

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1177	Press Mis.
Dated	24-8	1965

20-202

4/5

Not to be folded or roughly handled

Read the following papers :—

No. 200. From W. ROBINSON, Esq., Inspector General of Police, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Kotagerry, 25th July 1865, No. 1476.

I would request, if the Government see fit, to have a legal opinion on the following points :—

2. In a case in which a person, other than the accused or person suspected, is not legally bound to answer questions put to him by a Police officer inquiring into a case under Chapter IX, is he liable, under Section 182 of the Code of Criminal Procedure if he do reply with the distinct intention to mislead?

3. In a recent case, the Superintendent of Police of Trichinopoly argued that the defendant who was charged under Section 182 (it is admitted that he was not bound to answer) might have held his tongue, but, having answered falsely and with a view to mislead, he must take the consequences. One of the subordinate—Courts ruled that, because he was not bound to answer the question, he could not be charged for giving false information.

4. The point is obviously one of much importance.

Referred to the Government Solicitor, for the opinion of the Advocate General.
FORT SAINT GEORGE, (Signed) A. J. ARBUTHNOT,
8th August 1865. Chief Secretary.

No. 201. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 11th August 1865, No. 453.

I have the honor to acknowledge the Order of Government noted in the margin, relative to the applicability of Section

Dated 8th August 1865, and made on letter from Inspector General of Mofussil Police to Government, of 25th July 1865, No. 1476.

182 of the Indian Penal Code to the case of a person (other than the accused or person suspected), not legally bound to answer questions put to him by a Police officer inquiring into a case, giving false information with intent to mislead.

2. I submitted the matter for the consideration of the Advocate General, with whom I have also conferred; and,

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

COPY—OPINION.

It is quite impossible for me to answer, with any satisfaction to myself, questions framed in the general, sketchy, and abstract fashion of the Inspector General of Police, in his letter of the 25th July 1865, No. 1476.

2. Each case depends upon its own particular facts; it would not only be very unsafe to give any opinion upon a mere general question, but far more unsafe to act upon it. I have more than once had to request that specific facts may be stated; and I observe that my predecessor, Mr. George Norton, frequently remonstrated against being called on to deal with questions framed like the one now before me.

3. Independently of the vagueness of the statement, its incorrectness alone would render it impossible for me to reply to it. In paragraph 2, I am referred to Chapter IX; but of what Act is not stated. Again I am referred to Section 182 of the Code of Criminal Procedure which I presume is a mistake for Indian Penal Code. Paragraph 2 would seem to be framed with reference to the Sections of the Indian Penal Code immediately preceding Section 182, as it refers to the person accused not being "legally bound" to answer, while paragraph 3 refers to Section 182, which, unlike the immediately preceding Sections, is altogether independent of the person accused having been "legally bound" to speak the truth.

*Proceedings of the Madras Government, Judicial Department,
24th August 1865.*

4. Against paragraph 3 speaks of the statement having been given "with a view to mislead." There is no mention of any such object or intention in Section 182. The word "mislead" is not made use of; and the case put does not inform me whether the Statement was made with the intention of causing the Superintendent of Police to use his power to the injury of another, &c. A statement intended to mislead might be by way of joke or hoax, and the answer might have been "false," without its being intentionally so.

5. The point is stated to be of much importance. The greater, therefore, is the necessity for having the facts on which it turns fully and correctly stated.

6. Assuming that all the elements necessary to constitute an offence under Section 182 of the Indian Penal Code were present in the case referred to by the Inspector General of Police, I am of opinion that the party giving the false answer might be convicted under that Section. He gives the information, and it is immaterial whether he gives it spontaneously, or in answer to a question.

7. The only doubt that could occur, according to my impression, is whether an answer criminating the speaker is not within the proviso of Section 32 of Act II of 1855—the Evidence Act, and so not the subject of any Criminal prosecution. But the proviso expressly says that such answer may be used against him on a criminal charge, *for the purpose of punishing him for his wilfully false evidence.*

8. Even if the party in the case referred to by the Inspector General was a "witness," he would not be protected; but I infer that he was not being examined on oath or affirmation as he is stated not to have been "legally bound" to answer.

10th August 1865.

(Signed) J. B. NORTON,
Advocate General.

(True Copy).

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

No. 202. ORDER THEREON, 24th August 1865, No. 1177.

The foregoing Opinion of the Advocate General is communicated to the Inspector General of Police. His attention is specially drawn to the remarks made in the 2nd, 3rd, 4th, and 5th paragraphs.

2. Copies of these Proceedings will also be sent to all Magistrates of Districts.
(True Extract).

Chief Secretary.

To the Inspector General of Police.

„ Magistrate of

Exd, J, H Burns.

Order
The Governor in Council having
received a full report on the subject
The petition declines to interfere
in the orders passed by the District
Magistrate of Jails. *H* *M*
Cancelled - & another
adv. passed *C.W.*

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters.

From the Inspector General of Police. 25 July 1865 No. 1176.)

From the Govt. Solicitor. 21 Aug^t — " — " 453.)

Order thereon. 24 August 1865 No. 1177.

The foregoing opinion of the Advocate General is communicated to the Inspector General of Police. His attention is specially drawn to the remarks made in the 2^d, 3^d, 4th & 5th paragraphs—

2. Copies of these Proceedings will also be sent to all Magistrates of Districts.

The Inspector Genl. of Police.

— Magistrates of the several Districts.

desd 28/8

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These are to be used
in the following manner
in the case of a
defect -

For office use.
Serial 48657 Department.

No. 1179.

PROCEEDINGS OF GOVERNMENT.

Dated 24 August 1885.