

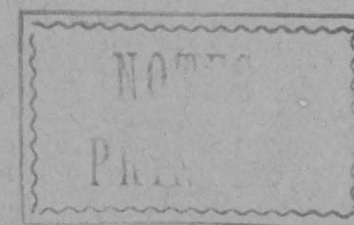
Government of Madras.

Judicial (1908) Department.

ORDINARY MS.

G.O., No. 256

DATED 7. 2. 1895



[Despatch Abstract.]

Stating that, if the Police have grounds for believing that an under-trial prisoner is an old offender, they can request the Jail authorities to send a warder or other Jail officer for his identification.

BACK PAPERS.

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

FURTHER PAPERS.

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

When given for copying _____
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190

Government of Madras.

JUDICIAL DEPARTMENT.

Recd.

Regd.

} 1895.

Enclosures

Spare copies

G.O., No. 256, 7th February 1895.

NP
 ORIGINAL.

Stating that, if the Police have grounds for believing that an under-trial prisoner is an old offender, they can request the Jail authorities to send a warder or other Jail officer for his identification.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper :—

Letter—from J. THOMSON, Esq., Acting District Magistrate, Tanjore.
To—the Chief Secretary to Government.
Dated—Vallam, the 10th December 1894.
No.—Ref. 1571-Magl.

The Superintendent of Police, Tanjore, brings to my notice that the Stationary Sub-Magistrate, Shiyali, refused to allow a prisoner named Govinda Pillai *alias* Chidambara Pillai, against whom an offence under section 380, Indian Penal Code, was established at his trial, to be taken out of the sub-jail to the Central Jails of Trichinopoly and Vellore to ascertain whether he had any previous conviction, and objects that unless this is done, the number of old offenders who escape prosecution as such will considerably increase. The Superintendent further states that the practice of taking round prisoners for the purpose obtains in districts he has served in, but is unable to quote any authority warranting the procedure.

2. In the case now reported the trial has been closed and the accused found guilty but sentence deferred by the Magistrate at the request of the Police. I am unable to find any provision of law or Jail or Police order governing the matter but consider that such applications for a remand when preferred by the Police and apparently well founded when regard is had to the facts of the particular case should be complied with and the purpose of identification specifically stated.

Order—No. 256, Judicial, dated 7th February 1895.

The Stationary Sub-Magistrate did right to refuse to allow the prisoner in question to be taken out of the subsidiary jail. There is no provision of law which authorizes the removal of an under-trial prisoner from one place of confinement to another for the purpose of procuring his identification, and the Government considers it most undesirable that such removal should be permitted. If the Police have grounds for believing that an under-trial prisoner is an old offender, they can request the Jail authorities to send a warder or other Jail officer to the place where the under-trial prisoner is confined, or they can move the Court to summon any person who is believed to be cognizant of the prisoner's prior conviction.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the District Magistrate of Tanjore.
„ all other District Magistrates.
„ the Chief Presidency Magistrate.
„ the Inspector-General of Police.
„ the Inspector-General of Prisons.
„ the Commissioner of Police, Madras

JUDICIAL DEPARTMENT.

NOTES CONNECTED WITH G.O., No. 256, JUDICIAL, DATED
7TH FEBRUARY 1895.

[SUBJECT.—*Transfer of under-trial prisoners.*]

From the District Magistrate, Tanjore, dated 10th December 1894, No. 6712.

For orders—

Remembering that some correspondence on a similar subject had taken place before, I sent this back to the office for papers. Instead of returning it at once with an intimation that the papers were not available, the office unfortunately detained it till they became available and hence the regrettable delay. The clerk concerned has been warned.

2. The authority for the transfer of prisoners is contained in section 30 of the Prisoners Act, 1871, as amended by Act VII of 1894. It will be seen that it gives to the Local Government and to the Inspector-General of Prisons subject to the orders of the Local Government the power to transfer from one jail to another—

- (i) prisoners under sentence of transportation or imprisonment;
- (ii) prisoners detained for failure to find security to keep the peace or to be of good behaviour.

