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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Technical DEPARTMENT

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
22nd January 1868.*

No. 172. Read the following letter from the Inspector General of Jails, to the Chief Secretary to Government, Fort Saint George; dated Madras, 2nd January 1868, No. 152.

I have the honor to forward two letters from the Superintendent of the Central Jail at Vellore, respecting the detention in confinement of a convict named Narrainsawmy for one month in excess of the period of his sentence.

2. It appears that, on the 15th November 1861, he was sentenced by the Session Judge of Chittoor to be imprisoned for three years, and that, having appealed, the sentence was confirmed by the High Court on the 3rd April 1865. The Session Judge then passed an order to the effect that the sentence should be reckoned from the receipt of the order communicating the result of the appeal. About the 10th November it was brought to the notice of the Officer then in charge of the Jail that the prisoner claimed to be released before the time specified in the Jail Register. The Record was then examined, and, the Officer in charge being satisfied with the Judge's order, no steps were taken, but when the matter came to the knowledge of Captain McLeod on his assuming charge, he doubted the power of the Judge to stay the operation of the sentence while the appeal was pending, and he, therefore, made a reference to Chittoor, which resulted in the release of the convict by order of the Acting Session Judge, Mr. Irvine.

From Captain W. S. McLEOD, Superintendent of the Central Jail, Vellore, to the Inspector General of Jails; dated Vellore, 16th December 1867, No. 182.

I have the honor to report the following circumstances regarding the detention till yesterday in this Jail of No. 127 Narrainsawmy, who ought to have been released on the 15th ultimo, or just one month earlier than he was.

2. Shortly after assuming charge here, the man complained to me of his detention in Jail, stating that his sentence, had, expired on the 15th November. I at once instituted inquiries regarding him, and found the date of expiry of sentence noted in the Register to be the 8th April 1868, while the date of sentence was the 15th November 1864, and the sentence itself three years rigorous imprisonment. On examining the warrant itself, I found that the original date which had been entered as that on which the sentence expired, viz., 15th November 1867, had been erased, and the 8th April 1868 substituted. I found also a letter from the Superintendent of the Jail of Chittoor to the Joint Magistrate in charge of the Jail here, stating that, by order of the Session Judge, Chittoor, the sentence was not to take effect till the 8th April 1865, thus making the date of expiry of sentence 8th April 1868. Not, however, feeling satisfied with this in the absence of the order cancelling the original warrant, or, enhancing the prisoner's original sentence, which in fact was being done; I, on the 2nd instant, addressed the Superintendent of the Chittoor Jail, and requested to be favored with a copy of the order referred to by him as received from the Session Judge. My letter appears to have been made over by the Superintendent of the Jail, Chittoor, to the Session Judge for disposal, as, yesterday, I received a letter from the Acting Session Judge, in reply to mine, in which he says that "the prisoner has already been in custody for nearly a month beyond the time allotted to him in his sentence, and should have been released on the 15th November last"; and, after explaining the manner in which the sentence should be regarded, he says "the prisoner should, therefore, be immediately released." As it appeared to me that I had no proper authority for the detention of the prisoner, I forthwith released him on receipt of Mr. Irvine's letter.

3. It appears that, after sentence of three years' imprisonment was passed on the prisoner, he gave notice of appeal, and, on the 8th of April 1865, an order was received by the Session Judge, Chittoor, confirming the sentence of the Session Court. To the order of the High Court the Session Judge appended an order of his own that the prisoner's sentence was to date

11/1/68

To the Secretary
of the
Judicial Department
Madras

*Proceedings of the Madras Government, Judicial Department,
22nd January 1868*

from that day. It is clear, however, that the Session Judge had no authority to stay the sentence from the date of original sentence to that on which the decision of the High Court was received, Section 421 of the Procedure Code giving the Appellate Court alone power to suspend a sentence pending appeal, and which in this case the Appellate Court did not do. This being the case, the warrant must be considered to come into force from the date thereof, viz., the 15th November 1861, and hence the sentence clearly expired on the 15th ultimo, in the absence of any authority from the Appellate Court suspending the sentence.

1. I much regret that this error regarding the man's sentence should have occurred, but it is scarcely attributable to the Jail authorities, though, doubtless, the original order should have been sought before the date of the man's sentence had been altered in the Jail Books.

From Captain W. S. McLEOD, Superintendent of the Central Jail, Vellore, to the Inspector General of Jails; dated Vellore, 21st December 1867, No. 143.

With reference to your letter, No. 1375, I have the honor to report that the prisoner, Narrainsawmy, mentioned to the Jail Writer, about ten days before my arrival, while the writer was at the Jail comparing the warrants and verifying the entries in the Register, that a mistake had occurred in his sentence; this, the writer reported to Mr. Gibson, who looked up the record and

finding the letter*, before referred to by me, from the Superintendent of Chittoor Jail to the Joint Magistrate, considered that was sufficient

* Herewith forwarded.

authority for the man's detention. The man again spoke to Mr. Gibson the day before my arrival, and after taking charge Mr. Gibson mentioned to me that he thought the case required looking into, as the man was so persistent. It was then that I, on visiting the Jail, asked for the man, who at once related what he had to say, and which led to my writing to Chittoor. The prisoner's warrant I returned to the Session Judge, Chittoor, on his release, in accordance with paragraph 5, Circular No. 185. I am however able to inform you that the new date inserted on the warrant as the release date neither bore the initial nor signature of any one at all, and that no alteration was made in the sentence itself which was three years, the only alteration being the date of release from the 15th November 1867 to the 8th April 1868.

