M.R.O. 1—33,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 503 Press ~~Mis.~~

219-221

Dated 26.3.1862 ~~19~~ .

9/10

Not to be folded or roughly handled

Read the following papers:—

No. 219. From G. A. BALLARD, Esq., Acting Magistrate of Tanjore; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Vallam, 7th March 1862, No. 89.

I have the honor to submit for the consideration of Government copies of the correspondence noted in the margin. In January last Mr. Cadell directed that sentences of imprisonment for a term of less than 10 days should be carried out in the Police Stations in the jurisdiction of the Courts sentencing, and that only when the sentence involved a longer period, should the Prisoners be sent to the Zillah Jail, objections were raised to this order. It was argued that legal imprisonment under the Indian Penal Code could be carried out in the Zillah Jail only, and in no other place. The question was referred to the Suddr Court, and they have ruled that this is the true interpretation of the law.

Acting Magistrate to Judges of Combaconum and Negapatam, February 26th and 27th.
Judge of Combaconum, 3rd March 1862, No. 216.
Judge of Negapatam, 3rd March 1862, No. 211.

2. Though it appears to me that to read the word "Jailor" in Section 386 of the Procedure Code, (the only Section really bearing on the point at issue) as meaning only an Officer in charge of a regular Jail, and not as including any Officer in charge of an authorized place of confinement, is a somewhat limited construction to put upon the term; I shall not venture to argue a point settled by superior authority. I must, however, respectfully point out that practically this construction of the law will be attended with vast inconvenience in this District as well as in many others.

3. As examples of the consequences in my own district.—The Sub-Magistrate at Arantanghi or Puttukottai in the Tanjore Zillah, or at Védaraniam in the Negapatam Zillah, may see fit to sentence a Prisoner to 5 days' imprisonment. In the first case the Prisoner would have to be marched 80 or 51 miles as the case might be to Kumbakonam; in the second 50 miles to Tranquebar; to undergo his sentence—the original period of which counting from its date would probably have expired before the legal place of confinement was reached.

4. On the objections to having a stream of Prisoners for short periods passing through the Jails, both as regards the contamination and degradation of the Prisoners, and the probable effect on general Jail discipline, it is unnecessary to speak.

5. I would therefore respectfully submit that, if the present law does not admit of short sentences of imprisonment being carried out elsewhere than in the Zillah Jails, an Act should be passed authorizing other legal places of confinement to be provided, and I doubt not that, if such Act is passed, the old Police stations or other suitable places may be determined upon in communication with the Police authorities in sufficient numbers to save Government any very great expenditure in erecting new buildings. On hearing that this proposition is likely to be entertained, I will institute enquiries and submit particulars of existing buildings available for the purpose in this District.

6. In conclusion I beg to observe that I addressed the Judges of Kumbakonam and Negapatam on this subject. Mr. Beauchamp agrees with me in considering that places for confinement for short periods other than the Zillah Jails should be allowed. Mr. Bird is of opinion that the Zillah Jails, and they only, are the proper places.

No. 220. Proceedings of the Sudder Court, dated 13th March 1862, No. 38.

From G. T. BEAUCHAMP, Esq., Session Judge of Tanjore; to C. F. CHAMIER, Esq., Registrar of the Sudder Court, Fort Saint George, dated Combaconum, 1st March 1862, No. 213.

I have the honor to forward the enclosed copy of a letter from the Acting Magistrate of this District inquiring whether it is requisite that all Prisoners sentenced to imprisonment should be forwarded to the Zillah Jail, and pointing out the great inconvenience that must attend the transmission of Prisoners from long distances for short periods to, and the inexpediency of subjecting petty offenders to the contamination of, the Jail,

ment

Proceedings of the Madras Government, Judicial Department,
26th March 1862.

2. The Code of Criminal Procedure does not define what is to be considered a Jail, and it seems to me desirable that places of confinement for short periods, say 14 days, should be, if necessary with the authority of Government, established in every Talook and placed under the charge of the Sub-Magistrate on the spot, or if this be considered inexpedient at every station where a Magistrate or a Joint or an Assistant or a Deputy, Magistrate is located.

3. It will, I apprehend, be a smaller burden to the Police to furnish guards for such Jails than to detail the frequent escorts to the Zillah Jail that will otherwise be necessary.

The Judges have held that the Zillah Jail, and the Jail, if any, under the charge of the Magistrate of the District, are at present the only legal places of confinement under the Code of Criminal Procedure; but they consider that it would be competent to the Government, with reference to Section 49 of that Code, to appoint other places, such as the Taluk Cutcherries or Police stations, for the custody of persons sentenced to short periods of imprisonment; and it would be in the discretion of the Magistrate passing the sentence to direct his warrant either to the Jailor of the Zillah Jail, or to the Officer in charge of the local Jail, according to the circumstances of each case.

