

Judicial (1895) Department.

ORDINARY PRINTED.

G.O., No 1991

Dated 24th Sept. 1895

INDEXED.

[Despatch Abstract.]

CONCURRENT SENTENCES.

Communicating to the Inspector General of Prisons, for information and guidance, the Advocate-General's opinion regarding the date from which the second sentence should take effect if the first of two convictions is quashed on appeal.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Govt. of {1895} Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., No. 1991, 24th Sept. 1895.

SEPTEMBER.

Concurrent Sentences.

Communicating to the Inspector-General of Prisons for information and guidance the Advocate-General's opinion regarding the date from which the second sentence should take effect if the first of two convictions is quashed on appeal.

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

READ—the following papers :—

From A. G. CARDEW, Esq., M.A., Inspector-General of Prisons, Madras, to the Chief Secretary to Government, dated Ootacamund, the 30th August 1895, No. 5266.

The Superintendent of the Central Jail, Trichingopoly, has submitted for orders the case of convict, No. 5142, Karumeni Tevan, whose nominal roll is enclosed. This man was sentenced to seven years' rigorous imprisonment on the 6th March 1895 for rape and to six months' rigorous imprisonment on the 25th March 1895 for escape from lawful custody. The first sentence was quashed by the High Court on appeal and the Superintendent enquires from what date the second and now only subsisting sentence takes effect.

2. It appears to me to be evident that the second sentence takes effect from the 25th March 1895. It cannot take effect from the 6th March, because it was not then in existence, nor can its operation be postponed until the date of the High Court's order quashing the first sentence, because by that order that sentence has become void *ab initio*, and the second and only subsisting sentence must, therefore, under general principles take effect from the date on which it was passed.

3. I should have informed the Superintendent accordingly and should not have troubled the Government with this reference if it had not been that a view opposite to mine was put forward in my predecessor's letter, No. 120, dated 8th April 1891, and was apparently accepted by Government in G.O., No. 836, dated 30th April 1891. Colonel MacDonald Smith relied on paragraph 4 (a) of the Advocate-General's opinion recorded in G.O., No. 1563, dated 9th September 1889. The remarks of the Advocate-General in that paragraph and in paragraph 4 (b) are certainly not free from doubt, but they do not appear to me necessarily to bear the meaning placed on them by Colonel Smith, and if they do bear that meaning, I would submit that they are wrong.

4. The simplest case in which the point at issue appears is that of a man sentenced at the same trial to two sentences of six months each, one upon a charge of house-breaking, the other upon a charge of theft. Under G.O., No. 938, dated 18th May 1892, it is now settled that these sentences must take effect consecutively. The prisoner undergoes six months' imprisonment on the first sentence, and upon the day on which he completes it an order is received from the Appellate Court quashing the first sentence but confirming the second. If the view put forward by Colonel Smith were correct, the prisoner would then be imprisoned for the full second period of six months. It is evident that this course would be highly inequitable, for it would cause the prisoner to undergo twelve months' imprisonment when he was sentenced only to six months. It would also entirely nullify the effect of the Appellate Court's order. And in the third place it would, it appears to me, be plainly illegal, because so soon as the first sentence is quashed, there is nothing to prevent the second sentence taking effect as though there had never been a first sentence, *i.e.*, from the date on which it was passed.

5. The confusion embodied in the correspondence recorded in G.O., No. 836, dated 30th April 1891, arises from the ambiguity of paragraph 4 (a) and (b) of the Advocate-General's opinion recorded in G.O., No. 1563, dated 9th September 1889.

The words "immediately takes effect" in line 2, paragraph 4 (b), may be read to mean either "immediately from the date on which the first sentence is quashed" or "immediately takes effect from the date on which the second sentence was passed." The first is the more natural meaning of the words, but if that was the Advocate-General's meaning, I beg to submit that he should be asked to reconsider it. But I do not think that the Advocate-General can have meant that the effect of a first sentence can subsist after it is quashed, so as to prevent a second sentence from coming into operation until the order reversing the first sentence is passed. Such a view would not only result in grave injustice to prisoners, but seems to be in contradiction with the views expressed by the Advocate-General himself in paragraph 2 of the same opinion.

From the Government Solicitor, dated 17th September 1895, No. 516.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 17th September 1895:—

OPINION.

