

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 600	Press
289-290 A	~~Mis.~~
Dated 27. 4. 1918	3/4

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
27th April 1864.*

Read the following papers :—

No. 289. From L. C. INNES, Esq., Session Judge of Ootacamund; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Judicial Department, Fort Saint George, dated Ootacamund, 16th April 1864, No. 80.

I have the honor to point out what appears to me to be a serious defect in the Indian Penal Code, and which was brought to my notice by Captain Weldon, Superintendent of Police of the Coimbatore District.

2. Section 224 provides that "whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished, &c."

3. Substituting for the word "offence" the definition of the meaning of that word as given in Section 40, the provisions run as follows :—"Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for *any thing made punishable by this Code* with which he is charged, or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for *any such thing made punishable under this Code*, shall be punished, &c."

4. It is provided in Section 5 that "the Act (Indian Penal Code) is not intended to repeal, vary, suspend or affect" the provision of certain other laws which it specifies, or the provisions of any special or local law: but this does not render offences against such other laws punishable under the Indian Penal Code. Consequently such offences cannot be within the meaning of Section 224; and an escape by a person in custody under a charge or after conviction of an offence punishable under a special or local law, as for instance by an officer of the Postal Department for fraudulent appropriation of a letter (Section 50, Act XVII of 1854), would not be punishable under this Section.

5. The former laws (Regulation VI of 1822, Section 5, Clauses 2 and 3, Madras, and Regulation XII of 1818 Bengal) under which escape from lawful custody was punishable, have been repealed and no other has been substituted but Section 224 of the Indian Penal Code, which as above shown is inoperative except as to escapes by persons under charges of acts or illegal omissions punishable under the Indian Penal Code.

Referred to the Advocate General for his opinion.

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

FORT SAINT GEORGE,
20th April 1864.

No. 290. From J. R. BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government; Fort Saint George, dated Madras, 23rd April 1864, No. 203.

I have the honor to acknowledge the Order of Government noted in the margin, relative to the meaning of Section 224 of the Indian Penal Code.
Dated 20th April 1864, and made upon letter from the Session Judge of Ootacamund to Government of 16th Idem, No. 80.

2. I submitted the matter for the consideration of the Advocate General; and,

3. I now forward a copy of his opinion and return the order above noted.

COPY-OPINION.

I am quite unable to feel the force of the objections suggested to the Sessions Judge of Ootacamund by the Superintendent of Police at Coimbatore, and concurred in by the Judge.

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2. It is true that Section 40 of the Indian Penal Code says that "the word" offence "does denote a thing" (a queer phrase enough) "made punishable by this Code;" but it does not say that the word "offence" denotes *only* a thing made punishable by this Code; on the contrary, Section 5 expressly recognizes the existence of *other* "offences" not punishable under the Indian Penal Code; I am therefore wholly unable to understand how the Judge and Superintendent of Police have come to the conclusion that a person resisting lawful apprehension, or escaping from custody, for an offence against a special or local law not repealed by the Penal Code, would not be punishable under the 224th Section. In my opinion he would clearly be so punishable.

3. The instance supposed, viz., that of an officer in the Postal Department, fraudulently appropriating a letter (Section 50, Act XVII of 1854) seems to me a rather unfortunate one; for, under Section 381 of the Penal Code, an offence of this nature would, in my opinion, be clearly cognizable; and the punishment almost precisely the same as under the Post Office Act.

22nd April 1864.

(Signed) T. S. SMYTH,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 290A.

ORDER THEREON, 27th April 1864, No. 600.

The Governor in Council directs that the foregoing opinion be communicated to the Session Judge of Ootacamund, and to the Inspector General of Police.

(True Extract.)

Chief Secretary.

To the Session Judge of Ootacamund.
Inspector General of Police.

Ed. J. Tulloch.

Judicial Department,

ROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter

From the Session Judge of Ootacamund. Received 16th April 1864. N. 56

From the Govt Solicitor — 23rd — 20 — N. 203

Order thereon 27th April 1864. N. 600.

*The Governor in Council
directs that the foregoing
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General of Police.*

*To the Session Judge of Ootacamund }
The Inspector General of Police } disp. 30/4*

Handwritten notes and signatures at the top of the page.

India 1864. Department

No. 600

PROCEEDINGS OF GOVERNMENT.

Dated

27th April

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