

Local & Munl. (1897) Department.

MISCELLANEOUS.

G.O., No. 2917 *mis* ✓

DATED 24/2/99

[Despatch Abstract.]

Prosecution of Mrs. Smith.

Considering that the case of Mrs. Smith,
^{by the Madras M.L.A.}
who was prosecuted for failure to report herself for
inspection according to passport rules, is not one
in which an application for revision should be made
to the High Court.

BACK PAPERS.

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

FURTHER PAPERS.

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

[L. & M.]
21
530-19-12-08.

LOCAL AND MUNICIPAL DEPARTMENT.

C. No. 233 P.

SUBJECT.

Prosecution of Mrs. Smith for failure to report herself for inspection according to passport rules - No 291 P. Mis. 24/2/77
ORDER. In a consideration of all the Circ. of the Case,
The Government does not consider the case to be one in which an application for revision should be made to the High Court.

(From orders)

V.R.
24/2/77

HT
m 299

To, The Plague Commr.
With ten Encl's returned.

Recd
H. Su
27/2

Local & Munl. (1899) Department.

CURRENT No. 233 P

From The Plague Commission

Order

To Jst. u.o.

Ref. No. 1115

It seems that all the facts were within the reach of the Magt. It was a summary case; & as there was some evidence that the woman had a passport in her possession & went with it to be inspected, it was open to the Magt. to ask her how she it came into her possession (really her husband took it for her as she was asleep).

Hence there was no necessity to adjourn the case for formal evidence on this point, while to adjourn the case for legal arguments whether in the above circumstances the woman was bound, was equally unnecessary. The fact being before or available to the Magt., it was for him to apply the law.

Dated 1- }
Received 3- } Feb 199
Registered 3- }
Enclosures 10
Spare copies.

SUBJECT.

Submitting with correspondence letter from the President, M. C. Madras, requesting him to move Court on the subject of the revision of the case in which the Magistrate acquitted Mrs. Smith against whom prosecution was instituted for infringement of the plague regulations, and stating that he agrees with the President in his opinion that the Magistrate in his acquitting the accused in the case.

P.T.O.

C. 18. 2. 99.
R 21. 2. 99.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Hence the acquittal
or discharge may have been
right, the admissions on
the Mun? appear unfounded.

The current will if just
wishes be transferred but
H. M. desires to see it in
connection with the linked
file. #1
7259.

H. M. with judicial
note.

Perhaps the letter had
better be Recorded.

#1
B 259.

The Pres. M.C. (R.3) asks for a revision.

I think the Mag's remarks were uncalled for &
that he should have questioned the accused as the C.P.C.
provides. But I agree it is not a case in wh. it is
likely the High Court would interfere. The Mag's action
will make it necessary for the Plague authorities to
insist on every person signing his or her passport &
not make allowance for ladies asleep.

It will be better to say that Govt. does not consider
the case to be one in wh. any application for revision
should be made to the M.C. Ask Jud. to concur.

To Jud. #1 16295

At 12.2-29

C No 233 P

Ref. On.O. No. 1115.



Plague Commission's Office,
Madras, 1st February 1899.

From

L. M. Buckley, Esquire., I. C. S.,

Plague Commissioner,
Madras.

To

The Secretary to Government,
Local & Municipal Department,
Madras.

Sir,

I have the honour to bring the enclosed papers to the notice
of Government.

2. The facts are:-

- (1) Mr. & Mrs. Smith arrived at Parambur on December
26th 1898.
- (2) Mr. Smith represented that Mrs. Smith was asleep,
and signed the passport for her.
- (3) Mrs. Smith reported herself for inspection for 2
days and then failed.
- (4) Mrs. Smith was prosecuted and acquitted.

3. No doubt the Sanitary Inspector was wrong in allowing Mr.
Smith to sign for Mrs. Smith, but he has a very heavy task
to carry out his occasionally delicate duties.

4. I am of opinion that a passport signed by a 3rd person
(except as recently provided for in the case of minors & luna-
tics) cannot be binding, and that Mrs. Smith was rightly acquit-
ted.

5. I thoroughly agree, however, in Lt. Col. Sir George Moore's
protest against the tenor of the Magistrate's remarks.

The case was a summons case. The procedure in a summons
case is laid down in Sections 242, 243, 244 & 245 of the Civil
Procedure Code. Mrs. Smith does not appear from the record,
copy of which I have obtained from the Presidency Magistrate's
Court, and enclosed over to have been questioned in accordance

Had she been questioned, the full facts of the case would undoubtedly have been placed before the Magistrate by her, and the Magistrate would have had only to decide whether the passport issued was a binding one or not. There would have been no occasion for an adjournment, unless the Magistrate was unable to make up his mind on the legal point (which from Lt. Col. Sir George Moore's letter seems to be the fact) and under such circumstances there would have been no ground for the Magistrate's concluding remarks. The President of the Municipal Commission, Madras appears to have been right in instituting a test case on the facts.

I have the honour to be,

Sir,

Your most obedient servant,

B. S. S. S.
2/2

Plague Commissioner.

[G.]
75
100-12-1 99.

Judicial Department.