There is no power to transfer *under-trial* prisoners given by the Act.

Nor does the Prisons Act, 1894, supply the defect, for section 60 (o) gives Government authority to frame rules for regulating the transfer of such prisoners only as are under a sentence which is about to expire.

3. In this connection attention is invited to paragraph 10 of Judicial letter, dated 22nd November 1890, No. 1867, and paragraph 2 (ii) of Judicial letter, dated 7th March 1893, No. 500. This Government therein urged that there ought to be some provision made enabling—

- (i) the police to bring forward, after a conviction, evidence that the convict is liable to enhanced punishment under section 75, Indian Penal Code, and (ii) the courts, on receipt of such evidence, to pass upon the convict an additional sentence under the said section.

4. As the law stands, convictions under section 75, Indian Penal Code, will continue to be comparatively rare until the Bertillon system of measurement is in full operation.

If, however, India accepts the suggestion made in 1890 and repeated (with modifications) in 1893, a great increase in the number of such convictions may be anticipated.

Given the successful development of the Bertillon system and the acceptance by India of the said suggestion, it is doubtful whether it will be necessary to amend section 30 of the Prisoners Act, 1871, so as to provide for the removal of under-trial prisoners from one jail to another for the purpose of identification. It seems more reasonable that the police should address the jail authorities, in such a case, in view to procuring the attendance of a warder, or other person likely to recognize the under-trial prisoner, at the place where he is

confined. This course would probably answer in most cases and the under-trial prisoner would not be exposed to the hardship of journeys to distant places in order that he may be identified. Besides, if the police see reason to suspect that a person is liable to punishment under section 75, Indian Penal Code, they can always move the court to summon any person for the purpose of identification.

5. Under these circumstances, it hardly appears advisable to move for the amendment of section 30 of the Prisoners Act; although it might, in certain cases, be useful if the Inspector-General of Prisons possessed power to transfer under-trials for purposes other than identification (*e.g.*, in the event of an epidemic).

If, however, it is considered that section 30 of the Prisoners Act should be amended so as to admit of the transfer of prisoners who are under-trial in view to their identification in other jails, then it will probably be necessary to confer the power to order such transfers on District Magistrates, as the Local Government and Inspector-General of Prisons are not in a position to decide whether such transfer is advisable.

A.B.—31-1-95.

Honourable Member—

I don't see any necessity for change in the law. I have always, when I wanted evidence as to the identity of a prisoner, summoned the person or persons to identify and not send the prisoner to him or them; this is the first time that I have heard of the course mentioned in this case.

J. F. PRICE—1-2-95.

I think it would be most objectionable to send a prisoner about from jail to jail to see if the warders can identify him. The Police can, if they like, get warders sent for the purpose or they can get the court to summon such persons.

H. B[Liss]—2-2-95.

No change in section 30 of the Prisoners Act of 1871 seems to be required.

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Government of Madras.

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K.W. 256, JUDICIAL, 7TH FEBRUARY 1895.

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H. B[Liss]—2-2-95.

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H. B[Liss].

CURRENT No 6712

Just Sept

From

The District Magistrate

Tanjore

To

The Chief Secretary
to Govt. G. S.
Madras

Dy. Secy 1894

Ref on C. No. 1571
msepDESPATCHED
15 DEC. 94

Enc: Nil

Subject

DEPT. SECRETARY
16 DEC. 94
DEPT. SECRETARY

Soliciting the orders of Government as to whether a prisoner can be taken out of a Jail to other Jails in order to ascertain whether he had any previous convictions.

The Please are
placed marked in
the copies re: Habitual
Offenders Bill -
The jury papers
are also put up
but contain no reference
to this subject. The
recent Commission
of Enquiry also
put up. R.
The jury papers
are available on 24/1.

CURRENT No 6712

TANJORE DISTRICT MAGISTRATE'S OFFICE,

Ref: No. 1571
Magl. Tallam, 10th December 1894.

