

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1274

Dated 15th June 1895

INDEXED.

[Despatch Abstract.]

CONVICTS.

Ordering the release of convict No. 380, Kutti alias Karuppan, 3rd accused in Coimbatore Sessions case No. 20 of 1894 and considering it unnecessary to re-arrest the wrongfully released convict No. 377, Katti alias Karuppan, 4th accused in the same case

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	3098		14/12/94				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	3358		95				

JUDICIAL. *septe*
JAIL (1895) DEPARTMENT.

Sp. 3098: 12.12.94
Sp. 2771: 15.11.94

CURRENT NO. *2109*
From

THE INSPECTOR-GENERAL OF PRISONS,
Madras,

To

THE CHIEF SECRETARY TO GOVERNMENT,

Dated *25*
Despatched
Received *26*
28/11
No. *2108*
April 1895.

ENCLOSURES. *3*

Subject.

Submitting a statement of a case of wrongful release at the Coimbatore Central Jail of a prisoner who was mistaken for another of the same name and requesting that steps be taken for the re-arrest of the former and the release of the latter.

3rd Accused.

Nominal Roll of Convict No. 380

Name *Shuti alio Shanayuan*

Crime.	Sentence.	Date of Sentence.	Adjudicating Court.	Prison Age.	State of Health.	Conduct in Jail.	Result of appeal to High Court.	Remarks if any previous convictions and remarks
<i>Deceit see 395 J.P.C + see 75 J.P.C.</i>	<i>5 yrs R. Impr</i>	<i>13th March 1894</i>	<i>Sessions judge Coimbatore</i>	<i>29 years</i>	<i>Good</i>	<i>Good</i>	<i>Appeal dismissed</i>	<i>Previous convictions once</i>
								<i>Prisoner is undergoing imprisonment in jail</i>

Coimbatore Central Jail,

17th April

1895.

600 Copies 15-12-92.

Superintendent Central Jail.

Alpharadee

4th Accused

Nominal Roll of Convict No. 377

Name Katti alias Karuppan

Appeal dismissed
Previous convictions twice
Was released on 21st Dec 94
No of previous convictions if any
and remarks

Crime.	Sentence.	Date of Sentence.	Adjudicating Court.	Present Age.	State of Health.	Conduct in Jail.	Remarks
(1) Escaping Sec 224. I. P. C. (2) Vagrancy Sec 39.5. P. C + 75. I. P. C.	(1) 6 months R. Impr (2) 5 years R. Impr	(1) 8 th Feb 1894 (2) 13 March 1894	2 nd cl magistrate Avinashy Sess: Judge Coimbatore	26 years	Good	Good	Appeal dismissed Previous convictions twice Was released on 21 st Dec 94

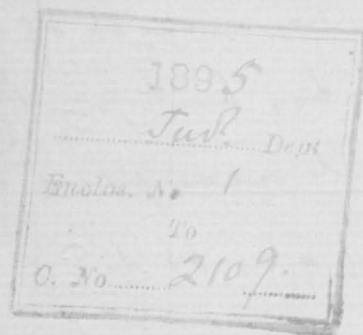
Coimbatore Central Jail,
17th April 1895.
600 Copies 15-12-92.

W. A. Allen
Superintendent Central Jail.

Nominal Roll of Convict No. 380
Katti alias Karuppan Coimbatore
Central Jail

1895
J. A. D. M.
Encl. No. 2
To
C. No. 2109

Nominal roll of Convict No. 377
Katti alias Karuppan Coimbatore
Central Jail.



CURRENT NO. 2109

No. 2103

OFFICE OF THE INSPECTOR-GENERAL OF PRISONS, MADRAS,

Dated Ootacamund the 25 April 1895.

From

A. G. CARDEW, Esq., M.A.,

INSPECTOR-GENERAL OF PRISONS,

MADRAS,

To

THE HONOURABLE MR. T. J. PRICE - C. S. J.

CHIEF SECRETARY TO GOVERNMENT,

SIR,

Under this office endorsement No. 6447 dt 24 October 94, a Petition was submitted to Government from the five marginally-noted Convicts* confined in the Coimbatore Central Jail. In Ld 14 December 94 No. 3098 the Government stated that it had referred the cases of these 5 Convicts to the Sessions Judge, Coimbatore, who had recommended a remission of sentence of three of these convicts, but not of the other two. The Government accepted this opinion and proceeded to pass orders accordingly.

