

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	974	Press ~~Mis.~~
75-78		
Dated	13.7.1865	19

7/7

Not to be folded or roughly handled

19/7/22

*Proceedings of the Madras Government, Judicial Department,
13th July 1865.*

Read the following papers:—

No. 75. From W. ROBINSON, Esq., Inspector General of Police, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 14th June 1865, No. 1135.

General Department.

I have the honor to submit, for the consideration of Government, an extract from a Diary of the Assistant Superintendent of Police in South Malabar, with remarks of Deputy Inspector General and Superintendent.

2. A prisoner convicted by a Pottail, on a charge of petty theft, escaped from custody. He was tried by the Deputy Magistrate, but released, on the ground that the offence did not come under Section 224 of the Indian Penal Code.

3. If this be good law, it is practically the state of the law in regard to all escapes when the arrest takes place, or the offence is charged under a local or special law, or where, as in the above case, special procedure is provided under a local law. How are these offences to be dealt with?

4. It has been held, also, that escapes from arrest under certain Sections of Chapter IX of the Procedure Code are not cognizable under Section 224 of the Penal Code.

5. Escapes are increasing in number; but under the circumstance neither the person who escapes, nor the Constable who negligently permits it, can be tried.

Extract from the Diary of the Assistant Superintendent of Police in South Malabar.

By Deputy Inspector General.
"I call Inspector General's attention to this matter. Escapes, as he will see, have doubled in the year."

W. S. D.

By Superintendent.
"Taking Section 224 with Section 40, Penal Code. The person must have been punished for an "offence" or thing punishable under the Penal Code. As the man you alluded to was punished for an offence under a special law, I suppose he could not be tried under Section 224, Penal Code. If so, how are these escapes to be dealt with?"

A. M. D.

"I should feel obliged by being informed whether a man who has been ordered into confinement by the Head of a Village, and escapes from custody can be tried under Section 224, Penal Code, for escape from lawful custody? On 31st March last, a man had been sentenced by Pottail of the Perreavoor Amshom to six hours, confinement for petty theft, and escaped before the time of his imprisonment was up. He afterwards was re-arrested on Sub-Magistrate's warrant, and committed to the Deputy Magistrate, who did not consider that the offence fell under Section 224, and accordingly released the prisoner."

(True Extract).

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

No. 76.

MEMORANDUM.

The undersigned is directed to inform the Acting Secretary to Government in reply to his Memorandum, dated the 22nd instant, that the point referred to in Mr. Secretary Sim's letter, dated 17th September last, No. 1373, has not yet come before the High Court for decision.

HIGH COURT OF JUDICATURE,
MADRAS, 24th June 1865.
To the Acting Secretary to Government.

(Signed) P. P. HUTCHINS,
Registrar Appellate Side.

*Proceedings of the Madras Government, Judicial Department,
13th July 1865.*

No. 77. From W. ROBINSON, Esq., Inspector General of Police, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 1st July 1865, No. 1281.

General Department.

I have the honor to submit a Memorandum by the Superintendent of Police of Madras District, reporting the escape of a person arrested by the Police on suspicion of theft.

2. He was being escorted, for the purpose of pointing out the stolen property, and escaped, probably with the connivance of the Policeman. Both were put up for trial; but both escaped as the offence is not provided for by the Indian Penal Code.

3. Several Police officers have urged the necessity of early measures being taken to obviate the anomalous state of the law in this respect, and I beg to solicit the early attention of Government to it.

4. The offences of escape from custody and negligently permitting escape are on the increase. The Deputy Inspector General of the Western Range remarks, in his Administration Report of the year, that the increase (in the number of these offences nearly double those which occurred in 1863), is to be accounted for "partly by the interpretation which has been put upon Sections 223 and 224, Indian Penal Code, whereby a person arrested on suspicion by the Police and escaping from their custody prior to his being taken before a Magistrate and duly charged, cannot be prosecuted for 'escape'; a like impunity extending to the Police officer permitting him to do so. Dread of punishment is as yet the only incentive for the energetic performance of his duty by an Indian Policeman, and lack of energy on his part in matters of this kind is at once apparent." I agree in the view he takes.

5. I append a copy of the Circular Memorandum alluded to by Captain Cloete. The opinion annexed to it is that of Mr. Collett.

MEMORANDUM.

Agreeably to C. M., No. 160, P. W. C., No. 8 of 1863, I beg to bring the following to notice:—

One Sooben was arrested on suspicion of having committed theft, and sent in charge of Constable No. 498, to a neighbouring village, for the purpose of pointing out the stolen property, within 24 hours of his arrest; on the way to the village, the prisoner escaped (I believe wilfully allowed by the Constable). The prisoner was retaken, and put up before the Acting Joint Magistrate, Mr. Webster, under Section 224, and the Constable, under Section 223. The Acting Joint Magistrate remarks on the charge sheet as follows:—

"As he was in custody on suspicion, without having been charged with or convicted of an offence, he neither can be punished for the escape under Section 224, nor can the Constable be punished under Section 223, Indian Penal Code;—charge dismissed, under Section 67, Criminal Procedure Code.