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government.

No. 221. ORDER THEREON, 26th March 1862, No. 503.

A copy of the above Proceedings of the Sudder Court will be forwarded to the Magistrate of Tanjore.

2. The Government concur in the objections urged by the Magistrate against the practice of forwarding all short sentence Prisoners for confinement in the Zillah, or Magistrate's Jail. They accordingly approve the suggestion of the Sudder Court, in respect to the imprisonment of all persons sentenced to 15 days' confinement or under.

3. The Sudder Court are requested to ascertain from the several Magistrates the places in their respective districts, which they would propose for carrying out short sentences of imprisonment, and the Officers to have charge of them. The Judges will forward to Government the reports of the Magistrates as they are received, with such remarks, if any, as the Court may have to make.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Tanjore Magistrate's Office
Vellum 26th February 1862

From Nos 69 & 70. 2-5

The Acting Magistrate of Tanjore

To

The Sessions Judges of
Tanjore and Negapatam

Sir,

I have the honor to bring to your notice, that some weeks ago Mr Cadell issued a circular[x] directing that all sentences of imprisonment for a term of less than 10 days should be carried out in the Police stations in the jurisdiction of the Courts sentencing, that only in cases involving a longer period of confinement should Prisoners be sent to the Zillah Jail.

[x] Dated 25th Janry/62 Copy enclosed

2 It appears that there are objections to this order, and it is argued that legal imprisonment under the new Penal Code, can be carried out in the Zillah Jail only, and in no other place.

3 I request the favor of your opinion on this point. I cannot find that it is any where laid down in Act XLV of 1860 or Act XXV of 1861 that imprisonment can only be carried out in the Zillah Jail, and under the old Regulations both Law and practice in cases of short imprisonment sanctioned confinement

The last sentence in Sec. 386 of Act XXV of 1861 may appear capable of this construction but I would submit that this word "Jailor" there means any Officer in charge of a Jail or other place of confinement.

ment in the Police Stations; practically any other course will be attended with vast inconvenience - For instance, the Sub Magistrate at Arandangi or Pattucottai in Tanjore Zillah, or at Vedaraniam in Negapatam may see fit to sentence prisoners to 5 days imprisonment - In the first case the Prisoners would have to be marched 80 and 51 miles respectively to Combaconam, and in the second 50 miles to Trangquebar, to undergo their sentences if they must be carried out in their respective Zillah Jails, whilst the objections to having a stream of prisoners for short periods passing through the Jails, it is unnecessary to point out -

I have &c

(Signed) G. A. Ballard
Acting Magt

Nos 72 & 73.

To

The Sessions Judges of
Tanjore and Negapatam

Sir,

With reference to my letter of yesterday's date, No 70, requesting your opinion as to whether sentences of imprisonment for short periods could or could not legally be carried out elsewhere, than in the Zillah

Jail, I have the honor to inform you, that I have, since its despatch, received Extract from the Pros of the Sudr Court, under date 21st Feb=ruary declaring the Zillah or Magistrate's Jail to be the only legal place of confinement -

I am issuing orders to day communicating their decision to the Sub Magistrates in my District -

2 I would, however, request your attention to my letter above mentioned, and the favor of the expression of your opinion as to the advisability of imprisonment under short sentences, say for 15 days, and under, in the Police stations or other suitable places of confinement as may hereafter be determined upon being legalized, as my own opinion that some such measure is necessary is so strong, that I purpose addressing the Chief Secretary to Government on the subject -

Tanjore Magte's Office
Vallam 27th Febry/62

I have &c
(Signed) G. A. Ballard
Acting Magistrate

No 216

From

The Session Judge of Tanjore

To The Acting Magistrate
of Tanjore

Sir,

With reference to your letter No 70

of the 25th Ultimo, I have the honor to forward Copy of a letter addressed by me to the Suddr Court on the Subject -

I have &c a
Combaconam
3rd March 1862 / Signed / G.T. Beauchamp
Session Judge

No. 213

From Session Judge of Tanjore

To The Registrar of the Suddr Court
Fort Saint George

Sir,

I have the honor to forward the enclosed Copy of a letter from the Acting Magistrate of this District, enquiring whether it is requisite that all Prisoners sentenced to imprisonment should be forwarded to the Trichy Jail, and pointing out the great inconvenience that must attend the transmission of Prisoners from long distances for short periods &, and the inexpediency of subjecting petty offenders to the contamination of the Jail -

2. The code of Criminal procedure does not define what is to be considered a

Jail, and it seems to me desirable that places of confinement for short periods say 14 days, should be, if necessary, with the authority of Government, established in every Taluck, and placed under the charge of the Sub Magistrate on the spot, or if this be considered inexpedient at every station where a Magistrate or a Joint or an Assistant or a Deputy Magistrate, is located -