2. The Sessions Judge of Coimbatore recommended the release of 3rd accused. Aravashi 3rd accused. Kutti alias Karuppan, and 5th accused. Ayyakutti and stated that there was not sufficient ground

8277 15.4.94

3 Enclosures.

* Aravachellan

Aravashi

Kutti alias Karuppan

Katti alias Karuppan

Ayyakutti -

granted to justify the release of
1st accused Arunachellan and
4th accused Katti alias Karuppan.

The Government in passing orders did not refer to the several prisoners by their number as accused before the Sessions Court, but by the Register Numbers given them in the Tail. and directed the release of

N. 378. Arunashi

N. 377. Kutti alias Karuppan

N. 376. Ayyakutti

and the retention in Tail of

N. 379. Arunachellan

N. 380. Katti alias Karuppan.

3. It appears that the Register Numbers thus quoted by Government were wrong. The mistake apparently arose through the carelessness of the Deputation Clerk of the Coimbatore Central Tail who has entered these Register Numbers against the names of the accused in the copy of the Sessions Court's Judgment which accompanied the Petition and which is herewith enclosed, and in so doing has transposed the numbers of the 3rd and 4th accused.

Whether the Nominal Rolls, which accompanied the Petition, were also wrong is not known, but probably the Government, in passing orders, was guided by the entries on the Judgment. The 3rd accused's correct number was 380 and that of the 4th accused 377. As the Government directed the release of N. 377, the 4th accused has, in consequence, been released, and the 3rd accused has been retained.

The same mistake
is repeated in the
nominal rolls.
2
1.5

but the nominal rolls
show one as Katti
& the other as Kutti
D
1.5.91

4. In the Sessions Court's Judgment the 3rd accused's name is printed Kutti alias Karuppan, while that of the 4th accused is printed Katti alias Karuppan. The letter "d" in the first name of the 4th accused appears to be merely a misprint, as no such name as Katti seems to exist in Tamil, and in the Tail Registers both Convicts have been entered as Kutti alias Karuppan.

5. The Assistant Tailor, 3rd Grade, is very much to blame for his carelessness in transposing the Register Numbers of the 3rd and 4th accused on the copy of the Judgment. This officer was, however, greatly overworked during the latter part of 1894 through the large amount of work which devolved upon him in preparing the very numerous petitions to Government which had at that time to be submitted from the Tail, and he has generally done his work well. The mistake in this matter, which has misled the Government, is very much regretted.

6. Steps should now be taken to release Convict 380 and to re-arrest Convict N. 377; but before this can be done it seems necessary that an erratum should be issued by Government to G.O. 14 December 1894 N. 3098, directing that the Register Number of the 3rd accused Kutti alias Karuppan

Karuppan shall be read as 380. and that
of the 4th accused Katti alias Karuppan as
377. Nominal Rolls of the 3rd and 4th
accused are enclosed.

I have the honour to be,
Sir,
Your most obedient servant

A. G. Cardew
Inspector General of Prisons.

[G.]
25.
600-8-3-95.

DEPARTMENT.

C. No. 2109 of 25.4.95
from the J. of Prison.

FOR ORDERS.

The origin of this mistake
lies in the jail custom of num-
bering the convicts otherwise
than in the order in which they
stood in the dock & are dealt
with in the judgment. This custom
has now been put a stop to, but
how any custom so extraordinarily
stupid arose, I can't imagine.

The jail clerk (who should be
suitably dealt with by the J.)
seems not to be the only person
who has blundered in this matter.
In the first place, the J. thought he
saw there is no Katti repeats the
name in the nominal roll now
sent up, and there are the errors
pointed out in the note as to
the previous convictions of the
2nd & 4th P. In the next place,
the J.O. 3098 clearly shows that
it was the 2nd, 3rd & 5th P. who
were to be released. - True the
jail numbers ~~below~~ afterwards
given were those of the 2nd, 4th & 5th
P. ~~But why~~ But why did the jail
Supt. to whom the order went,
detect the error of his clerk?
What is his explanation?

GN
25/9/95 not?

