M.R.O. 1—88,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 187	Press ~~Mis.~~
38-39	
Dated 6.2.1862.	~~19~~ .

5/6

Not to be folded or roughly handled

181

Proceedings of the Madras Government, Judicial Department,
6th February 1862.

No. 38. Read the following letter from W. GREY, Esq., Secretary to the Government of India; to T. PYCROFT, Esq., Chief Secretary to Government of Fort Saint George, dated Fort William, the 13th January 1862, No. 263.

Home Department.

I am directed to acknowledge the receipt of your letter No. 1,463, dated the 27th of November, submitting a Report by the Advocate General at Madras on a prosecution in the Supreme Court for importing sulphur without license in contravention of Act XXXI of 1860, and communicating the request of the Madras Government that the Police Authorities in Calcutta may be restrained from issuing licenses for the import of sulphur into the Madras territories.

2. In reply I am directed to state that the attention of the Commissioner of Police at Calcutta will be called to this case, and he will be instructed that licenses granted by him to import saltpetre, arms, &c., must be limited to importation into Calcutta.

3. With regard to the Proceedings in the Supreme Court at Madras, I am desired to say that the Governor General in Council cannot think that, under the Act and the Notification taken together, Mr. Wauchope did really possess authority to grant a license to import saltpetre into Madras.

4. The Notification appears to His Excellency in Council to restrict the authority of the Chief Officer of Police to granting licenses for the importation of arms, &c., into the sea-port towns or frontier districts *in which he holds his office*. This appears the natural meaning of the words of the Notification even if they stopped at the word "ammunition," but the proviso that the licenses are to be granted *subject to the general control and direction of the Chief Executive Authority of the Presidency or place* leaves no room for doubt as to the meaning. Mr. Wauchope in granting such licenses was to be subject to the general directions of the Lieutenant-Governor of Bengal, that being the Presidency or place in which he held office, and was not to be subject to the control of the Governor in Council of Madras, to whose orders or directions he was in no way subject.

5. Upon the general question, too, the Governor General in Council would certainly have thought that an authority to an Officer to grant a license to import arms, &c., into Calcutta would not have satisfied the requirements of Section 17, so as to justify an importation into Madras. By that Section no arms are to be imported into *any* part of the territories of British India except under a license from the Governor General in Council, or by some Officer *authorised in that behalf* by the Governor General in Council. An Officer expressly authorised by the Governor General in Council to grant a license to import into Calcutta, and not elsewhere, is surely not an *Officer authorised in that behalf* within the meaning of that Section, to license importation into Madras. The obvious meaning of the words "authorised in that behalf" appears to be "authorised to give a license to import into that part of the territories of British India into which importation is to be made." But as the scope of the present Notification has been held by such high authority as the Chief Justice of Madras to go beyond this, the Governor General in Council deems it expedient to remove all doubt as to the intention of the Government by issuing a further Notification, in modification of that dated the 1st of October 1860. A copy of the amended Notification is herewith sent.

6. I am to add that it seems doubtful to the Governor General in Council whether the case tried at Madras was one which ought to have been brought into Court, for the sulphur was imported openly and without any attempt at concealment, and the whole proceedings of the importer shewed that he believed in good faith (as he very reasonably may have done) that the license he held from the Commissioner of Police at Calcutta was quite sufficient. Under such circumstances no difficulty, it is presumed, could have been felt on the part of the Madras Authorities in granting a regular license in lieu of the original irregular one, and at all events it seems to the Governor General in Council to have been an error to prosecute the importer as a criminal for such a mistake. If it was thought important to obtain the opinion of the Court as to whether a Calcutta license could legally authorise the Madras consignee of an exporter of sulphur from Calcutta to import it into Madras, it should have been borne in mind that it is always difficult

to obtain a conviction for an offence punishable with long imprisonment, in a case where it would be revolting to common sense to treat the accused as a criminal; and some case therefore falling more nearly within the spirit of the provision of the law should have been selected for trial.

No. 262.

FORT WILLIAM, HOME DEPARTMENT, NOTIFICATION, THE 13TH JANUARY 1862.

With reference to the Notification No. 1,879, dated the 1st of October 1860, the following amended Notification is published for general information.

Under Section 17, Act XXXI of 1860, the Governor General in Council hereby authorises the Chief Officer of Police in every sea-port town and frontier district in India to grant licenses for the importation into such sea-port town or frontier district, of arms, percussion caps, sulphur, saltpetre, gun-powder, and other ammunition, subject to the general control and directions of the Chief Executive Authority of the Presidency or place: Provided that no Officer shall have authority to grant any license except for the importation of such articles into the Town or District within his jurisdiction.

(Signed) W. GREY,
Secy. to the Govt. of India.

No. 39. ORDER THEREON, 6th February 1862, No. 181.

The amended Notification received with this letter, will be published in the Fort Saint George Gazette.