FROM

J. Thomson
ESQUIRE,

AG DISTRICT MAGISTRATE,

TANJORE,

TO

The Honourable Mr. J. F. Price,

Chief SECRETARY TO GOVERNMENT,

Judicial DEPARTMENT,

MADRAS.

SIR,

The Superintendent of Police, Tanjore, brings to my notice that the Stationary Sub Magistrate, Shiyali, refused to allow a prisoner named Govinda Pillai alias Chidambara Pillai against whom an offence under Section 380, Indian Penal Code, was established at his trial, to be taken out of the Sub jail to the Central Jails of Trichinopoly and Vellore to ascertain whether he had any previous conviction, and objects that unless this is done, the number of old offenders who escape prosecution as such will considerably increase. The Superintendent further states that the practice of taking round prisoners for the purpose

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I have the honour to be,
Sir,

your most obedient servant,

For a District Magistrate

En

DEPARTMENT.

[5]
18-21-12-93.

Papers to be read in Proceedings:—

Again G.O., dated

18 , No.

Again G.O., dated

18 , No.

A Current No. 6712 of 1884, dated 10 Dec from D. M. Tanjore

Current No.

of 18 , dated

Order 27 Feb. 95, No. 256
P.S.

The Stat. Sub-mag. did right to refuse to allow the prisoner in question to be taken out of the Subsidiary Jail. There is no provision of law which authorizes the removal of an under-trial prisoner from one place of confinement to another for the purpose of procuring his identification & the Govt. considers it most undesirable that such removal should be permitted. If the Police have grounds for believing that an under-trial prisoner is an old offender, they can request the Jail authorities to send a Warden or other Jail officer to the place where the under-trial prisoner is confined, or they can move the Court to summon any person who is believed to be cognizant of the prisoner's prior conviction.

(From orders)

Office
Distribute to Submag.
also - *h*

Letter to D. M. of Tanjore
All other D. M. 1873
The J. of Police
Court of Police, Tanjore
5 Feb. 1895

Removal of
industrial prisoners

CS
P.S.

(7th & 8th Dec)

7

PRESS SLIP.

ORDINARY.

~~PREFERENCE.~~

~~URGENT~~ (a).

DEPARTMENT.

Current No. dated 190

G.O., No. 256, dated 7th February 1905.

Number of MS. pages sent { Correspondence (b) 2
(b¹)
Notes 4

Brief subject: Identification of under-trial pri-
soners

Number (a) of copies required when struck off (not including
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Correspondence
and orders. Notes.

FOR RECORD.*

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Total	13	13

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(b) Each letter, memorandum, or order, or set of orders, in the file of correspondence should be headed in succession with the Roman numeral I, II, III, etc., the number being written in red ink or blue chalk above the item. The particular papers to be printed in the special issue-copies should be indicated by the Roman numeral (I, II, etc.) by which that item has been headed in the correspondence file. All matter, including marginal remarks or references, to be printed should be written in ink and matter which should not be printed should be encircled. Initials and signatures that are not quite legible should be re-written distinctly.

(b¹) For rules regarding printing of notes, see rule 248 of the Office Manual.

(c) The number of copies and the details of distribution should be filled in by the Superintendent or Referencer concerned.

(d) In the absence of special instructions to the Press to keep matter standing for a specified period, ordinary papers of 8 pages and under will be kept standing for one week, and larger papers for two weeks only. The type, of notes and of all confidential papers, is distributed immediately after striking.

(e) This slip, properly and completely filled in, should accompany every paper sent to Press; it will be returned by the Press when proofs are furnished; it should be sent to the Press when a call is made for revised proofs or when a corrected proof is sent for striking. When finally returned by Press it should be filed with the original order or letter.

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(c) Signature copies of letters to the Secretary of State or to the Government of India should be printed on hand-made paper.

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C. M. SCHMITT,
Registrar,
Chief Secretariat.

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† Copies distributed on (Press Despatcher.)

* To be initialed and dated.

[P.T.O.]

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