In G.O. of 14.12.94 No. 3098, Govt.
directed the release of three convicts
sentenced to 5 years rigorous imprison-
ment in a Coimbatore Sessions Case.
There were five persons convicted in the
case & their names were entered as
follows in the judgment.

1. Arunachellan
2. Arunachi
3. Katti alias Karuppan
4. Katti alias Karuppan
5. Arakatti.

A joint petition was
received from all five
only G.O. 2771 & this was acco-
rded 15.11.94

By five nominal rolls under no thought
of the Supt of the Central J. there
petition purports to come from 25 - more
"344 Katti alias Karuppan" alias
Katti alias Karuppan" & the

tree; it does not state which the number
each accused in the Sessions Case. The
nominal rolls refer to "

377 Katti alias Karappan

380 Katti alias Karappan

There is nothing to distinguish the
two men as third & fourth accused in
the Sessions Case, except the entry
in col. the last column of the nominal
roll which shows one previous
conviction against "377 Katti alias
Karappan" & two previous convictions
against "380 Katti alias Karappan";
~~from~~ this entry corresponds with
the judges sentence which ^{mentions} ~~assigns~~
one previous conviction against the
third accused & two against the fourth
accused. — So far as these records
go, the natural conclusion was that
"377 Katti alias Karappan" was the
third accused.

2. In P.O. of 15.11.94 No 2771, M.D. Wier
was asked his opinion as to the release
of; his reply, P.O. of 14.12.94
which does not refer to the
name recommended the
the "2nd 3rd & 5th accused"
accepted this opinion & the
lies, presumably in order to
chance of a mistake between

Unauthorized release of
a convict

H.M.

FOR ORDERS.

the spelling of their names,
"Katti & Katti"

[G.]
[25.]
600-8-3-95.

DEPARTMENT.

C. No.

FOR ORDERS.

the 3rd & 5th accused, directed the release

of
"2 Ananachi
3. Katti alias Karappan
5 Ayakatti."

The order drafted from this, in order
still further to minimize the chance
of a mistake first refers to the Sessions
Judge as assigning adequate reasons
"for a remission of the sentences passed
upon 2 Ananachi 3 Katti ^{alias Karappan} & 5
Ayakatti" & then goes on to sanction
the release of convicts "378 Ananachi
377 Katti alias Karappan & 376 Ayak-
katti". — These were the numbers
mentioned in the nominal rolls; & as I
have shown above there was nothing to
lead any one to suspect that there
was a mistake in the numbers — more
especially as these same numbers were
entered by a jail clerk against the

names of the accused at the beginning of the judgment which accompanied their ^{papers}.
3. Mr. Cardew now reports however that the number of the 3rd accused was really 380 not 377, & that of the 4th accused 377 not 380, (b) that there is no such name as "Katti" in Tamil & that both men were named "Katti" & entered in the jail registers. As a consequence of these two circumstances, the wrong man - fourth accused - has been released, & the right man is still in jail. -

Mr. Cardew submits corrected nominal rolls now; they differ from those previously submitted not only as regards the convicts number, but also as regards the number of previous convictions: there were thus two mistakes in the original nominal rolls. Moreover in spite of the statement that both men were entered in the jail registers as "Katti alias Kureppan", both sets of nominal rolls show one man as Katti & the other as Katti.

4. The punishment of the jail clerk concerned may presumably be left to Mr. Cardew. Orders are now solicited as to whether the fourth accused should be re-arrested. The

FOR ORDERS.

* There is also an omission in col. 3 of the corrected nominal roll of the 4th accused, noted in pencil

[G.]
[25.]
600-8-3-95.

DEPARTMENT.

C. No.

FOR ORDERS.

immediate release of the third accused must of course be directed; this can either be done by an erratum to G.O. D. 14. 12. 54 - or by a separate order, but should be done without delay - as but for a mistake the man would have been released over four months ago. It is for this reason that the paper is marked "urgent".

As regards the fourth accused, I imagine there is no legal objection to his re-arrest; it is true, probably, that Govt. cannot revise its orders directing remission of sentence, but in this case it may fairly be held that the order was not carried out by the jail superintendent, & that a ^{more} mistake in a nominal roll cannot alter the clear sense of the Govt. order.

