M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 604 Press ~~Misc.~~

15-16

Dated 2 — 5 — ~~1916~~ 1859

Not to be folded or roughly handled

No. 15. Read the following letter from W. FISHER, Esq., Magistrate of Canara ; to the Chief Secretary to Government, Fort Saint George, dated Mangalore, 28th March 1859, No. 19.

I have the honor to submit the following circumstances for the consideration of Government, and to request their instruction for my guidance.

2. In para one, Extract Minutes Consultation under date 18th January 1859, Judicial Department, No. 64, the Government directed the release of four prisoners who had been sentenced by Mr. Ballard, Special Commissioner in North Canara, after the date of the assumption of the Government of India by Her Majesty the Queen, on the ground that their offences were of a comparatively venial description. These four men had been sent down to Mangalore for embarkation to Madras, and being in the Jail here when the orders of Government were received, I immediately applied to the Subordinate Judge for their release, and on their being made over to me by that Officer, forwarded them to their homes under escort.

3. Subsequently, but before Mr. Robinson was aware of the actual release of these men, he addressed Government in a letter, dated 12th February 1859, No. 72, the statements contained in which seem to have satisfied Government that only one of these four men should be unconditionally set at liberty.

4. Their orders on this subject, Extract Minutes Consultation, 3rd March 1859, have just reached me through the Joint Magistrate.

5. I have not a copy of Mr. Robinson's communication to Government to refer to, and do not deem it necessary to wait until I can obtain one, before informing Government that the orders they seem to believe in abeyance, have been carried out.

6. The proceedings in the cases tried in North canara by the Special Commissioner did not come before me, but all statements connected with the charges, trials and convictions were sent direct to Government. Their order seemed to me to be explicit, and having no reason to suppose that it had been passed under misapprehension, I carried it out forthwith

7. This explanation given, it now becomes necessary to obtain further instructions regarding the course to be pursued towards the three individuals, Nos. 38, 39 and 40 alluded to in para 2 of the orders of Government above quoted.

8. Mr. Robinson, as Joint Magistrate, has now addressed me regarding them, thinking that my opinion and explanation would be called for. He considers that their re-apprehension would not now obviate any evil effect their release may have had, and that such a course would bring in question our good faith, and weaken the general confidence reposed in it.

9. I personally explained to these men, that they were released because their conviction had taken place subsequent to the assumption of the Government of India by Her Most Gracious Majesty, in accordance with the Proclamation issued, the crimes of which they stood convicted, not being of a character which shut the door of mercy against them. Such was the view Government had then taken of their cases, and I think with Mr. Robinson, that it would be politic to allow these men the advantage accident has given them, and I concur with him therefore in the necessity of a further reference before again subjecting them to the punishment awarded by the Special Commissioner.

10. Neither they or any other persons whether released in accordance with Her Majesty's Proclamation after conviction of minor offences, or before it, can I imagine claim exemption from punishment when proof may be forthcoming of their having been participators in murder, or leading rebels, or instigators of revolt ; and should such crime be laid to the charge of any of the parties released, and proved against them, I suppose they would be as liable to punishment, as others who having up to this moment escaped detection, may be subsequently convicted of crime for which Her Majesty's Proclamation offers no pardon.

11. I venture to recommend therefore that the pardon extended to these men may shield them from the consequences of those crimes of which they have been convicted, but that they be still held liable to trial for any graver charges which may be hanging over them, and which their release was never intended to condone.

Proceedings of the Madras Government, Judicial Department, from 30th April to 3rd May 1859.

No. 16. ORDER THEREON, 2nd May 1859, No. 604.

1. In the above letter, the Magistrate of Canara reports that, before the revised order of Government, contained in Extract Minutes Consultation, dated 3rd March, No. 296, reached him, the previous decision, dated 18th January 1859, had been carried out, and the parties set at liberty. In soliciting instructions, he sets forth his own views upon the question now submitted for decision, viz., whether or not measures should be adopted for the re-apprehension of the parties in Cases Nos. 38, 39 and 40.

2. The Government concur in the opinion expressed by Mr. Fisher and direct that the course indicated in paras. 9 to 11 of his letter be followed. The pardon thus extended to these parties will, as remarked by the Magistrate, cover only those specific offences of which they have been *convicted*, but will not shield them from the penal consequences of other crimes, whensoever committed, which may hereafter be brought home to them.

