to State.
19. Operation of other law not barred.
20. Application of Act to other economic plants with sanction of Government.
21. Power to make Rules.

THE KUTH ACT, 1978 (1921 A. D.)**ACT NO. 1 OF 1978**

{Sanctioned by His Highness the Maharaja Bahadur per Chief Minister's letter No. 1109, dated the 4th May, 1921 and published in Government Gazette dated 24th Jeth, 1978.}

Preamble.—Whereas it expedient to provide for the conservation and protection of the Kuth plant (*Sassurea Lappa*) and its produce in Jammu and Kashmir State and to guard against illicit cultivation, extraction, possession and export thereof, it is hereby enacted as follows:—

1. Extent.—This Act may be called the Jammu and Kashmir State Kuth Act, 1978. It shall extend to the whole of the territories of the Jammu and Kashmir State. 1 []

Commencement.—It shall come into force with effect from the date of publication in the Jammu and Kashmir Government Gazette.

2. Interpretation Clause.—To this Act unless there be something repugnant in the subject or context, the expression "Kuth" includes the root, stem, leaves, flower and all other parts of the Kuth plant (***Sassurea Lappa***) also all substances manufactured therefrom, and all preparations or admixtures containing Kuth or substances manufactured therefrom; "export" means to take out of the Jammu and Kashmir State territories to any place outside such territories; "transport" means to remove Kuth from one place to another within the territories of the Jammu and Kashmir State;

"Magistrate" means any person invested with Magisterial powers under the Code of Criminal Procedure and includes any official or other person specially empowered by 2[the Government] to try cases under this Act;

"Kuth offence" means any offence punishable under section 5 of this Act; _

"State territory" means the territory of the Jammu and Kashmir State;

"Forest officer" includes the Chief Conservator, Conservators, Deputy and Assistant Conservators, Forest Rangers, Foresters, Forest Guards and any persons whom 1 [the Government] or any officer empowered by the 1 [the Government] may, from time to time, appoint, by name or as holding an office, to carry out all or any of the purposes of the Forest Act; "Police officer" means and includes all 'persons of the Police Department of and above the rank of a constable; "Customs and Excise officer" includes the 2 [inspector General, Inspectors, Deputy Inspectors, Assistant Inspectors, Mahaldars and Jamadars of the Customs and Excise Department;

3 [Revenue officer] includes 4 [Deputy Commissioners] Tehsildars, Naib-Tehsildars, Zaildars, Lambardars, 5[] Girdawars and Patwaries.

3. Presumption that Kuth is State property.—All Kuth within the State territory, unless title to it is vested in any person in accordance with any rule made or permission granted under section 4 of this Act, shall be presumed to be the property of the State.

4. Acts prohibited.—Except in accordance with rules published with the previous sanction of 1 [the Government] in the Jammu and Kashmir Government Gazette, no person shall, within the territories of the Jammu and Kashmir State, take part in—

(a) the cultivation of Kuth;

(b) extraction of Kuth,

(c) the possession of Kuth,

(d) the transport of Kuth,

(e) the export of Kuth,

(f) the sale of Kuth,

(g) the manufacture of any substance or preparation containing Kuth.

Nothing in this Act to prohibit acts done by permission.—Nothing in this section shall be deemed to prohibit any act done by permission in writing of the Conservator of Forests or other Forest officer authorized by him in this behalf.

5. Penalties for acts in contravention of section 4.—(1) Whoever contravenes 1 [or abets, or attempts, or connives at the contravention of] the provisions of section 4 of this Act shall, on conviction before a 2[Judicial Magistrate], be punished for each such offence with imprisonment of either description for a term which may extend to 2 years, or with fine which may extend to Rs. 5,000, or with both.

3 [(2) Whoever having been convicted of an offence punishable under sub-section (1) shall be guilty of any offence punished under the said sub-section shall be subject for every such subsequent offence to imprisonment of either description for a term which may extend to four years, or with fine which may extend to Rs. 10,000, or with both.]

4 [(3) If at the time of committing any Kuth offence or with a view to avoid arrest at any time after its commission, the offender uses any deadly weapon, the imprisonment with which he shall be punished may extend to 10 years.]

