

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	18	Press ~~Mis.~~
Dated	2 — 1 — 1868.	

Not to be folded or roughly handled

Post

*Proceedings of the Madras Government, Judicial Department,
7th January 1868.*

No. 31. Read the following letter from the Inspector General of Jails, to the Chief Secretary to Government, Fort Saint George; dated Ootacamund, 19th December 1867, No. 146.

On the 20th September 1862, a number of convicts belonging to the Vellore Jail escaped from custody while at work outside. Twenty of these men were tried for the escape, and sentenced on the 10th October 1862 to rigorous imprisonment for two years, under the provisions of Section 224 of the Penal Code. I have now the honor to forward a letter from Captain McLeod, Superintendent of the Central and Fort Jails at Vellore, expressing doubts as to his authority for detaining the convicts in question after the expiration of their original sentences, for two reasons, viz., the absence of any warrant directing the Jailer to confine them for the additional period specified in the sentence for escape, and also because the Court did not say whether that sentence was to take effect immediately or not.

2. It might have been better had the Convicting Officer made such an order, but I am not satisfied that he was bound to do so. The explanation following Section 224 of the Penal Code sets forth that the punishment for escape is in addition to

* 47.

the former sentence, and the power given in the Section* of the Code of Criminal Procedure quoted by Captain McLeod being permissive and not mandatory, I infer that, in the absence of any order directing that sentences should be concurrent, the latter should be considered to commence from the expiration of the former in accordance with the Penal Code.

3. The omission to issue separate warrants in the case of the escape appears more serious. Sections 383, 384, 385, and 386, especially the concluding sentence of the last, seem to require it. It may be that the Convicting Officer, who, as Joint Magistrate, was in all probability also in charge of the Jail (such having been the case until lately), did not think it necessary to issue warrants to himself for men already in his custody. The convicts were duly convicted and sentenced, and the sentence is on record. The question now is whether they can be detained without a warrant; and, as I cannot find any precedent in the records of this office, I submit the matter for the orders of Government.

From Captain W. S. McLEOD, Superintendent, Central Jail, Vellore, to the Inspector General of Jails; dated Vellore, 16th December 1867, No. 134.

I have the honor to bring to your notice the following circumstances, regarding the marginally noted prisoners, the first of whom is in the Central Jail, while the remainder are in the Fort Jail, and for whose detention on the charge of escape no warrants exist.

Nos.
1. Alazeri Coolen, alias C. Ramasawmy.
641. W. Venkata Boyadoo.
627. Vythialingam.
724. Adda Moonegan.
693. Bundoo.
688. Chengadoo.
606. Lambady Narasimmudoo.
628. Mottai.
642. Chinna Armoogam.
710. Gulladoo.
740. Andy.
708. Ganngadoo.
741. Vembday.
697. Yanady Venkatigadoo.
639. Chinna Gangadoo (Yanady).
644. Yanady Chundragadoo.

2. The whole of the prisoners were long-sentenced prisoners, and effected their escape in September 1862, for which offence they were tried together with some others on the 10th of the same month, and sentenced to two years' rigorous imprisonment by the then Joint Magistrate, W. T. Blair, Esq., a copy of whose decision and sentence I forward for your information.

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3. Soon after assuming charge of the Central Jail, I found there was no warrant for the first of the marginally noted prisoners on the charge of escape, though his sentence had been entered in the Register as 16 years, viz., 14 for his original sentence and 2 for escape. On this, I addressed the Joint Magistrate, requesting to be furnished with a copy of the sentence and warrant; in reply, Mr. Comyn has furnished me with the copy of the sentence now forwarded, and says "it appears to have been the practice hitherto in such cases to simply make an entry of the 'additional punishment in the Jail Punishment Book, no regular warrant being granted.'" The sentence is clearly a Judicial one, and not such as would appear in the Jail Punishment Book, which I have carefully examined and can find nothing. In the Jail Register, I find noted against each of the prisoners "escaped, two years' imprisonment," but these entries neither bear any date nor any one's signature.

