

PROCEEDINGS OF THE PLAGUE COMMISSIONER.

(1898)

MISCELLANEOUS.

No. 505

DATED 3-11-98

Despt 3-11-98.

Recd from 7m
11/98

[Despatch Abstract.]

Arrivals from infected parts failing to
obtain passports or to report themselves.

Communicating the opinion of the
Govt. Solicitor as to 'whether knowledge is
essential for an offence under sec. 188 I.P.C.
by —' to the collector of Ganjam with
instructions on the particular case they re-
ferred to the Plague Commr. ^{Collector}

BACK PAPERS.

No.	Date.	No.	Date.

FURTHER PAPERS.

No.	Date.	No.	Date.

PLAGUE COMMISSIONER'S OFFICE. (1898)

CURRENT No. 854

From The Govt. Solicitor
Madras

Order no 505 of 3-11-98

Communicated to the Colls
of Panaji with reference to his
letter No 1249 of 15-10-98. As
a copy of the judgment has
not been forwarded, the Plague
Commr. is unable to get the whether
the accused was acquitted after
trial or discharged without any
inquiry. In the former case, the
first ^{can} ~~should~~ be moved ^{by the District Magistrate} to direct the
Public Prosecutor to file an appeal
under Section 417 of the Cr. P. Code.
In the latter case, the Colls as the
Magistrate ^{is requested to} ~~should~~ take the necessary
action under Chap. XXXII of the Code.

29/11/98
Chapter about reference & revision

No. 495

Dated 28-10-1898
Received 29-10-1898
Registered 29-10-1898
Enclosures C-10 630 ret'd.
Spare copies

SUBJECT.

Forwarding his opinion on
the question of as to whether
knowledge is necessary
essential to an offence
under section 188 I.P.C. for
the prosecution and conviction
of a person who arrives
from plague infected part
and fails to obtain pass-
port or to report himself.

BACK PAPERS.

No	Date.

FURTHER PAPERS.

No.	Date.

From,

Ernest Barclay

Government Solicitor

M A D R A S.

To,

The Plague Commissioner

M A D R A S.

Sir,

1. I beg to acknowledge receipt of your letter of the 25th instant No. 630/90, with its enclosure, which I return herewith.

2. Taking Section 188 of the Indian Penal Code alone, the Senior - Assistant Magistrate who tried the case against Puckana Dandasi, would I think, have been right in dismissing the case, for the Section - expressly provides that whoever knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, disobeys such direction, - shall, if such disobedience causes or tends to cause obstruction, - annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed, be punished &c, and the explanation to the Section declares that it is not necessary that the offender should - intend to produce harm or contemplate his disobedience as likely to produce harm; it is sufficient that he knows of the order which he disobeys and that his disobedience produces or is likely to produce harm.

3. But the Magistrate apparently over looked the provisions the - Epidemic Diseases Act 1897, Section 2 of which empowers the Governor General in Council, if he thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, to take or require or empower any person to take such measures and, by - public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as the Governor - General in Council shall deem necessary to prevent the outbreak of - any dangerous epidemic disease or the spread thereof and, in particu-

29/10/98
Show me new
Cr. P. Code

-lar, the Governor General in Council is empowered to take measures and prescribe regulations for the inspection of persons travelling by railway or otherwise and the segregation in hospital &c of persons suspected of being infected with any such disease. Further, Section 3 of the Act expressly provides that any person disobeying any regulation or order made under the Act shall be deemed to have committed an offence punishable under Section 188 of the Indian Penal Code.

4. Under Sub-section 2 (3) of the Act the Governor General in Council has, I presume, directed that all or some of the powers conferred by the Act may be exercised by the Local Government of Madras with respect to the territories administered by it and, under such direction, the Local Government has passed the Regulations referred to in the letter of 15th instant from the Acting Collector of Ganjam to your address.

5. I am of opinion that the express provision in Section 3 of the Epidemic Diseases Act 1897 that any person disobeying any regulation or order made under that Act shall be deemed to have committed an offence punishable under Section 188 of the Indian Penal Code overrides the requirement of knowledge of the regulation or order necessary in ordinary cases under that Section. Under Section 3 of the Epidemic Diseases Act, if a person disobeys a regulation or order made under that Act, he thereby commits an offence punishable under Section 188 of the Penal Code, whether he knew of the regulation or order or not. The Magistrate who dismissed the case against Puckana Dasani was therefore wrong in doing so. Rule 36 of the Additional Regulations seems unnecessary as it is merely a repetition of Section 3 of the Epidemic Diseases Act.

