

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1587	Press Mis.
¹⁷⁻¹⁸ Dated	2-11-	19.1864

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
2nd November 1884.*

No. 17. Read the following letter from W. ROBINSON, Esq., Inspector General of Madras Police; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 24th October 1884, No. 2187.

General Department.

I have the honor to submit, for the orders of Government, the accompanying correspondence.*

* Letter from the Superintendent of Police, Bellary, dated 8th August 1884, with Proceedings of the Session Court, dated 25th July 1884.

2. The point at issue is—Are Jail Warders equally responsible with Police guards for the safe custody of convicts? and are they equally liable to criminal penalty in case of negligent escape, under Sections 222 and 223 of the Indian Penal Code?

3. The point has arisen out of the following occurrence:—Two convicts escaped from a working gang at Bellary on the 21st June last. The Warder and Police Constable guards in charge of the gang were tried for negligent escape before the Joint Magistrate, and were sentenced, the Warder included, to various terms of imprisonment. It may be remarked, that the Warder was the more guilty of the party, for through him the larger gang had been broken up in contravention of Departmental (Jails) rules, thereby facilitating the escape.

4. On appeal to the Session Court, the Joint Magistrate's decision was upheld as regards the Constables, but reversed as regards the Warder; the Judge holding "neither was he, in his capacity of Warder, at all directly chargeable with, or for the guarding and security of the prisoners."

5. Now the Inspector General of Jails does hold Prison Officers responsible for the safe custody of convicts committed to their charge, and "for omissions and commissions whereby a prisoner is allowed to escape." A copy of his Circular Order, No. 128, is appended. Further, he has had the Sections of the Indian Penal Code

Sections 128, 129, 130, 216, 217, 222, and 223.

bearing on the matter reprinted for the information of all Prison Officers, with instructions that "one copy of the same will be suspended in every Jailer's Office, and copies of the Vernacular edition of the same will be furnished to every Guard room and Warder's room in the prisons." The Prison Officers have been fully warned of their responsibilities by the Head of the Department, "and Judicial Officers have maintained this."

6. It may further be argued—"To whose custody are prisons committed? To the Jailers, not the Police on duty at Jails. The Warders are simply the Jailer's Deputies, and share his responsibilities. The Police guard is furnished only to support the Jail authorities in the discharge of their duties."

Memorandum by Superintendent of Police, Coimbatore, dated 29th Aug. 1884.

7. I think that Sections 222 and 223 of the Penal Code apply to Warders as well as Police Officers. There is no exception in favor of the former.

8. In a case of negligent escape, the Magistrate of Coimbatore convicted both Warder and Police, and the sentence was not reversed.

9. Difference of opinion and practice however exists, and a distinct reading of the law is requisite for guidance.

*Proceedings of the Madras Government, Judicial Department,
2nd November 1864.*

From Lieutenant F. J. HICKS, Superintendent of Madras Police, Bellary; to Captain C. S. HEARN, Deputy Inspector General of Police, Vellore, dated Bellary, 8th August 1864, No. 229.

General Department.

I have the honor to forward you proceedings of Session Court, cancelling the sentence of Joint Magistrate of Bellary passed on a Warder for allowing a convict to escape.

2. The facts of the case are as follow:—

On 21st June a gang of convicts sent out to cut firewood was, at the suggestion of two Warders who accompanied the gang, divided into three parties. The Warder, whose sentence is now cancelled, was with one of these divided parties; two of the convicts belonging to which managed to escape during the day, having first been allowed to leave the rest of the gang with the apparent connivance of the Warder.

One Head Constable } 4 months' imprisonment.
One Constable. }
One Constable, one year's imprisonment.
* The Police permitted it.

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3. The Police officers in fault have been sentenced as per margin, whereas one Warder has escaped punishment altogether, although he most irregularly permitted* a gang of convicts to be broken up against strict orders to the contrary, and the remaining Warder has now had his sentence cancelled, and gets off with six months' suspension, which, considering the case with which employment is now obtained, is scarcely any punishment at all.

The Police are entirely responsible for the safe custody of convicts. If they suffer themselves to be led into neglect of strict rules by a Warder, and an escape occurs in consequence, they and they only are responsible.

11th August 1864.

(Signed) C. S. HEARN,
Depty. Inpr. Genl. of Police.

Extract from the Proceedings of the Sessions Court of Bellary, under date the 25th July 1864.

Read Criminal Appeal Petition No. 13 of 1864, presented by Vakeel Vasoodava Naidoo, appealing, on behalf of the 4th prisoner in case No. 78 of 1864 on the file of the Acting Joint Magistrate of Bellary, from the sentence passed against him in the said case.

Read also the Calendar in the said case.

The extent of petitioner's guilt, according to Joint Magistrate's own summing up, appears to have been the permitting, even if he did not actually suggest, the breaking up of the gang, with which he had been sent out as Warder, and which breaking up it was that obviously paved the way for the escape that eventually took place.

With that escape itself, however, the petitioner does not appear to have had any concern; neither was he, in his capacity of Warder, at all directly chargeable with, or for the guarding and security of the prisoners.

The Session Judge under this view resolves to cancel the sentence passed in his case, though at the same time orders that he be suspended for a term of six months, for obvious neglect of duty.

Ordered that an extract from these Proceedings be sent to the Magistrate of Bellary for his information, and for communication to the Acting Joint Magistrate.

(True Extract.)

(Signed) J. RATLIFF,
Session Judge.