3 It will, I apprehend, be a small burden to the Police to furnish guards for such Jails them to detail the frequent escorts to the Trichy Jail that will otherwise be necessary -

I have &c a
Combaconum
1st March 1862 / Signed / G.T. Beauchamp
Session Judge

(True Copy)

/ Signed / G.T. Beauchamp
Session Judge

No. 211

From The Acting Session Judge of
Negapatam

To

To

The Acting Magistrate of Jaypore

Sir,

In reply to your letters Nos. 69 and 72 of the 26th and 27th Ultimo, in reference to the propriety of legalising any other than the Zillah or Magistrate's Jails as a place of Imprisonment for petty offences; I have the honor to state, that in my opinion such a measure would not be advisable - The Legislature evidently intended the place of Imprisonment for all "offences" should for the future be one in which a Jailor, properly so called, has the responsible management, and where the supervision is vested in an Officer who is himself responsible to the Inspector of Jails. Sections 222. 223. 383. and 386 of the Code of Criminal Procedure, seem to me to be explicit on the point and the only Section which permits a deviation from the strict Rule of Incarceration in a "Criminal Jail" properly so called is Section 433 wherein the place of confinement, however, is specially directed to be a Reformatory recognised by the Local Government, as a fit place for

confinement kept by a person willing to obey such rules as Government may direct as to discipline &c and in which there may be "means of suitable Discipline" - It is obvious that in none but Jails properly so called can Sentences of "Rigorous Imprisonment" (Imprisonment with hard Labor and in Prons: Section 53 Penal Code Proc: Suddr: Court 5th December 1860) be enforced, and in my opinion it would be highly impolitic to entrust native Officers in charge of Police Stations, with power to carry out such Sentences of hard Labor with Irons or indeed any penal Sentence at all; the Supervision which obtains in Jails being in such cases a necessity altogether wanting -

2 It appears to me the difficulty you experience will be obviated if instructions be issued to your Sub Magistrates, situated at any great distance from the Zillah or Magistrates Jail to visit all petty offences triable by them; and which may seem to call for so slight a punishment as 10 or 15 days imprisonment

with Fine instead of Imprisonment. This they are competent in all such cases to do, and if a sound discretion be exercised no fine being awarded obviously beyond the power of the Offender to pay the cases where the accused will elect to suffer Imprisonment instead of paying the fine will be few; and the objections to the distance of the place of legal confinement you refer to, will be reduced to a minimum.

3 I beg to enclose for your information copy of a correspondence now in progress in reference to the mode in which the duration of a sentence of Imprisonment should be calculated. On receipt of the final orders of the Sudder Court on the subject, which nearly concerns the matter now under discussion, I will communicate the result to you I have submitted to the Judges your letter No. 69 of the 26th Ultimo, as bearing on my communication of the 28th Idem, as it may possibly influence them to re-consider their ruling of the 21st February, in regard to the "legal place" of confinement under the Code of Criminal Procedure.

I have &c. (Signed) E.W. Bird
Sessions Judge

Tranquebar
3rd March 1862

(True Copies)

Judicial Department. 75

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the Magistrate of Tanjore — Dated 7th Mar. 62 No. 89

Read also Pros: of the Sudder Court — 13th Do. — 38.

Order — 26th March 1862 No 503

A copy of the above Proceedings of the Sudder Court will be forwarded to the Magistrate of Tanjore.

2. The Govt. concur in the objections urged by the Magistrate

Magistrate against the practice of forwarding all short-sentence prisoners for confinement in the Zillah, or Magistrates' Jail. They accordingly approve the suggestion of the Sudder Court, in respect to the imprisonment of all persons sentenced to 15 days confinement or under order.

3. The Sudder Court are requested to ascertain from the several Magistrates the places in their respective districts, which they would propose for carrying out short sentences of imprisonment, & the officers to have charge of them. The Judges will forward to Govt. the reports of the Magistrates as they are received, with such remarks, if any, as the Court may have to make.

The Sudder Court. Sept. 27th
" Magistrate of Tanjore.
" Inspector Genl. of Police.
" Inspector Genl. of Jails.
} Sept. 27th

Trans of Morals

Jud. 1862. Department.

No. 303.

PROCEEDINGS of the MADRAS GOVERNMENT.

Jud. 773-774-776-777-778-779-780-781-771-775-817-2212.

Jud. Proc. 2nd July 1862 Pub. 115.

Dated 26 March 1862.

With reference to the objection raised by the Mag.te of Tanjore to sending short sentence prisoners to the Gillah Jail, approve of the suggestion of the Sudder Adawlut for the imprisonment of persons sentenced to 15 days imprisonment or under & call upon the several

(329). Madras—Printed at the Government Press.

Magistrates to name places within their respective Districts where such prisoners can be confined.