I have the honor to be

Sir

Your Obedient Servant

James Baileys

Government Solicitor.

Dis No 1249R
Guj 72

L. No 630

Ganjam Collector's Office.

Dated Camp Berhampore 15th October '98

From

H. D. Taylor Esquire, I.C.S.,

Acting Collector of

Ganjam

To

The Plague Commissioner

Madras

Sir,

I have the honor to state that one Puckana Dandasi recently arrived from Calcutta by rail and alighted at Jagannadhapur station, whence he proceeded to Berhampore. He failed to obtain a passport ^{or} and to report himself. I directed his prosecution under

XVII (1) Mofussil Regulations.

2. The Senior Assistant Magistrate who tried the case dismissed the charge on the ground that knowledge is essential to an offence under Sec 188 I.P.C. and that there was no proof that the accused knew either that Calcutta was an infected area, or that he was bound to obtain a passport.

3. Regulation XVII (1) states that every passenger arriving from a place declared to be

& be infected with plague shall before leaving the Railway station at which he has alighted, obtain a passport.

Rule 36 of the Add. Regulations provides that any person contravening any regulation made under the Epidemic Diseases Act 1897, shall be deemed to have committed an offence punishable under Sec 188 I.P.C.

Sec 188 I.P.C reads "Whoever knowing that he is directed to abstain from a certain act"

4. It seems to me that the Add. Regulation 36 which itself has the force of law is intended to expand and amplify Sec 188 I.P.C., and not to be limited by it.

The general head of Sec 188 I.P.C is "Dis-obedience to an order promulgated by a Public servant." In pursuance of certain orders persons coming from certain areas are directed to perform (not abstain from performing) certain acts - i.e. to take ^{out} ~~and~~ passports.

Add Regulation 36 says that persons failing to comply with the order shall be deemed to have committed an offence under Sec 188 I.P.C. It seems to me that the mere fact of failure to comply with the order is sufficient to constitute an offence under Sec 188 I.P.C. - the knowledge, if essential, being presumed.

presumed.

5. If the interpretation of the Senior ^{Magistrate} Assistant ~~Collector~~ is correct, the result will be to render add. Reg 36 and in fact ^{many} ~~all~~ regulations under the Epidemic Diseases Act of 1897 a dead letter.

The Regulations have been published in both the Fort Saint George ~~Gazette~~ and District - Gazettes and have the force of Law - ignorance ^{of} ~~of~~ law is no excuse for crime.

The ignorance referred to in Sec 188 I.P.C refers in my opinion to specific orders addressed to an individual, not to general orders promulgated by Government and having the force of law.

6. I request your instructions on the point, ^{and} if you agree with me, I think it - highly desirable that the case should be referred for the orders of the High Court, and an authoritative ruling obtained. - otherwise it will be necessary to alter the wording of add. Reg 36 and prescribe a specific penalty. In the Regulation itself without reference to Sec 188 I.P.C., or, to make matters clear, to insert the word "knowingly" between the words "person" & "disobeying" in "I have the honour to be, that regulation"

Sir,

Your most obedient servant

W. L. L.
Ag Collector

For
16.10.

Compd
16/10/98

C No. 630
ask hi
Gnd S. Smith's
in his name in the
and raised, and long
left for
From
H. D. Taylor, Esquire, I.C.S.,
Acting Collector of Ganjam.

To
The Plague Commissioner,
Madras.

Dated Camp Berhampur 15th October 1898

Despatched. — 17 —

Received.

Dis No 1249
Eng

Encls:

Subject.

Requesting instructions as to whether
knowledge is essential to an offence
under Section 188 I.P.C for the
Prosecution ^{of conviction} of a person who arrives
from plague infected part & fails
to obtain passport or to report himself.

22/10/98

Ref. No. 630/98

d/25.10.98

To

The Govt. Solicitor
Madras

Sir

I shall be much
obliged if you can kindly
advise me on the legal question
raised in the enclosed letter
from the Collector of Ganjam.

Yours
22/10/98

22 + 98

Desp. 27/10/98.