(True Copy.)

(Signed) A. HATHAWAY,
Magistrate.

CAMP GOOTY,
29th July 1864.

To the Superintendent of Police, Bellary, for his information.

*Proceedings of the Madras Government, Judicial Department,
2nd November 1864.*

MY DEAR MR. R—,

At page 250 P. W. C. is published Extract from Proceedings of the Bellary Court, acquitting a Jail Warder of negligently allowing an escape, on the plea that he is not in any way responsible for the safe custody or security of the prisoners. To my astonishment this view is endorsed by C. Hearn!

2. I protest against this. If I am not much mistaken, the Inspector General of Jails himself will protest against it. I have heard Mr. Rohde express a contrary opinion. If I recollect aright, he published a Circular, warning Jail officers that they *were* responsible, or informing them that they *were*. Why! of course they are. To whose custody are prisoners committed? To the Jailers, not to Police on duty at Jails. The Warders are simply the Jailer's Deputies, and share his responsibilities.

3. A Police Guard is furnished only to support the Jail officers in the discharge of their duties. Police are in attendance to act if called on to do so, and the necessity arises. If Police and Police only are responsible, why is a separate Jail establishment maintained?

4. Why are not the keys of the Wards handed over to the Police? I maintain that Police act only *in support* of the Jail officers. A case somewhat similar to the Bellary one (except that the Warder did not figure even so actively) occurred in this District. *Police and Warder* were prosecuted. The Magistrate who tried the case had some doubt at first as to the responsibility of the Warder. I believe a reference was made to the Inspector General of Jails. *Both Warder and Police* were convicted, and underwent their sentences.

5. I presume these cases are tried under Sections 222 and 223, Indian Penal Code. I would like to know what there is either in those Sections, or the terms of a Warder's appointment to absolve him or throw the responsibility exclusively on the Police. The very gravest mischief may arise from the dissemination of such a ruling as that of the Sessions Judge of Bellary. On the contrary, the Inspector General of Jails had the Sections of the Indian Penal Code applicable to escapes, &c., printed in large type, and posted in some of his Jails for the guidance of his officers.

6. I presume the C. M. has been published to bring such mistaken law to notice. I hope so.
29th August 1864. (Signed) T. WELDON.

P. S.—It would be satisfactory to have the law settled independently of individual opinions. If a convict, attempted to break out of Jail was resisted and killed by a Jail Warder, would the Warder be held guilty of murder, on the ground that he had nothing to do with the prisoner's safe custody?

"Also, to justify an officer or private person in these cases, it is necessary that they should, 'at the time, be in the act of legally executing a duty imposed on them by law, and under such circumstances that if the officer or private person were killed, it would have been murder.' (Arch. 546)."

If it is held no part of a Warder's duty to keep prisoners in custody, he would be guilty of murder in above case.

"If the prisoners in a gaol, or going to a gaol assault the Jailer or Officer, and be in his defence 'kill any of them it is justifiable (Arch. 546).'" Why should the Jail officer enjoy all the privileges and none of the obligations?

(Signed) T. WELDON.

CIRCULAR No. 128.

A question having arisen as to the liability of Jail Warders, who by negligence permit the escape of prisoners, the Inspector General of Jails declares that not only Warders, but Jailers and all prison officers are bound to detain, in safe custody, prisoners committed to their charge, or committed to the Jail of which they are officers, and he requests officers in charge of Jails to notify to them that they are not exonerated by the Police guards being also liable.

*Proceedings of the Madras Government, Judicial Department,
2nd November 1864.*

2. Any Jailer, Prison's Officer, or Warder, who, through any neglect of duty, permits the escape of a prisoner should be immediately committed for trial to the Court having jurisdiction.

OOTACAMUND,
OFFICE OF INSPR. GENL. OF JAILS,
15th October 1863.

(Signed) J. ROHDE,
Inspector General of Jails.

To all Officers in charge of Jails for information and guidance, and Inspector General of Police for information.

"Whoever being a public servant, legally bound as such public servant to keep in confinement any person charged with, or convicted of any offence, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

Section 223, Act XLV of 1860.

(True Copy.)

(Signed) W. ROBINSON,
Inspector General of Police.

No. 18. To the Honorable Sir C. H. SCOTLAND, Knight, Chief Justice of Her Majesty's High Court of Judicature, Madras, dated Fort Saint George, 2nd November 1864, No. 1587.

I am directed to transmit to you the annexed copy of a letter, under date the 24th ultimo, from the Inspector General of Police, on the subject of the construction of Sections 222 and 223 of the India Penal Code, and to request that the question may receive the attention of the High Court on occasion arising.

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

Ezd. J. Tulloch.

Memo.

Please see the Pros. put up, dated 14th Sep. '64 No. 1373, where, under § 404 of the C.C.P. the Magistrate or the Court cannot apply to the High Court to determine the point of law arising out of the case disposed of by the Session Judge on appeal.

Unless in such cases the opinions of the High Court are elicited under this §, the Court cannot reach the Session Judges (who have power to revise the proceedings of the Magistrates) & fresh legislation will be necessary whenever any one of the lower Courts delivers a decision & thereby puts

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deposits of

No. 1587. Judicial Department
The Honorable Mr. J. H. Scotland, Knight,
Chief Justice of the High Court
of Judicature, Madras,

Respected Sir,

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For S. George
2^d Nov. 1866

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Reference to the
original document
p. 522-223 of
the code.

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Vol. 2, Nov 1864

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