4. The prisoners No. 1 of Central Jail, and Fort Jail's Nos. 597, 693, and 724 had already completed their original sentence, and are undergoing that awarded in the accompanying sentence for escape from custody. It appears, however, doubtful to me whether this sentence of two years can be considered as additional to that which they were originally sentenced, as by Section 47 of the Criminal Procedure Code, which was in force at the time of their trial, it is laid down, with reference to escapes, that "the Court may direct such sentence to take effect immediately, or after such 'escaped convict shall have suffered imprisonment or transportation, as the case may be, for the 'further period equal to that which remained unexpired of his former sentence at the time of his 'escape.'" The Code evidently contemplates the Court to make an order directing the immediate execution of the sentence, or its suspension pending the full satisfaction of a former sentence. In the present case no such order appears to have been made, and the question arises whether, in the absence of any such order of the Court, the sentence can be stayed, but ought not rather to be considered as concurrent with the one they were undergoing at the time of sentence. There can be little doubt that the intention of the Court was that the two years for escape should be additional, but I request you will favor me with instructions on the point for my guidance, as there are, if I mistake not, several similar cases in the Jail; but I have deemed it right to bring the present one at once to notice, there being no warrants whatever for the sentence, and will hereafter report any further cases that may appear, as I am examining *seriatim* the warrants of all prisoners in the Jails.

CRIMINAL No. 83.

The Queen
versus

1st Prisoner Wadda Venkata Boyadoo.	11th Prisoner Narraiyanan.
2nd Do. B. Vecra Ragavoodoo.	12th Do. Mottai.
3rd Do. Mannaroogadoo.	13th Do. Chinna Armoogam.
4th Do. Vythialingam.	14th Do. Guladoo.
5th Do. Adala Moonegan.	15th Do. Andy.
6th Do. Buddoo.	16th Do. Gannagado.
7th Do. Chengadoo.	17th Do. Vembaday.
8th Do. Lambady Nurasimmudoo.	18th Do. Yanady Venkatigadoo.
9th Do. Alageri Cullan.	19th Do. Yanady Chinna Gungadoo.
10th Do. Veerasawmy.	20th Do. Yanady Chundragadoo.

Charge.

Escape from lawful custody.

That the prisoners being convicts in the Branch Jail at Vellore on the 20th day of September 1862 at Vellore escaped from the custody of the Police Constables who were guarding them while at work outside the Jail and that they have thereby committed an offence punishable under Section 224 of the Indian Penal Code and within my jurisdiction.

(Signed) W. T. BLAIR.

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The charge is proved against the prisoners and the evidence of the Jailer.

The Court finds that the prisoners are guilty of the offence specified in the charge namely that they have escaped from the lawful custody and have thereby committed an offence punishable under Section 224 of the Indian Penal Code and the Court directs that the said prisoners be imprisoned for two years with rigorous imprisonment.
10th October 1862.

(Signed) W. T. BLAIR.

No. 32. ORDER THEREON, 7th January 1868, No. 18.

From the letter above recorded, it appears that in September 1862 a number of convicts escaped from the Jail at Vellore. Twenty of these men, who were re-captured, were sentenced by the Joint Magistrate at Vellore, under Section 224 of the Indian Penal Code, to rigorous imprisonment for two years, for escaping from legal detention.

2. From the record of the case it does not appear that the Joint Magistrate stated specifically, as required by Section 48 of the Code of Criminal Procedure, that this sentence should be carried into effect *immediately*, or *at the expiration of the imprisonment* to which these prisoners had previously been sentenced. Further, the Joint Magistrate, who was also in charge of the Jail, failed to issue any warrants to the Jailer on account of the sentence on the charge of escaping from custody.

