

Judicial (1895) Department.

ORDINARY PRINTED.

G.O., No. 2244

DATED 5th Nov: 1895

INDEXED.

[Despatch Abstract.]

SEARCH WARRANTS.

Communicating to the Inspector General of Police, the opinion of the Advocate General that the law does not authorize the removal of an under-trial prisoner from a sub-jail in view to secure his presence at a search in which he is interested.

BACK PAPERS.

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

FURTHER PAPERS.

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

Gobt. of {1895} Madras.

JUDICIAL.



2244

5 Nov 1895

Issued

Recd.

Encl.

G.O., No. 2244, 5th Nov. 1895.

NOVEMBER.

Search Warrants.

Communicating to the Inspector-General of Police the opinion of the Advocate-General that the law does not authorise the removal of an under-trial prisoner from a sub-jail in view to secure his presence at a search in which he is interested.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following paper:—

G.O. No. 1070-R, Judicial, dated 30th September 1895.

Read—the following letter from M. HAMMICK, Esq., I.C.S., Inspector-General of Police, to the Chief Secretary to Government, dated Calicut, 16th September 1895, No. 4937.

I have the honour to report that more than once since I have been in charge of the Police Department I have had cases brought before me where Sub-Magistrates acting under G.O., No. 256, Judicial, dated 7th February 1895, have refused to allow the Police to take a prisoner from a sub-jail to be present at a search in which the prisoner is interested. I have the honour to request that, if possible, the Government may make it clear that the order referred to does not apply to such cases.

2. I enclose a Sessions Court judgment from Malabar in which the Sessions Judge remarked: "But as this search was made six days after the men had been arrested and as he was in custody at the time and was not present at the search either in person or by proxy the finding of the things in his house is no evidence against him and is therefore inadmissible also" (paragraph 6 of judgment in Calendar Case No. 25 of 1895, South Malabar). The Superintendent of Police reports that the Sub-Magistrate in the case refused to allow the Police to search the houses of the prisoners 4 and 5 in their presence declining to allow the prisoners to be removed from the jail to be present at the search. The Sub-Magistrate remarked that if the property was found when the prisoners were not present the case against them would be stronger. The Sessions Judge took exactly the opposite view.

3. I had a similar case reported by the Railway Inspector, South Indian Railway, short time ago, where a prisoner in custody (I think in Tanjore) gave information about certain concealed property in Cuddalore and the Police were not allowed to take the prisoner to Cuddalore to point out the place where he had hidden the property.

4. Section 103, Code of Criminal Procedure, lays down that the occupant of the place searched, or some person in his behalf shall, in every case, be permitted to attend during a search and if Sub-Magistrates decline to allow a prisoner to be removed from a sub-jail to be present at a search, this provision of the law is defeated.

5. It constantly happens that a man is arrested and subsequently gives information about property which he has concealed and it will be very inconvenient if the Police in such cases are not allowed to take him to the spot to point out the place of concealment. Very often, unless the man himself goes with the Police, it is impossible to discover the spot, and in any case unless he is present there is the danger of the Judge declining to listen to the evidence regarding the search.

6. I should be glad of the orders of Government on the matter.

7. I enclose a copy of the judgment in Calendar Case No. 25 of 1895, Sessions Court, South Malabar, and request that it may be returned when no longer required.

ORDER—No. 1070 R., Judicial, dated 30th September 1895.

Referred to the Advocate-General for favour of opinion as to whether there is any legal objection to permitting the police to remove an under-trial prisoner from a sub-jail in view to secure his presence at a search in which he is interested.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the Government Solicitor.

READ—also the following papers:—

From the Government Solicitor, Madras, dated 19th October 1895, No. 604.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 19th October 1895:—

[Re order of Government, R. No. 1070, Judicial Department, dated 30th September 1895.]

OPINION.

There is no provision of law which authorises the removal of an under-trial prisoner from a sub-jail in view to secure his presence at a search in which he is interested. When it was found "expedient to provide facilities for obtaining the evidence and appearance in court of prisoners and for service of process upon them" the Prisoners Testimony Act, XV of 1869, had to be passed empowering the courts to make an order to the officer in charge of the jail for the production of a prisoner confined therein for the purpose mentioned in the order. No similar legislative enactment empowers any court to order the removal of a prisoner from a sub-jail in order to secure his presence at a search.

2. I may point out that the Code of Criminal Procedure, section 103, does not require the presence of a prisoner or of the person accused, but permits the attendance of "the occupant of the place searched." A prisoner in a sub-jail can hardly be called the occupant of the place in which he resided before his arrest, and the search is not confined to his place of residence, if any, before such arrest. If the Legislature had intended every search to be carried out in the presence of the person accused of the crime, in connection with which the search is made, they would have said so.

MADRAS,
19th October 1895.

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

ORDER—No. 2244, Judicial, dated 5th November 1895.

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

(True Extract.)

Chief Secretary.

To the Inspector-General of Police,
with judgment returned,
" the Commissioner of Police.
" all District Magistrates.
" the Chief Presidency Magistrate.
" the Inspector-General of Prisons.

Exd. C. M. Brisson.

CURRENT No 4947

Ind (1895) Department
From Ernest Barclay
Government Solicitor
Madras

To
The Chief Secretary
to Government
Madras

No 604

Dated 19 October 1895
Received 20 " J
Recd 21 " J

Enclos No 4447
Forwarded with enclosure
with reference to the Order
of Government dated 30
September 1895. R No 1070
Judicial Department

for Ernest Barclay
Government Solicitor
Substantive Mr

Go to 1070 d 30-9-95 R
+ papers.

Read again 5.04 30. Sep 95. 20/10/95

A.P. X L No 4947 - A

ms 5 Nov 1895 No 2244
P.S.