(Signed) T. PYCROFT,
Chief Secretary.

Krd. F. Cartledge.

Memo for Orders -

With his letter dated 14th Dec: 58
W. Ballard Special Commrs.
North Canara submitted a
Statement of cases disposed
of, subsequently to 20th Sept:
1858, under Act XIV. of 57

2. With regard to the
Her Majesty's Act of Amnesty
which had just reached him
he pointed out that whereas
the Sentence passed before
1st Nov: 58 were to hold good
as having taken effect before
the promulgation of the Act,
it was nowhere expressly affirmed
that Sentences passed after 1st
Nov: should be annulled -
He forwarded the Record (in
English) of four cases in which
were disposed of after the date
above mentioned - "The Con-
"vict" to be observed," in cases
"38. 39. & 41. were directly or in-
"directly concerned in acts of
"private wrong. The convict
"in No. 40. was currently said

En L. M. L.
7th Dec: 58. S.D.

"to have been guilty of murder.
"tho' no Evidence was produc-
": able on this point & the
"Record only shows that he
"was same time with the Blue.
"I cannot say that it appears
"to me desirable that any of
"these Sentences shd be interfered
"with". Mr. Robinson the Jt Mags.
Letter of 22nd Dec. 58. in E.A.C. dated 18th Jan. 59. has stated his general concurrence in these views.

3 - The Govt in E.A.C. under date 18th Jan. 59 referred Mr. Ballard to a circular x letter Govt in elucidation of the Terms of the Amnesty, under which it appeared to them that the crimes of wh. these Prisrs were convicted were not of such a nature as to exclude them from pardon. Their unconditional release was therefore ordered.

x dated 13th Dec. 58. p. 17. in E.A.C. of 5th Jan. 59

4. On receiving the above orders, the Jt Mags solicited Letter dated 9th Feb. 59. the re-consideration of the question, in consequence that Mr. Ballard's "general" re-marks had placed these cases in a more favorable light

than they deserved & than was intended. He cited the various crimes of which the Prisrs in H.R. 38. & 39. were guilty & considered that the desperate Character of these men who had attained a notoriety throughout the District excluded them from the benefits of the Amnesty.

5. On the new view of the case the sentences against these two were ordered to stand, the 3rd Prisr was to be released, but the 4th to be kept, the 4th was to be set at large unconditionally.

E.A.C. 3rd March. 2. 296.

6. The Mags of Canara now reports that before receiving the revised order, the previous decision of the Govt had been carried out and the parties set at liberty - In soliciting instructions he sets forth his own views as to the course Govt should now be pursued. He considers that the pardon announced to these men as being in accordance with the provisions of the Amnesty Act, should be confirmed; as their re-apprehension might

Comr Mags 9th March 59.

bring in question the good faith of the Govt & weaken the general confidence reposed in it.

He remarked, further, that this pardon would cover those offences only of which the Parties stand convicted, and that they could not in virtue of this pardon claim exemption from the consequences of any crimes which may hereafter be brought home to them.

L. J.

13-4-59.

This seems right

W 15 Apl

Judicial Dept 4

No 602.

E. & C.

2d May 1859.

Read the January letter from the Mags. of Canara.

Mem entn 2. 19. dated 28th March '59.

1 — In the above letter the Mags. of Canara reports that, before the revised order of Govt contained in G.L.C. dated 3rd March No 296. reached him, the previous decision, dated 18th Jan. '59. had been carried out, & the Parties set at liberty. In soliciting instructions he sets forth his own views upon the question now submitted for decision, viz whether

measures
or not should be adopted
for the re-apprehension
of the Parties in cases
Nos. 38. 39. & 40.

2. The Sub.t cannot in
the opinion Expressed
by Mr. Tinker and
direct that the
course indicated
in paras 9 to 11. of
his letter be followed.
The pardon thus
extended to these
Parties will, as
remarked by the
Mag.te, cover only
those specific offences
of which they have
been convicted,
but will not shield
them from the
penal consequences
of other crimes, when-
soever committed,

which may here-
after be brought
home to them -

W. K. J.

To the Magt Cgara - Disp.d 5th

Entered Sixty 27. May /59.

Proof Copt 3 May.

Judicial 1859 Sept 1st

No 604

Proof of Service

2d May 1859.

C No. 55.57
18-1-59
18-1-59
8-2-59

154 Ala.