(Signed) H. D. CLOETE, Captain.

Superintendent of Police.

24th June 1865.

CIRCULAR MEMORANDUM, No. 160, 25th FEBRUARY 1863.

Escape of Prisoner arrested as a Vagrant.

Extract from the diary of the Superintendent of Police of ———

"Another legal point has arisen in another case, on which subject the Supreme Government only recently gave orders that, if occasion required, the matter should be sent up for argument before the High Court. A prisoner arrested as a Vagrant is sent to ——— from ———. He

*Proceedings of the Madras Government, Judicial Department,
13th July 1865.*

"escaped, but was recaptured. He was sent up to the Magistrate for trial for escape, but is released, on the grounds that he had not committed an offence punishable under the Code."

2. The case does not appear to have been pressed on for argument. Many cases of the kind have occurred, and the sooner the point is decided the better. On the recurrence therefore of a similar case, officers will use their endeavours to get the case sent up through the regular channel. They will have the goodness to make an early and special report (with copy of decisions) of any such case to Inspector General. A legal friend thus disposes the point:—

I expect that the release was right. The being a person described in Clause XIX is not an offence, nor is the taking of security intended as a punishment. Why Section 224, Penal Code, was worded in the way it is I am at a loss to understand; the offence consists in escaping from lawful custody, and it cannot matter why a man is in custody if only the custody was lawful. I expect that the desire may have been to avoid including an escape from custody under Civil process, and so the restraining words have been made wider than they would have been if the Criminal Procedure Code had at the time been matured. On principle, though, I do not see why an escape from every kind of lawful custody, should not be punished criminally; it certainly is a wrong against public justice in which the public is somewhat concerned; though it may be that those who negligently or wilfully suffer on escape from custody under Civil process should not be held liable otherwise than civilly. However as Section 224, Penal Code, now stands, I expect an escape by one in custody in default of giving security is not within it. The nicer question would be, whether if one escapes who is in custody for an offence under a special or local law, Section 40 and Section 7, Penal Code, would not have to be applied to Section 224, so as to exclude even such a case.

(Signed) W. ROBINSON,

Inspector General of Madras Police.

(True Copy.)

(Signed) W. ROBINSON,

Inspector General of Madras Police.

No. 78. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 13th July 1865, No. 974.

Adverting to Mr. Sim's letter of the 12th July 1864, and to your reply under date the 22nd August last, relative to the construction of Section 224 of the Indian

From the Inspector General of Police, 10th November 1864, No. 2287.
From the Government Solicitor, 22nd November 1864, No. 806.
Order thereon, 3rd December 1864, No. 1730.
From the Inspector General of Police, 14th June 1865, No. 1135.
To the Registrar of the High Court, 24th June 1865.
Inspector General of Police, 1st July 1865, No. 1281.

Penal Code, I am directed to submit, for the consideration of His Excellency the Governor General in Council, the annexed copies of a correspondence which has since taken place on the subject, and from which it will be seen that the offences of escape from custody and of negligently permitting escape are on the increase, and that this is attributed to the interpretation which has been put upon the Section in question.

7. As suggested in your letter above referred to, the High Court were requested to call up the point for decision, whenever an opportunity offered, but this it appears has not yet been done, and it is impossible to say when the point will be decided by the High Court. Under these circumstances, I am directed to submit, for the consideration of the Government of India, the expediency of amending the law on the point in question.

(Signed) W. HUDLESTON,

Acting Secretary to Government.

Exd. J. H. Burns.

Memorandum.

The undersigned is directed to inform the Acting Secretary to Government in reply to his Memorandum dated the 22^d instant that the point referred to in Mr Secretary Sim's letter dated 17th September last, No. 1373, has not yet come before the High Court for decision.

Wentworth

High Court of
Judicature, Madras,
24th June, 1865.

Registrar.
Appellate Side.

To The Acting Secretary to
Government.

Copd. A. Perera.

Ed. J. P. Henderson.

No. 974.

Print Department

Sir,

Amila

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Pellier of the 12th July 1864, and
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From the Inspector Genl. of Police 10th Nov/1864. No. 2257
 — " — Government Secy. 22nd — " — No. 666.
 Order thereon 3rd December 1864. No. 1730.
 From the Inspr Genl. of Police 15th June/65. No. 1135
 — " — Registrar High Court 24th — " —
 — " — Inspector Genl. of Police 1st July. No. 1251

5764-1287

Practical & S. Dept.
June
The Registrar of the Court
of the
12th

Filed 24th June/87 -
June 28th

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Wrote thank you card
concerning the construction
of the fence on Dec 22, of
the Pearl Lake, has got
done before the fourth
decision.

both. I must not overstate
 influence I want to see
 for it. I think it is
 pretty close but and
 which the two things mentioned
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 force or carry on
 at considerable
 or at least to the
 degree. The outside
 custom of us may be
 consistent with improving
 6 Aug 65. W.D.



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Fort St. George
13 July 1865

March 1865. Depart.

11th 7/74.

To the Secretary of the

of the

Oct 20 18.

March 13th 1865.

According to the
Construction of Dec. 22nd.
of the Division Canal
Q. Q. e.