M.R.O. 1—23,000—16-11-53.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1085 110-112	Press Mis.
Dated 11-7	19 1886

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 11th July 1866.

Read the following papers :—

No. 110. From the Inspector General of Jails, to the Chief Secretary to Government, Fort Saint George; dated Madras, 25th June 1866, No. 36.

On the 22nd February 1866, one Kandan was convicted before the Principal Sudder Ameen of Salem of house-breaking, and sentenced to rigorous imprisonment for 15 months, and also to receive 50 lashes. According to the provisions of the Whipping Act (VI of 1864), sentences of flogging ought to be carried out immediately on the expiration of 15 days, but the punishment has not yet been inflicted in this case, and the present Superintendent now hesitates to order it, as he doubts the legality of his so doing, after the lapse of several months.

2. I have, therefore, the honor to request that the opinion of the Government Law Officer may be taken on the point. The correspondence with the Superintendent of the Jail at Salem is herewith enclosed.

From the Superintendent of Central Jail, Salem, to the Inspector General of Jails, Madras ; dated Salem, 11th June 1866, No. 70.

I have the honor to bring to your notice that prisoner Kandan, in case No. 27 of 1866, on the file of the Principal Sudder Ameen of Salem, was sentenced, on the 22nd February 1866, to 15 months' rigorous imprisonment, and to receive 50 lashes, for house-breaking—Section 454 of Indian Penal Code. On receiving charge of the Jail, on the 30th ultimo, the fact that he had not been flogged was brought to my notice, and I hesitated to carry the sentence into execution, as Mr. Stokes, the Assistant Collector, who was in temporary charge of the Jail during Dr. Roberts' absence, had made a reference to the Magistrate of the District, as he doubted whether it was legal to whip the man after so many days had elapsed. I have since seen the Magistrate, who told me that the sentence should not be carried out.

2. As it will be necessary to return the warrant to the Principal Sudder Ameen, and as, under the circumstances, only a portion of that Officer's sentence has been carried out, I have the honor to request you will solicit the orders of Government on the subject, and let me know whether the whipping is to be inflicted or not, as, in the latter case, it will be necessary to obtain a remission of that portion of the Convict's sentence which directs him to be flogged.

3. The Act (VI of 1864) directs the whipping to be inflicted immediately on the expiry of fifteen days.

From the Superintendent of Central Jail, Salem, to the Inspector General of Jails, Madras ; dated Salem, 14th June 1866, No. 74.

In reply to your letter, No. 173, of the 12th instant, I have the honor to inform you that Dr. Roberts was in charge of the Jail when Kandan was admitted.

2. It has been the custom at this Jail heretofore to execute sentence of flogging at any time before the expiration of the period of imprisonment, and this custom seems to have been in existence for many years.

3. The Whipping Act was not furnished to this office ; consequently Dr. Roberts had no means of acquainting himself with its provisions.

Referred to the Government Solicitor, for the opinion of the Advocate General.

FORT SAINT GEORGE,
4th July 1866.

(Signed) J. D. SIM,
Acting Chief Secretary.

Proceedings of the Madras Government, Judicial Department,
11th July 1866.

No. 118. From the Government Solicitor, Madras, to the Acting Chief Secretary to Government, Fort Saint George; dated Madras, 10th July 1866, No. 337.

I have the honor to acknowledge the Order of Government noted in the margin (with enclosures), requesting the Advocate General's Opinion as to the carrying out of a sentence of flogging under Act VI of 1864.

Order made on letter from the Inspector General of Jails to Government, of 25th June 1866, No. 36.

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

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

COPY—OPINION.

This is a new and difficult point, and there has been no case upon it either in Bengal or Madras. I am inclined to think the provision is merely directory, and that if there were a sufficient cause for the delay, as, for instance, if a person suffering sentence of imprisonment were ill on the 15th day, that it might lawfully be inflicted when he recovered. In the present case, however, there is no excuse for the delay, and considering the time which has elapsed, and the doubt as to its legality, I advise that the whipping ought not to be inflicted now.

2. The best course would be for the Governor in Council to remit the whipping, under Section 54 of the Criminal Procedure Code.

7th July 1866.

(Signed) J. D. MAYNE,
Acting Advocate General.

(True Copy).

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

No. 112. ORDER THEREON, 11th July 1866, No. 1085.

Under the circumstances stated, and in exercise of the powers given by Section 54 of the Code of Criminal Procedure, His Excellency the Governor in Council resolves to remit that portion of the sentence accorded againt prisoner Kandan in Case No. 27 of 1866 on the file of the Principal Sudder Ameen of Salem, which directed the infliction of 50 lashes.

(True Extract).

Acting Chief Secretary.

To the Inspector General of Jails, with 2 enclosures returned.
,, Superintendent of Central Jail, Salem.

Exd. J. H. Burns.

Order thereon 11 July 1866 No 1085
Copy of letter from Govt Solr to Secy to Govt dated 10th June 1866 No 337
Copy of Opinion of Acting Advocate General dated 7th July 1866
Copy of letter from Inspr Genl of Jails to Govt dated 25th June 1866 No 36

Under the circumstances stated
& in exercise of the powers given
by Sec 54. of the Code of Criminal
Procedure the Govr in Council
resolves to remit that
portion of the sentence
accorded against prisoner
Kandan in Case No. 27. of
1866. on the file of the P.S.
A. of Salem which
directed the infliction of
50 lashes.

To the Insp Genl of Jails
& 2 enclosures returned
Supt of Central Jail, Salem
Despd 14/7/66