

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	965	Press
		Mis.
Dated	12-7-	19-1875

Not to be folded or roughly handled

(15)

*Proceedings of the Madras Government, Judicial Department,
12th July 1865.*

Read the following papers:—

No. 53. From J. ROHDE, Esq., Inspector General of Jails, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Ootacamund, 1st June 1865, No. 22.

In acknowledging the Order of Government, 26th May, No. 750, inquiring the cause of my instructing the officer in charge of the Prison, constituted under Act XXIV of 1855, not to receive a prisoner committed on suspicion, under the provisions of the 27th Vict., Cap. 3, Clause 34, I have the honor to state that the commitment was in my opinion irregular. It was clearly Mr. Foster's duty to have committed the supposed deserter "to the Head Quarters or Depôt of the Regiment to which he belonged," which Depôt was nearer by 10 miles than Ootacamund; failing this the commital should have been made to the *MOST CONVENIENT Police Station or public prison legally provided as a LOCK-UP HOUSE for the TEMPORARY CONFINEMENT of persons taken into custody.*

2. The meaning of the Act is clear and decisive. Jails in England and Police lock-ups are under a system of Rules distinct from those of prisons for Penal servitude. The European prison at Ootacamund is recognized only as a prison for carrying out judicial penal sentences, and has its distinct code of rules, not one of which can be construed as recognizing it *as a prison legally provided as a lock-up for the TEMPORARY CONFINEMENT of persons taken into custody.*

Referred to the Advocate General, for his opinion.

FORT SAINT GEORGE,
16th June 1865.

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

No. 54. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated 21st June 1865, No. 361.

I have the honor to acknowledge the order of Government noted in the margin (with its enclosures), relative to the confinement of a Military deserter, committed on suspicion, under the provisions of the 27th Victoria, Chapter 3, Clause 34.

Dated 16th June 1865, and made on letter, from Inspector General of Jails to Government, of 1st Idem, No. 22.

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.

I am clearly of opinion that the Commitment was perfectly regular and legal, and that the alleged deserter ought to have been rescued by the Keeper of the Ootacamund Prison.

2. The Inspector General of Jails is under some misapprehension in stating that it was "clearly Mr. Foster's duty to have committed the supposed deserter to the Head Quarters or Depôt of the Regiment to which he belonged, which Depôt was nearer by 10 miles than Ootacamund", for it appears by Mr. Foster's letter of the 29th April 1863, No. 48, that the man

which

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was supposed to belong to the 3rd Battalion of the 60th Rifles, which Regiment was at Rangoon at the date of the prisoner's apprehension and commitment.

3. By 27 Vic., Ch. 3, Cl. 31, such delivery is only to take place, if "the Head Quarters or "Depôt of the Regiment or Corps to which he (the prisoner) belongs is stationed within a convenient or easily accessible distance from the place of commitment."

4. In the present case the Deserter's Regiment was in Burmah, and the course to be pursued by the Justice fell under the other alternative of the Section, namely, committal to prison.

5. A perusal of the Section shows at a glance that the Committal is to be to the "nearest or most convenient public prison" or to a "Police station legally provided with a lock-up", &c. This qualification applies only to the "Police station," and not to the "prison."

6. Singularly enough, the Inspector General of Jails in quoting this part of the Section in his letter of 1st June 1865, No. 22, has transposed the terms "prison" and "Police station," interpolating the former after the latter, and thus making the qualification which in the Act applies only to a Police station, descriptive of the species of prison to which commitment is to be made.

7. But this is not all:—That part of the Section, to which the Inspector General of Jails refers, applies exclusively to the case of alleged deserters who are apprehended in Great Britain. It speaks of "Boroughs" and "Counties."

8. In that part of the Section which applies to apprehensions "in any part of Her Majesty's foreign dominions," the commitment is to be to some "public prison." There is not one word about "Police station legally provided as a lock-up house for temporary confinement of persons taken into custody."

9. It is difficult, therefore, to understand where the prisoner was to be committed to, if not to the Jail at Ootacamund. It is not contended that that Jail is not a prison. It is true that there is a Jail at Coimbatore; but Mr. Foster points out in the 3rd paragraph of his letter, that the Coimbatore Jail is not adapted for European prisoners, especially if unconvicted, and that small-pox prevailed in it at the time of commitment.

10. The words of the Act in that part of the Section which applies to England give the Justice the choice of committing to the "nearest," or "most convenient" public prison. The language used in that part of the Section which applies to India is only "some public prison".

20th June 1865.

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

(True Copy).

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

No. 55. ORDER THEREON, 12th July 1865, No. 965.

Communicated to the Inspector General of Jails, to all Officers in charge of Jails, to all Magistrates, and to the Inspector General of Police.

2. It would appear from the endorsement made by the Keeper of the European Prison at Ootacamund on the Acting Head Assistant's warrant that that Officer made a direct reference to the Inspector General of Jails, and on receiving his instructions wrote the endorsement referred to, which was afterwards countersigned by the Session Judge, the Officer in charge of the Jail. The matter was clearly one which should have been disposed of by the Officer in charge of the Jail on his own responsibility, and if, as would appear, a direct reference was made to the Inspector General by the Keeper of the prison, the course taken was very objectionable.

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3. It should be distinctly understood that the Keeper of the Prison is responsible to, and entirely under the orders of, the Officer in charge, and that no orders are to be given to him by any other authority. In order that there may be no mistakes on this point in future, the Government direct that the words "of the Inspector General of Prisons and" be struck out from Rule 15 of the Rules lately sanctioned for the Ootacamund Jail.

(True Extract).

W. HUDLESTON,
Acting Secretary to Government.

To the Inspector General of Jails.
" Inspector General of Police.
" Civil and Session Judge of
" Magistrate of

Exd. J. H. Burns.

Feb 12 20

pp
will
send

communicated to the Inspector
General of Mills, & all officers in
charge of Mills, & all magistrates
& the Inspector General of Mills
by the local printing press
A. L. H.

copy
sent
12/20

It seems odd
that the person
in charge of
the ^{law} ~~only~~ ^{and} had
secured his own
proof in this matter,
instead of allowing
himself to be
guided by the order
(and shall ~~un~~ pay
one) of the Inspector
Genl of facts, who it
seems happened to be
on the spot, but
who might have
been at Saigam or
Seneally. The I.G.
appears to me to
do very much what
the Company's men
are doing. That is

in line with
things & concern
them not at all

28/6/65 W.D.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following Paper.
from the Inspector General of Jails - Here enter pt. June 1865 N^o 22
- Government Solicitor - Madras - " - 2nd - " - " 361.

Order thereon 12 July 1865 N^o 965.

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Sanctioned
15/11/1907

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- Inspector Genl. of Police -
- Civil Session Judge of all districts
- Magistrate of - all do
Desp 15/7

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Case 1755-177
26/5/65

Judicial 1865. Department.

No. 9/65

PROCEEDINGS OF GOVERNMENT.

Dated 12th July 1865
1543
1475