The opinion expressed by the Inspector-General of Prisons in paragraph 2 of his letter, No. 5266, dated the 30th August 1895, is correct. The second sentence takes effect from the 25th March 1895.

2. On the 27th April 1892, I admitted that the opinion I had expressed on the 22nd August 1889 regarding "concurrent sentences" was erroneous.

3. In that opinion I used the phrase "immediately takes effect", not "immediately begins to take effect." In paragraph 4 (b), I pointed out that where one of several sentences, which take effect consecutively, is annulled, the next in order of sequence immediately takes effect, and I had already stated that imprisonment begins from the date of the sentence. If the first of two convictions is quashed, the second sentence is the only one in force, and it necessarily takes effect from the date on which it was passed.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

ORDER—No. 1991, Judicial, dated 24th September 1895.

The Advocate-General's opinion will be communicated to the Inspector-General of Prisons for information and guidance.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the Inspector-General of Prisons.

Erd. A. Baith.

No. 5266

OFFICE OF THE INSPECTOR-GENERAL OF PRISONS, MADRAS,

Dated *Ootacamund*, the 30th August 1895.

From

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

INSPECTOR-GENERAL OF PRISONS,

MADRAS,

To

THE HONOURABLE MR. J. F. PRICE C.S.I.

CHIEF SECRETARY TO GOVERNMENT,

SIR,

/ Enclosure.

Trichinopoly
The Superintendent of the Central Jail, has submitted for orders the case of Convict N^o 5142 — Karumini Tavan, whose Nominal Roll is enclosed. This man was sentenced to 7 years' rigorous imprisonment on the 6th March 1895 for rape and to 6 months rigorous imprisonment on the 25th March 1895 for escape from lawful custody. The first sentence was quashed by the High Court on appeal and the Superintendent enquires from what date the second and now only subsisting sentence takes effect.

2. It appears ^{to me} to be evident that the second sentence takes effect from the 25th March 1895. It cannot take effect from the 6th March, because it was not then in existence, nor can its operation be postponed until the date of the High Court's order quashing the first sentence, because by that order that sentence has become void *ab initio*, and the second and only subsisting sentence must, therefore, under general principles take effect from the date on which it was passed.

3. I should have informed the Superintendent accordingly and should not have troubled the Government with this reference, if it had not been that

that a view opposite to mine was put forward in my predecessor's Letter N^o 120 dated 8th April 1891 and was apparently accepted by Government in G.O. 30th April 1891, N^o 836. Col. MacDonald Smith relied on para 4(a) of the Advocate General's opinion recorded in G.O. 9th September 1889, N^o 1563. The remarks of the Advocate General in that para and in para 4(b) are certainly not free from doubt, but they do not appear to me necessarily to bear the meaning placed on them by Col. Smith and if they do bear that meaning, I would submit that they are wrong.

4. The simplest case in which the point at issue appears is that of a man sentenced at the same trial to two sentences of 6 months each, one upon a charge of house breaking, the other upon a charge of theft. Under G.O. 18th May 1892, N^o 938 it is now settled that these sentences must take effect consecutively. The prisoner undergoes 6 months' imprisonment on the first sentence, and upon the day on which he completes it, an order is received from the Appellate Court, quashing the first sentence but confirming the second. If the view put forward by Col. Smith were correct, the prisoner would then be imprisoned for the full second period of six months. It is evident that this course would be highly inequitable, for it would cause the prisoner to undergo 12 months' imprisonment when he was sentenced only to 6 months. It would also entirely multiply the effect of the Appellate Court's order. And in the 3rd place it would, it appears to me, be plainly illegal, because so soon as the first sentence is quashed, there is nothing to prevent the second sentence taking effect as though there had never been a first sentence, i.e. from the date on which it was passed.

5. The confusion embodied in the correspondence recorded in G.O. 30th April 1891, N^o 836, arises from the ambiguity of para 4(a) and (b) of the Advocate General's opinion recorded in G.O. 9th September 1889, N^o 1563.