The Advocate-General's opinion
will be commd to the durg.
Smt y Police for information
+ guidance.

D. x. 55

28/11/95

28/10/95.
To the Secy of P. & B.
with judgment returned
Comm. of P. & B.
all S. Magistrate 170
the Chief Secy. Magistrate
Secy of Prison 6

3.0 20
1070 d 30
20/10/95
— A
durg
20/11/95

24/11
24/11

Re Order of Government dated 30th September 1895, R, No.1070,
Judicial Department.

OPINION.

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2. I may point out that the Code of Criminal Procedure Section 103 does not require the presence of a prisoner or of the person accused but permits the attendance of "the occupant of the place searched". A prisoner in a sub-jail can hardly be called the occupant of the place in which he resided before his arrest, and the search is not confined to his place of residence, if any, before such arrest. If the Legislature had intended every search to be carried out in the presence of the person accused of the crime in connection with which the search is made, they would have said so.

J. H. Spring Branson

Advocate General.

Madras

19th Octr 1895.

(True Copy)

W
From the Joint Solicitor
of 19.10.95 N^o 604
Government Solicitor.
Luthalau M

Abstract forwarded to the
of the Adv. G. 8/19/10/95

Just 46-2244 d/5 Nov 95

Dated 20/11/95

The Collectors of
The District Magistrates of

Anantapur.	8
North Arcot, Chittoor.	8
South Arcot, Cuddalore.	8
Bellary.	8
South Canara, Mangalore.	8
Chingleput, Saidapet.	8
Coimbatore.	8
Cuddapah.	8
Ganjam, Chatrapur.	8
Godavari, Cocanada.	8
Kistna, Masulipatam.	8
Kurnool.	8
Madras (when necessary).	
Madura.	8
Malabar, Calicut.	8/12
Nilgiris, Ootacamund.	8
Nellore.	8
Salem.	8
Tanjore.	8
Tinnevely.	8
Trichinopoly.	8
Vizagapatam.	8

No. 2244, JUDICIAL, 5TH NOVEMBER 1895.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following paper:—

G.O. No. 1070-R, Judicial, dated 30th September 1895.

ABSTRACT.—

READ—also the following papers:—

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I have the honour to report that more than once since I have been in charge of the Police Department I have had cases brought before me where Sub-Magistrates acting under G.O., No. 256, Judicial, dated 7th February 1895, have refused to allow the Police to take a prisoner from a sub-jail to be present at a search in which the prisoner is interested. I have the honour to request that, if possible, the Government may make it clear that the order referred to does not apply to such cases.

2. I enclose a Sessions Court judgment from Malabar in which the Sessions Judge remarked: "But as this search was made six days after the men had been arrested and as he was in custody at the time and was not present at the search either in person or by proxy the finding of the things in his house is no evidence against him and is therefore inadmissible also" (paragraph 6 of judgment in Calendar Case No. 25 of 1895, South Malabar). The Superintendent of Police reports that the Sub-Magistrate in the case refused to allow the Police to search the houses of the prisoners 4 and 5 in their presence declining to allow the prisoners to be removed from the jail to be present at the search. The Sub-Magistrate remarked that if the property was found when the prisoners were not present the case against them would be stronger. The Sessions Judge took exactly the opposite view.

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4. Section 103, Code of Criminal Procedure, lays down that the occupant of the place searched, or some person in his behalf shall, in every case, be permitted to attend during a search and if Sub-Magistrates decline to allow a prisoner to be removed from a sub-jail to be present at a search, this provision of the law is defeated.

5. It constantly happens that a man is arrested and subsequently gives information about property which he has concealed and it will be very inconvenient if the Police in such cases are not allowed to take him to the spot to point out the place of concealment. Very often, unless the man himself goes with the Police, it is impossible to discover the spot, and in any case unless he is present there is the danger of the Judge declining to listen to the evidence regarding the search.

6. I should be glad of the orders of Government on the matter.

7. I enclose a copy of the judgment in Calendar Case No. 25 of 1895, Sessions Court, South Malabar, and request that it may be returned when no longer required.

Sofnath (Printed 46-2244 d/30/9/95)
16 is the order on the above letter

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ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 19th October 1895:—

[R^e order of Government, R. No. 1070, Judicial Department, dated 30th September 1895.]

OPINION.

There is no provision of law which authorises the removal of an under-trial prisoner from a sub-jail in view to secure his presence at a search in which he is interested. When it was found "expedient to provide facilities for obtaining the evidence and appearance in court of prisoners and for service of process upon them" the Prisoners Testimony Act, XV of 1869, had to be passed empowering the courts to make an order to the officer in charge of the jail for the production of a prisoner confined therein for the purpose mentioned in the order. No similar legislative enactment empowers any court to order the removal of a prisoner from a sub-jail in order to secure his presence at a search.

2. I may point out that the Code of Criminal Procedure, section 103, does not require the presence of a prisoner or of the person accused, but permits the attendance of "the occupant of the place searched." A prisoner in a sub-jail can hardly be called the occupant of the place in which he resided before his arrest, and the search is not confined to his place of residence, if any, before such arrest. If the Legislature had intended every search to be carried out in the presence of the person accused of the crime, in connection with which the search is made, they would have said so.

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(Signed) J. H. SPRING-BRANSON,
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ORDER—No. 2244, Judicial, dated 5th November 1895.

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

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Exd. C. M. Brisson.

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First copy sent to Press.

Returned for signature.

Despatched in print.

READ AGAIN G.O. No.

139

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

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B = Not to be printed.

P = Print abstract only.

Q = Print heading only.

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Letter only.

Order complete with Letter.