(4) Where a fine is imposed the Court may direct the offender to be imprisoned in default of payment of the fine for a term which may extend to one-fourth of maximum

imprisonment provided for the offence and such imprisonment shall be in addition to any other imprisonment to which he may have been sentenced.

(5) Offences punishable under sub-section (1) shall be triable by a 5 [Judicial Magistrate] of the 1st or 2nd class and under sub-section (2) or (3) by the Court of Sessions or a 5 [Judicial Magistrate] of the first class.

6 [(6) All offences under this section shall be non-bailable.]

(c) detain and search in any open place any cart, pack animal or other conveyance which he has reason to believe to be used for carrying Kuth in respect of which a Kuth offence has been committed;

1 [(d) enter and search any building, vessel or place in which he has reason to believe Kuth to be unlawfully kept or concealed or in case of resistance to break open any door or remove any other obstacle to such entry. All warrants issued and all searches made under this section shall be executed or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure in force within the State.]

9. Application for confiscation.—Every officer seizing any property shall, as soon as may be, make a report of such seizure to the 2 [Judicial Magistrate] having jurisdiction to try offence on account of which the seizure has been made, provided that when the offender is unknown it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

10. Procedure thereupon—Upon the receipt of any such report the 2 [Judicial Magistrate] shall, with all convenient dispatch, take such measures as may be necessary, for the arrest and trial of the offender and the disposal of the property according to law.

11. Confiscation Kuth, tools, etc., when liable to confiscation.—All kuth, in respect of which a kuth offence has been committed and all deadly weapons, materials, tools, boats, carts, 3 [motor vehicle] and cattle used in committing any kuth offence, shall be liable to confiscation. Such confiscation shall be in addition to any other punishment prescribed for such offence.

12. Disposal on conclusion of trial for forest offence of produce in which it was committed.—When the trial of any kuth offence is concluded any kuth, in respect of which such offence has been committed, shall, if it is the property of the State or has been confiscated, be taken charge of by a Forest officer and in any other case may be disposed of in such manner as the Court may direct.

13. Procedure when offender not known or cannot be found.—When the offender is not known, or cannot be found, the 1 [Judicial Magistrate] may, if he finds that a kuth offence has been committed, order the Kuth in respect of which the offence has been committed to be confiscated and taken charge of by Forest officer or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing the kuth or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

14. Appeal from orders under sections 11, 12 and 13.—The officer who made the seizure under section 8 or any of his official superiors, or any person claiming to be interested- in the property so seized, may within one month from the date of any order passed under sections 11, 12 or 13 appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable and the order passed in such appeal shall be final.

15. Property when to vest in State.—When an order for the confiscation of any property has been passed under section 11 or 13, as the case may be, and the period limited by section 13 for an appeal from such order has elapsed and no such appeal has been preferred, or when on such appeal being preferred, the appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the State free from all incumbrances.

16. Saving of power to release property seized.—Nothing hereinbefore contained shall be deemed to prevent any officer, empowered in this behalf by 2 [the Government,] from directing at any time the immediate release of any property seized under section 8.

17. Punishment for wrongful seizure.—Any officer who vexatious and unnecessarily seizes any property, detains or searches any person, animal or conveyance, arrests any person, or enters and searches any building, vessel or place, on the pretence that the kuth offence has been committed, shall be punished with imprisonment which may extend to 6 months or with a fine which may extend to Rs. 500, or with both.

18. Recovery of money due to State.—Any arrears of any sum due on account of royalty or other payment due to the State under this Act, or any rule made under this Act, may be recovered as if it were an arrear of land revenue.

19. Operation of other law not barred.—Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rule made under it or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act, provided that no person shall be punished twice for the same offence.

20. Application of Act to other economic plants with sanction of Government.—With the previous sanction of 1 [the Government,] the provisions of this Act may be made applicable, by notification in the Jammu and Kashmir Government Gazette, to any other economic plant or plants.

2 [21. Power to make rules.—3 [The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, make rules, o prevent the illicit export of kuth from the State,]