

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.

894

Press
Mis.

55-56

Dated

9.6.1962

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
9th June 1862.*

Read the following papers :—

No. 55. From R. COLE, Esq., Inspector General Medical Department; to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to Government, Judicial Department, Fort Saint George, dated 28th May 1862, No. 106.

Referring to the Proceedings of Government and Order thereon marginally noted,* I have the honor to request you will submit to His Excellency the Governor in Council, the following particulars regarding the Convict, Patrick Donovan.

*21st January 1862, No. 89, Judicial Department.

2. It appears by the statement of the Commissioner of Police, that the Convict was "sentenced to imprisonment for life for shooting with intent to kill," and it is added, "his mind has been affected ever since his admission into the Penitentiary." Now these two statements led me to the inference, that this was originally a case of unrecognized Lunacy, and that the unhappy man, instead of being condemned to imprisonment for life as a felon, would, if proper Medical testimony as to his mental condition had been before the Court which tried him, have had passed upon him the less ignominious sentence, bringing with it no penal infliction, of confinement in an Asylum for the Insane.

3. Should the wretched sufferer ever recover reason, or should he in his native land have friends to care for him, it would be a painful satisfaction to him and them to know, that his crime had been set down to aberration of mind, the dispensation of Providence, and not to malignant intent when enjoying sound reason. Moreover, his present sentence condemns him to confinement in this country, the climate of which is inimical to his malady; whereas, if it had been otherwise, he might be transferred with other insane Soldiers, to Europe, where restoration to sanity would be more probable.

4. I have made every enquiry to discover whether any thing is on record regarding Patrick Donovan, showing his state of mind previous to his attempt on the life of his comrade, but have been unable to learn any thing whatever on the subject. It is not likely that, in the evidence before the Supreme Court, any thing was elicited directly indicating an unsound state of mind, or no doubt the merciful consideration of the Jury and the Judges would have been directed thereto. The early manifestations of mental disease are not easily recognizable, and difficulties in our Courts of Law in defining them are constantly met; but, unmistakable insanity having been developed so soon after the Criminal attempt, I have no hesitation in pronouncing that Patrick Donovan was of unsound mind at the time, and I beg to recommend that an application be made to the Honorable the Judges of the Supreme Court, for a commutation of the sentence pronounced on him.

5. Whatever may be the result of such reference, should Government be pleased to make it, I beg to recommend, on Medical grounds, that the Lunatic be removed to Europe at the earliest opportunity.

Referred for the opinion of the Advocate General, with Proceedings, 21st January 1862 No. 89.

FORT SAINT GEORGE,
2nd June 1862.

(Signed) A. J. ARBUTHNOT,
Acting Chief Secretary.

From JOHN MILLER, Esq., Acting Government Solicitor, Madras; to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to Government, Madras, dated 4th June 1862, No. 280.

1. I have the honor to acknowledge the Order of Government noted in the margin, and the enclosure which accompanied it.

2. I submitted them for the consideration of the Advocate General, and now forward a copy of his opinion thereon.

3. I likewise return the order above noted.

Proceedings of the Madras Government, Judicial Department,
9th June 1862.

COPY—OPINION.

The application suggested by Doctor Cole would be perfectly useless. The Judges have no power now to commute Donovan's sentence. There was nothing in the depositions, nor did any thing transpire at the time, to warrant even a surmise of insanity at the time of the committal of the offence, or at that of the trial. If there had been, I should have taken care, as would the Chief Justice, that the grounds for so believing were laid fully before the Jury, and an acquittal taken upon this ground. Government itself can act in this case, should it think fit so to do, either under Act XVIII of 1853, Section I—or, if satisfied that Donovan's health requires removal, under Act XXIV of 1855, Section VIII.

(Signed) T. SYDNEY SMYTH,
Advocate General.

June 3rd, 1862.

(True Copy.)

(Signed) JOHN MILLER,
Acting Government Solicitor.

No. 56.

ORDER THEREON, 9th June 1862, No. 894.

A copy of the Advocate General's opinion will be furnished to the Principal Inspector General, Medical Department.

2. Mr. Smyth points out that Patrick Donovan's case can be dealt with either under Act XVIII, 1853, which declares the power of the Government to grant pardons, and reprieves, and remissions of punishments—or under Act XXIV, 1855, which, in Section VIII, authorizes the Executive Government, with the consent of the Government of India, to order the removal of any European or American Convict from the prison or place in which he is confined to any other public prison or place of confinement within any part of the territories under the Government of India.

3. The Act last cited does not appear to meet the case, the Principal Inspector General of the Medical Department having recommended on Medical grounds that Patrick Donovan should be removed from the Lunatic Asylum to Europe at the earliest opportunity.

4. In the other it seems hardly a case for a pardon or remission of sentence, and His Excellency in Council accordingly resolves to request that the Advocate General will reconsider the case and state whether the Convict in question who was sentenced to imprisonment for life in Penal Servitude under Act XXIV, 1855, and is now kept in the Lunatic Asylum under a warrant issued under Section VI, Act IV, 1849, may be removed from India, and if so under what enactment.

(Signed) A. J. ARBUTHNOT,
Acting Chief Secretary.

Exd. T. O'Connor

Proceedings of the Madras Government, Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

the following letters—

to the Principal
Inspector Genl., in
Medl. Dept. — Inter 28th May '62 N^o 106.

the Govt. Solicitor — 4th June — "280.

Order — 9th June 1862 N^o 894.

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The Government Solicitor
Principal Inspector Genl
Medical Dept. } Despt 10th

~~Lib of 25 June~~

18-9-08

Proceedings of 18-9-08

Joseph Lane
Charles 1862 & 1872
1872

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He quoting the Advocate
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1872