He changed his
mind
G.O. 938
1889-92
B

The words "immediately takes effect" in line 2 para 4(a) may be read to mean either "immediately from the date on which the first sentence is quashed" or "immediately takes effect from the date on which the second sentence was passed." The first is the more natural meaning of the words, but if that ^{was} the Advocate General's meaning I beg to submit that he should be asked to reconsider it. But I do not think that the Advocate General can have meant that the effect of a first sentence can subsist after it is quashed, so as to prevent a second sentence from coming into operation until the order reversing the first sentence is passed. Such a view would not only result in grave injustice to prisoners, but seems to be in contradiction with the views expressed by the Advocate General himself in para 2 of the same opinion.

I have the honour to be

Sir

Your Most obed^t Servant.

Ry Cardew

Insp^r Genl of Prisons

jud

4177

JUDICIAL.

JAIL (1895) DEPARTMENT.

From

THE INSPECTOR-GENERAL OF PRISONS,
Madras,

To

THE CHIEF SECRETARY TO GOVERNMENT,



Dated 30th August 1895.
Despatched
Received 31st

Page 29

No. 5266.

ENCLOSURES.

Subject.

Submits the case of convict N^o 5142 Kammuni Tevan who was sentenced to 7 years and 6 months rigorous imprisonment on the 6th and 26th March respectively and whose first sentence was quashed on appeal and begs to be informed from what date the second and only subsisting sentence is to take effect.

To await the receipt of S.O. 1304-51. 20836 from Madras.

3/9/95
initials
dispatched
21/9
9/9

938 d 18.5.92 sec.
836 d 20.4.91 in (later)
1563 d 7.9.89 sec.

Enclosure N^o 2135

Referred to the Advocate-General for opinion of remarks

11/9/95 (By order)

Colonel Davidson
H. Under Secretary.

Cotacamund
11th Sept 1895
9/9/95
To the Secy. Secy.

with copy of S.O. 1304-51, no 1843



CURRENT No. 4448
jud (1895) Department

From

Ernest Barclay
Government Collector
Madras

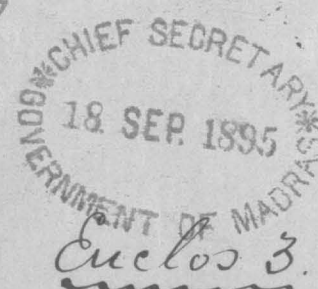
To
The Chief Secretary
to Government
Cotacamund

N^o 516

Dated 17 September 1895

Recd 18th
Reg 19th

C. 4177 +
Encls. 3



Forwarded with enclosure with reference to the Order of Government dated 11th September 1895 N^o 2138 Judicial.

Ernest Barclay
Government Collector

Refer 2138/95
d paper

(nos 4177 + 4448)

under 824th September 1895, no 1991.

The Advocate-General's opinion will be sent to the S. Secy of Prison for information & guidance.

24-9-95
24/9/95

24/9/95 305C
To the S. Secy of Prison (no 4177-4448)

24/9
3
in file

From the Post Selection, Madras

8-17-9-95 N^o 516

Abstract forwarded the following opinion of the Ad^l 8/17-9-95

48

Opinion

1. The opinion expressed by the Inspector General of Prisons in paragraph 2 of his letter, N^o. 5266, dated the 30th August 1895 is correct. The second sentence takes effect from the 25th March 1895.

* See S.O. of 18 May
92, No 938

2. On the 27th April 1892, I admitted that the opinion I had expressed on the 22nd August 1889 regarding on "Concurrent Sentences" was erroneous.

3. In that opinion I used the phrase "immediately takes effect" not "immediately begins to take effect". In para 4 (b) I pointed out that where one of several sentences, which take effect consecutively, is annulled, the next in order of sequence immediately takes effect, and I had already stated that imprisonment begins from the date of the sentence. If the first of two convictions is quashed, the second sentence is the only one in force, and it necessarily takes effect from the date on which it was passed.

Madras
17th September 1895

J. H. Spring Branson
Advocate General.

(True Copy)

Ernest Davies

Government Solicitor

First copy sent to Press.

Returned for signature.

Despatched in print.

NUMBER OF COPIES
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Order complete with Letter.

READ AGAIN G O. No.
189

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILLED UP, BEING WANT FOR DESPATCH
IN ORIGINAL.

N.B. -

A = Print in full.
B = Not to be printed.
T = Print abstract only.
Q = Print heading only.