2. Ordered also that copies of this letter be furnished to the Advocate General and to the Commissioner of Police.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

No. 263.

FROM

W. GREY, ESQUIRE,
Secy. to the Govt. of India,

To

T. PYCROFT, ESQUIRE,
Chief Secretary to Government of Fort St. George.

SIR,

Dated Fort William, the 13th January 1862.

HOME DEPT. I AM directed to acknowledge the receipt of your letter No. 1465, dated the 27th of November, submitting a Report by the Advocate General at Madras on a prosecution in the Supreme Court for importing sulphur without license in contravention of Act XXXI of 1860, and communicating the request of the Madras Government that the Police Authorities in Calcutta may be restrained from issuing licenses for the import of sulphur into the Madras Territories.

2. In reply I am directed to state that the attention of the Commissioner of Police at Calcutta will be called to this case, and he will be instructed that licenses granted by him to import saltpetre, arms, &c., must be limited to importation into Calcutta.

3. With regard to the Proceedings in the Supreme Court at Madras, I am desired to say that the Governor General in Council cannot think that, under the Act and the Notification taken together, Mr. Wauchope did really possess authority to grant a license to import saltpetre into Madras.

4. The Notification appears to His Excellency in Council to restrict the authority of the Chief Officer of Police to granting licenses for the importation of arms, &c., into the sea-port towns or frontier districts *in which he holds his Office.* This appears the natural meaning of the words of the Notification even if they stopped at the word "ammunition," but the proviso that the licenses are to be granted *subject to the general control and direction of the Chief Executive Authority of the Presidency or place* leaves no room for doubt as to the meaning. Mr. Wauchope in granting such licenses was to be subject to the general directions of the Lieutenant-Governor of Bengal, that being the Presidency or place in which he held Office, and was not to be subject to the control of the Governor in Council of Madras, to whose orders or directions he was in no way subject.

5. Upon the general question, too, the Governor General in Council would certainly have thought that an authority to an Officer to grant a license to import arms, &c., into Calcutta would not have satisfied the requirements of Section 17, so as to justify an importation into Madras. By that Section no arms are to be imported into *any* part of the territories of British India except under a license from the Governor General in Council, or by some Officer *authorised in that behalf* by the Governor General in Council. An Officer expressly authorised by the

Governor General in Council to grant a license to import into Calcutta, and not elsewhere, is surely not an *Officer authorised in that behalf* within the meaning of that Section, to license importation into Madras. The obvious meaning of the words "authorised in that behalf" appears to be "authorised to give a license to import into that part of the territories of British India into which importation is to be made." But as the scope of the present Notification has been held by such high authority as the Chief Justice of Madras to go beyond this, the Governor General in Council deems it expedient to remove all doubt as to the intention of the Government by issuing a further Notification in modification of that dated the 1st of October 1860. A copy of the amended Notification is herewith sent.

6. I am to add that it seems doubtful to the Governor General in Council whether the case tried at Madras was one which ought to have been brought into Court, for the sulphur was imported openly and without any attempt at concealment, and the whole proceedings of the importer shewed that he believed in good faith (as he very reasonably may have done) that the license he held from the Commissioner of Police at Calcutta was quite sufficient. Under such circumstances no difficulty, it is presumed, could have been felt on the part of the Madras Authorities in granting a regular license in lieu of the original irregular one, and at all events it seems to the Governor General in Council to have been an error to prosecute the importer as a criminal for such a mistake. If it was thought important to obtain the opinion of the Court as to whether a Calcutta license could legally authorise the Madras consignee of an exporter of sulphur from Calcutta to import it into Madras, it should have been borne in mind that it is always difficult to obtain a conviction for an offence punishable with long imprisonment, in a case where it would be revolting to common sense to treat the accused as a criminal; and some case therefore falling more nearly within the spirit of the provision of the law should have been selected for trial.

I have the honor to be,
SIR,
Your most obedient servant,

Secy. to the Govt. of India.

Pro 27th Nov 61 - No 1674 & 82.
Pro 6th Feb 62 - No 138 & 184

Cov of February
Judicial 1862 Desp

From
The Secy to the Govt
of India. Home Dept
263.

Dated 13th
Rec'd 27th January 1862

Encl 1 on 5 pages
Copies

No 168.

Communicates the remarks of Govt on the subject of the letter from this Office No 4638 of 27th Nov last submitting a Report by the Advocate Genl regarding a prosecution in the Supreme Court for importing Gunpowder without license in contravention of Act 31 of 1860 &c and forwards an amended Notification relative to granting licenses for the importation of arms, Gunpowder &c

With an Order.

Rec'd 31st Jan 1862

Dep 2nd Feb 80.

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No 181 - 6th February 1862.

The amended Notification received with this letter, will be published in the Fort St. George Gazette.

2. Ordered also that Copies of this letter be furnished to the Advocate General & to the Commissioner of Police

To the
Advocate General
Commissioner of Police
} Desp to the