3. The Superintendent of the Vellore Central and District Jails has now raised the question, whether, under these circumstances, he can legally detain in custody these prisoners, whose original sentences are about to expire, for the period of imprisonment to which they were sentenced by the Joint Magistrate under Section 224 of the Indian Penal Code.

4. The Government see no reason for questioning the legality of requiring these convicts to undergo the imprisonment awarded to them by the Joint Magistrate.

5. The present Acting Joint Magistrate is directed to issue the separate warrants in the form required by the Code of Criminal Procedure, in conformity with the sentence passed by the Joint Magistrate in 1862, as recorded in the Criminal Case, No. 83 of that year, on the file of the Joint Magistrate's Court at Vellore.

(True Extract.)

Chief Secretary.

To the Inspector General of Jails, with enclosures returned.
" Magistrate of North Arcot.
" Joint Magistrate of do.

Exd. J. H. Burns.

My dear Mr.

I wd. be thankful to hear
from the matter -

The sentence, as admitted,
the Officer in charge of the
Jail, has a statement made,
is a judicial sentence.
Consequently, according to
the requirements of Article 4 &
Code of Criminal Procedure, as
having been passed on
persons already under
sentence of imprisonment,
it should have been ordered
to commence at the expi-
ration of the imprisonment.
provided no one person had

2
already been sentenced.
4
Accordingly, further, to the
late order of 1808 that a
separate sentence shall be
entered in our records, it
seems now that it will
be sufficient to ^{request} ~~order~~, as
a measure of last minute
convenience & arrangement,
that the magistrate at-
present presiding over the
Court viz. Mr. W. T. Main
proceed when the habeas
corpus is ~~granted~~ ^{granted} issue
a warrant in a separate
form, prepared in conformity
with the law of procedure
his observance of which
has been so far neglected
in consequence, as it would

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been of the transcript in further view
of the Court's order of the 18th of October.
We will be a more precise statement
of the steps in the Court's order the
admission of a defendant's name ~~to the~~
in view of a more precise statement
of the Court's order.
The Court in our first record, the sentence
of the sentence and the Court's order that
in a separate sentence shall be entered
in our records of the Court's order
in view of a more precise statement
of the Court's order.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
Letter from the Inspector
General of Sails.
(Here enter 14 December 1867, No. 45)

Eden Wilson Apr 18 of 7 Jan 1862

From the letter above recorded it appears, that in September 1852 a number of convicts escaped from the ship at Tellico. Twenty of these men who were recaptured were sentenced by the Joint Magistrate at Tellico under Section 224 of the Indian Penal Code to rigorous imprisonment for two years, for escaping from legal detention.

2. From the record of the case it does not appear that the Joint-Magistrate acted specifically, as required by section 48 of the Code of Criminal Procedure,

that this sentence should be carried into effect immediately or at the expiration of the imprisonment to which these prisoners had previously been sentenced. Further the Joint Magistrate who was also in charge of the Jail failed to issue any warrants to the Jailor on account of the sentence on the charge of escaping from custody.

3. The Superintendent of the Vellore Central and District Jail has now raised the question whether under these circumstances he can legally detain in custody these prisoners, whose original sentences are about to expire, for the unexpired period of imprisonment to which they were sentenced by the Joint Magistrate under Section 224 of the Indian Penal Code.

4. The Government see no reason for questioning the

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the legality of requiring these convicts to undergo the imprisonment awarded to them by the Joint Magistrate.
5. The present Acting Joint Magistrate is directed to issue the separate warrants in the form required by the Code of Criminal Procedure in conformity with the sentence passed by the Joint Magistrate in 1862, as recorded in the Criminal Case No 93 of that year on the file of the Joint Magistrate Court at Vellore.

M. D.

The Joint General of Police,
Magistrate of North Arcot } despatch
Joint Magistrate — do }

Ind. 1868. Department.

No. 18.

PROCEEDINGS OF GOVERNMENT.

Sept 651/74

Dated 7th November 1868

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