NOTE FOR THE CHIEF SECRETARY.

The Local and Municipal Dept. forwards to Judicial u.c. certain correspondence relating to a case in which a Mrs. Smith, charged with an offence under the Plague Regulations, was acquitted by the Chief Magistrate.

There are two separate points upon which the orders of Govt. are required

(1) as to whether an appeal against the acquittal should be filed and (2) whether certain reflections passed by the Magte. in his judgment upon the conduct of the case by the municipal authorities were or were not justified.

With regard to the acquittal, the President, Municipal Commission, recommends that an appeal should be filed. The Plague Commissioner however considers that the acquittal was proper. The question at issue was whether a passport signed by one person for another is binding upon the latter. Sir George Moore considers that as Mrs. Smith, the lady in question, was in possession of a passport, she was bound by its provisions. It is however submitted that the undertaking in the passport "I do hereby bind myself to appear for examination daily" can on the face of it only bind the person who signs the passport. If it

is

is intended to permit, as in the present case, the signing of a passport by one person for another person, ~~the~~ ^{some} modification of the form, appears to be necessary. It is submitted that no appeal against the acquittal is called for.

(2) Mr. Clarke in his judgment expresses his regret at the manner in which the prosecution in this case was conducted. The prosecution was carried on by a prosecuting Inspector. As soon as it came to notice that the passport in Mrs. Smith's possession had not been signed by her, Mr. Clarke informed the Inspector that a somewhat intricate legal question would arise. He therefore suggested that the municipality should be represented by somebody more competent to argue the legal point than the Inspector himself, and for this end he adjourned the case until the following day. The President on receiving this message considered it unnecessary to instruct Counsel or to take legal advice on the question. Mr. Clarke was informed accordingly, and proceeded to decide the case, acquitting the accused on the ground that it was not shown that ~~she~~ ^{she had bound herself to appear for inspection.}

Mr. Clarke's remarks, of which the President complains, are to the effect that "if the municipality think it worth while to prosecute in cases of this nature, it is incumbent on that body both in the interests of the public and

and of justice to see that when it presents a case before a court there is evidence to establish the prosecution otherwise the accused persons are unduly harassed and valuable public time absolutely wasted" ^{Sir George} ~~Mr. Moore~~ says that he did not feel justified in expending municipal funds on legal advice, because the Magistrate was unable to form an opinion of his own. The Plague Commissioner points out that the case being a summons case, the Presy. Magte. should have questioned the accused in accordance with the provisions of sections 242 and 243 of the Code of Criminal Procedure. He remarks that if this had been done, the facts regarding the passport would at once have come to light, and the Magte., having all the facts before him, would have been able to decide the case at once without an adjournment. The Local and Municipal Dept. also emphasizes the fact that no adjournment was necessary.

It is submitted that the Chief Presy. Magte's action in the matter, so far from being intended in any way to embarrass the municipality in its working ^{of the} plague regulations, showed that body special consideration. From paragraph 4 of the statement made by Vaidiyar, the Overseer, it will be seen that Mr. Clarke adjourned the case, not apparently because he was not aware of the facts regarding the passport but

but because he doubted whether the passport signed by Mr. Smith could legally bind Mrs. Smith to appear for inspection. Mr. Clarke was apparently unwilling to decide off-hand ^a question which had ^{so} ^a important bearing on the working of the plague regulations. When the Municipality refused to obtain legal advice and Mr. Clarke acquitted ^{even} he then avoided giving a decision which might prove inconvenient. Instead, therefore, of finding that the passport was not binding, he preferred to give a general decision that it was not proved that Mrs. Smith was legally bound to attend for inspection.

^{3rd George} Moore's objection to Mr. Clarke's remarks is based upon the assumption that the case was an absolutely clear one which should have resulted in nothing but conviction. If the case had been of this nature, the Municipality would no doubt have been justified in saying that it was unnecessary in the first instance to go to the expense of legal advice in the matter. The Plague Commr's remarks however lead to the inference that the case was instituted as a test case. If this was so, it is submitted that Mr. Clarke was right in expecting that in a test case bearing on an important subject the Municipality should, by being represented by Counsel afford ^{possible} the Magte. all the assistance in arriving at a conclusion. It is submitted

that

that it is undesirable that the time of Presy. Magtes. should be taken up in deciding test cases upon which the Municipality had not apparently even thought it worth while to consult their legal advisers.

Under the circumstances there appears to be nothing for Judicial to do in the matter, and it ^{seems} ~~is~~ therefore to be unnecessary that the current should, as suggested by Local and Municipal, be transferred to this department.

Mr.
11/2/99. I just came. The Court can not be expected to stretch the law in such cases as these. I do not find it set out that but Smith was Smith's wife was by them and statement and there is no evidence at all to prove I can see how prove that E Smith had any authority to help her. Further no matter of law it is a very difficult question whether he is bound her to see to make her liable criminally. I think he is not. I think the Magte. was right in asking that the

Print the above.

11/24/99.

No 443 of 11-2-99.

To L. M. Dept.

(us)

When given for copying

When copied

When examined

When signed

189

READ AGAIN G.O. No.

189

DATED

NO.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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