It is to be considered however whether

I don't really know whether this man can be re-arrested & committed to jail again - Ask the Ad. Genl. - It will be useful to know for future guidance, even if we don't have the man re-arrested - But I don't know the A.G. with all these papers, but simply with the question of the wrong man of two of the same name having been released because of a mistake in their numbers. The fact that they were committed in the same case is, of course, of no importance. W

it would not be cruel to unarrest ~~the~~
 a man whose release has been
 sanctioned for over four months. He
 had undergone 10½ months imprison-
 ment but 6 months of this related to
 a sentence imposed upon him by the
 sab-maj of Ananashi for escaping from
 lawful custody. - The Sessions Judge (H. B. J.),
 in the last para of his opinion (S.O. of
 14-12-94 No. 3098) wrote "As
 regards the 4th accused's case, I
 feel some difficulty, but, on the
 whole, I scarcely consider it my
 duty to recommend his release."

D
 1-5-95

As the matter is urgent I have
 telegraphed to the Superintendent to
 release the man wrongly detained
 in confinement. The question
 of the re-arrest of the man
 who was released by mistake
 is for orders.

170
 1/5/95

Telegram sent to Supt. Central Jail
 Comptroller
 202447
 Release immediately (Kutti alias
 Karappa) two accused in Comptroller
 Sessions Case Twenty of 1894.
 (Per C. S. order)

Release of a Convict



H.M.

Note for C.S.

Marked "urgent" for the reason
 given on p. 3 of the note (vide
 blue pencil).

Perhaps C.S. will himself authorize
 the immediate issue of a direction
 to release the 3rd accused; - then will
 then be no need to mark the paper
 urgent.

D
 1-6-95

C.S. has now telegraphed directing
 his release.

1-5-95

2/5
 R. 9/5

[G.]
 600-8395

DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated 189 , No.
 Again G.O., dated 189 , No.
 Current No. of 189 , dated from

Current No. of 189 , dated from

ORDER.

Refce only 1028. 7/19. 5-95

The Advocate General ~~will be~~ is requested
 to favour Govt with at an early
 date with his opinion on the following
 case.

A+B.

Case. Two convicts, bearing the
 same name, petition to Govt for
 remission of the sentence passed upon
 them. Their petitions are accompanied
 by nominal rolls prepared in the
 jail in which they are confined & by
 a mistake on the part of a jail subordinate
 A's number is assigned to B & vice
 versa. The Govt decides to release
 A, & to leave B in prison & the order
 with a view to making matters clear
 quotes the name & says jail number
 of A+B. - The mistake in the
 nominal rolls result in the release
 of B instead of A, & it is not noted

as given in the nominal rolls

some months later that the ^{error} mistake is discovered.

Can B be recalled & compelled to undergo the unexpired portion of his sentence & if so, under what provision of the law can this be done, & what procedure must be adopted?

7/5/95 (fr. 2)
4.5.55

In Govt. Secy. 13/5

Ref. to J.P. of Prison

The J.P. of Prison is requested to state how the error is committed

Note for Cs.

On second thoughts I think it is better to refer calling on the J.P. for explanation until the adv. Genl's opinion is received & a full order can issue.

11/5/95

H/G

Please copy at Madras & send up for issue.

12/5
9/12

11/5

Ref. to Advocate Genl.

Cs.
from order.

Refer only

CURRENT NO. 2565.
Judicial (1895) Department

From Ernest Barclay
Government Solicitor
Madras

To The Chief Secretary to
Government
Cotacaimund.

22 MAY 1895
GOVERNMENT OF MADRAS
No 301

Dated 21st May 1895
Recd 22nd }
Rys 23rd } do.
Enc. "

Forwarded with reference to the Memorandum of Government dated 13 May 1895. No 1028. Judicial

Ernest Barclay
Government Solicitor

Ref. No. 1028: 13-5-95. + 1028: 13-5-95

Relieve for Counsel
H.C. the Governor
for orders

Subj. with reference to H. this remarks on the note and for orders under cover of reference of 13 May 95, No 1028. — For orders as to whether application should be made [to the Sessions Court] for the issue of a warrant of arrest against the fourth accused, or his release should be approved in view of the facts that he has been at liberty for five months & that the Sessions Judge had doubts as to his guilt. When this point is decided, the mistakes committed in the J.P.'s office will be pointed out to the J.P. 25-5-95 28/5/95