2. The Acting Joint Magistrate, in his letter, No. 55, requested the Superintendent of the Chittoor Jail to inform him of the offence and date of release of the prisoner. In reply to this letter, he received from the Superintendent of Chittoor Jail that now forwarded for your information. From the Joint Magistrate inquiring the date of release one would be led to infer that such did not appear on the warrant at all, but there is no doubt that such was entered in the warrant when I saw it, and also that a pen had been run through the original date, and the 8th April 1868 entered slightly above the original entry. It is clear, however, from the letter of the Superintendent of the Chittoor Jail that the original order of the Session Judge was not forwarded here, as it doubtless ought to have been on the prisoner's transfer, and hence it is that I am of opinion that the entry of the 2nd date of release in the warrant was made here without the original order having been seen. Had the entry been made at Chittoor before the warrant was sent, there would have been no need for the Joint Magistrate to have requested to be informed of the date of release when it was so clearly entered in the warrant itself. In any case, though, the Acting Joint Magistrate and Superintendent of the Chittoor Jail doubtless considered the after order of the Session Judge sufficient to warrant the alteration.

3. The copy of the Proceedings of the High Court furnished me by the Acting Session Judge, Chittoor, together with a copy of the order of the late Session Judge, Mr. Roberts, regarding the sentence of the prisoner Narrainsawmy, are enclosed for your information.

From the Acting Superintendent of the Chittoor District Jail, to the Joint Magistrate of North Arcot, in charge of the Jail at Vellore; dated Chittoor, 27th December 1867, No. 201.

In answer to the letter of the Acting Joint Magistrate of North Arcot, dated 21st December, No. 55, I have the honor to inform you that the 3rd prisoner Narrainsawmy in Calendar Case No. 138-61 was sentenced on the 15th November 1861 to three years' rigorous imprison-

*Proceedings of the Madras Government, Judicial Department,
22nd January 1868.*

ment by the Session Judge of Chittoor, by whose order the punishment was to take effect from the 8th April 1865, thus making the date of release the 8th April 1868.

In the High Court of Judicature at Madras, Monday, the third day of April, one, thousand eight hundred and sixty-five.

PRESENT,

The Honorable Sir Colley Harman Scotland, Knight, Chief Justice;
The Honorable Mr. Justice Frere; and
The Honorable Mr. Justice Holloway.

Criminal Petition No. 3 of 1865.

Ahmed Hussein Sahib and two others, Appellants (Prisoners).

Appeal against the sentence of the Court of Session of Chittoor in Case No. 133 of the Calendar for 1864.

Order.—This appeal coming on for re-hearing in the presence of Mr. Government Pleader on behalf of the prosecution, upon perusing the petition of appeal and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of Mr. Advocate General, Counsel for the Appellants, it is ordered that the sentence of the said Court of Session be, and the same hereby is, confirmed, and this appeal dismissed.

By the Court.

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

Order of the Session Judge.

The sentence will be reckoned from the date of the receipt of this order.

(Signed) C. A. ROBERTS,
Session Judge.

8th April 1865.

No. 173.

ORDER THEREON, 22nd January 1868, No. 107.

The Governor in Council directs that the correspondence above recorded be submitted to the Honorable the Judges of the High Court, with a view to such orders being issued as may seem necessary to prevent the recurrence of the mistakes and misunderstandings which appear to have occurred in the case to which the correspondence relates.

(True Extract).

Chief Secretary.

To the Honorable the Judges of the High Court.
" Inspector General of Jails, with enclosures returned.

Exd. J. H. Burns.

*Ref. to Mr. Clerk
General of Jails
1/1/68*

Journal

Read letter from the Insp General
of Inds 2^d Janu., 1868.

No 107 of 22^d January 1868,

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in the case to which
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Wm
N. Ly

Presented to the H. Court
by the Insp General of Inds
22^d Jan 1868

4/10
Memo for orders

The Inspector General of Jails, reports
the case of a prisoner at Vellore, who
was sentenced to on the 15th Nov
1864 to rigorous imprisonment.
He appealed to the High Court. &
his sentence was affirmed confirmed
on the 3rd April 1865.

The Acting Sessions Judge Mr. Roberts
upon receiving the order of the High
Court - passed an order that
"the sentence will be reckoned from
the date of the receipt of the High
Court's order." 8th April 1865.

The prisoner claimed to be released on
the 15th Nov. 1867. and as the date
of release on the warrant had
been altered to the 8th April 1867
apparently without authority
release was made. To the

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Letter 22 'Concurrence'

25th 63

Proceedings of Court

Chief

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M. P. [illegible]

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the
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No. 152

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From
Lieut. Col. W. J. Wilson
Inspector General of Jails
To
The Honble. R. S. Ellis Esq.
Chief Secretary to Government
Fort Saint George.

Sir, I have the honor to forward
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the Central Jail at Vellore respecting
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Captain McLeod on his assuming
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Judge to stay the operation of the
Sentence while the appeal was pending,
and he therefore made a reference to
Hittor which resulted in the release
of the Prisoner by order of the Acting
Sessions Judge Mr. Irvine.

I have the honor to be
Sir
Your most obedt. Servt.

J. M. L.

Super. Insp. of Jail

Madras
2^d Janry. 1868

August 1855
 The Secy. Genl. of the
 U. S. Army
 Wash. D. C.

Recd. 2^d Aug. 1855.
 Recd. 3^d Aug. 1855.
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Report the detection
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 in 1855 of the same