I don't think it worth while to get the man re-arrested
29/5/95

I agree
25/6 and I
11 JUN 1895
GOVERNMENT OF MADRAS

6/6 5/10/96
R 30/5 12/10/96 12/10/96

Opinion

1. I am not aware of any special provision of law by which B. can be arrested and compelled to undergo the unexpired portion of his sentence; nor am I aware of any judicial decision upon the point. In the absence of authority, I think such arrest would be justified on the ground that the sentence must be carried out unless it is suspended, remitted or commuted by competent authority. It was not remitted by Government, for remission obviously involves the intention to remit. In the present case the intention not to remit was expressed, and B. cannot take advantage of the mistake caused by the error in the nominal roll.

2. If Government think that it is worth while to have B. arrested, the only course seems to be to apply for a warrant, for the provisions of paragraph three of Section 401 of the Criminal Procedure Code are not applicable to such a case as the present.

(Signed) J. H. Spring Branson
Advocate General

Colacannund }
18th May 1895 }

(True Copy)

Wm. Barclay

Government Solicitor

Again G.O., dated

189 , No.

Again G.O., dated

189 , No.

Current No.

of 189 , dated from

Current No. 2109 of 1895, dated 25 April from the J. F. of Prison
Govt. Telegram of 1-5-95 to the Supdt. Central Jail Coimbatore
C No 2565 — 95 of 21 May for Rmt. etc.

ORDER.

d/ 15th June 1895 No. 1274

The release of convict No. 380 Katti
alias Karappa had occurred in
Coimbatore Sessions Case no. 20 of
1894 has already been directed in
the telegram read above, & it ^{now} remains
to consider whether steps should be
taken to re-arrest convict no. 377 Katti
alias Karappa fourth accused in the
same case. The Sessions Judge who
heard the case when consulted by Govt.
remarked "As regards the fourth
"accused's case I feel some difficulty
"but on the whole I scarcely consider
"it my duty to recommend his release".
There was thus some doubt as to the
guilt of this convict; he has now been
at liberty for some months - under the
impression that his sentence has been
remitted & the Govt. ^{is of opinion} ~~remitted~~ ^{considering} that under
the circumstances it would be inadvisable

to order his arrest.
 2. The origin of the ^{error} mistake which led to the release of the wrong man is to be found in the jail custom of numbering the convicts otherwise than in the order in which they stood in the dock & were referred to in the judgment. The jail clerk, who is mainly responsible, should be suitably dealt with by the Inspector-General.

3. It is observed, however, that G.O. of 14-12-94 No. 3048 quotes the Sessions Judge's opinion that there was "not sufficient ground to justify the release of 1. Brannachellan and 4. Katti alias Karaffan" & states that he assigned reasons "for a remission of the sentence passed upon 2. Brannachi 3. Katti alias Karaffan & 5. Appakatti" — the mention of numbers should have been sufficient to show clearly that it was the third accused (i.e. 3. Katti alias Karaffan) who was to be released & not the fourth, & the Supt. of the Coimbatore Central Jail should by this means, as it appears to Govt. have been able to detect the ^{clerk's} mistake.

4. The nominal rolls received with the convicts' petitions repeat the mistake as to the numbers, Katti alias Karaffan Katti

Command to S. J. of Prison

This explanation shld. now be submitted to Govt.

[G. 21.]
 671-8395.

DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated 189 , No.
 Again G.O., dated 189 , No.
 Current No. of 189 , dated from

Current No. of 189 , dated from

ORDER.

being assigned the number 377 & credited with ^{one} previous conviction while Katti alias Karaffan is numbered 380 & ^{two} previous convictions ^{are} shown against him. The nominal rolls then contained nothing to enable the Govt. to detect the ^{error} mistake in the numbers entered in the copy of the judgment submitted.

Mr. Cardew remarks that both men were entered in the jail registers as Katti alias Karaffan but it is observed that the revised nominal rolls which he now submits describe one as Katti and the other as Katti (Jag order)

Copy 12.6.95
 13/6/95
 The S.S. Prison with just. attached
 Q+O.

21 JUN 96
 IN M.S.

Release of
Amnest

Cs
mis
promised

200.5

When given for copying _____
When copied _____
When examined _____
When signed _____

189

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTERS OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
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