

Marine (1899) Department.

G.O., No. 289 Me ✓

DATED 28th March 1899

Despatched

643 hrs
R B. 411 hrs
by 11.5.99

Prosecution of the ^[Despatch Abstract.] Master of the Dhoney
"Mahomed Samdany"

Sanctioning the prosecution, under the Indian Penal Code, of the Master of the Dhoney, "Mahomed Samdany", reported to have been ^{convicted and} ~~unconvicted~~ and stating that the question of proceeding under the Sea Customs Act will be considered in the Revenue Department.

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12

[100/1000]

28/3

G.O., No. 289, 28th March 1899.

MARCH.

Prosecution of the Master of the Dhoney "Mahomed Samdany"

Sanctioning the prosecution, under the Indian Penal Code, of the master of the Dhoney "Mahomed Samdany," reported to have been overloaded and unseaworthy, and stating that the question of proceeding under the Sea Customs Act will be considered in the Revenue Department.

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following papers:—

- Endorsement from the Collector of Madura, dated 9th January 1899, No. 20, submitting letter from the Port Officer, Pámban, dated 30th December 1898, No. 894/54 W.
 Endorsement thereon by the Presidency Port Officer, Madras, dated 11th January 1899, No. 498/17 G.
 Note from the Presidency Port Officer, Madras, dated 28th February 1899, No. 498/77 G.

ORDER—No. 289, Marine, dated 28th March 1899.

The Port officer, Pámban, reported, in his letter No. 894/54 W., dated 30th December 1898, that he ordered the detention of Dhoney "Mahomed Samdany" of 76 tons, as it was, in his opinion, overloaded and unseaworthy. In forwarding this report to Government, the Presidency Port Officer added that the tindal and owner of the vessel had refused to take an order by the Port officer directing the discharge of her cargo, and he recommended that they should be prosecuted under the Indian Ports Act for wilfully refusing to obey a lawful direction of the Conservator, but wrongly quoting section 10 (2) for section 8 (2).

2. In memo. No. 37 E., dated 19th January 1899, further information was called for and it was suggested to the Presidency Port Officer that it would be the simplest plan to take legal advice in the first instance and then come up to Government for orders to prosecute, if necessary.

3. The Government Solicitor, who was thereupon consulted, suggests that the master should be prosecuted under section 336, Indian Penal Code, for committing an act endangering the life or personal safety of others. He also suggests prosecution under several sections of the Port rules, but the Presidency Port Officer does not propose any action under these rules. He considers that prosecutions should be instituted under section 336 of the Penal Code, and under sections 62 and 167 of the Sea Customs Act, the latter against the tindal for leaving without a port clearance.

4. The proposed prosecution under the Indian Penal Code is sanctioned. The Presidency Port Officer will take the requisite steps.

5. The question of proceeding under the Sea Customs Act will be considered in the Revenue Department.

(True Extract.)

Under Secretary to Government.

To the Presidency Port Officer.

" Government Solicitor.

" Revenue Department, with office-note and note by
His Excellency the Governor in original.

Exd. S. A. S. Raghaviengar.

MARINE DEPARTMENT.

Read the following:—

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Endorsement thereon by the Presidency Port officer, Madras, No. 498/17 G, dated 11th January 1899.
 Note from the Presidency Port Officer, Madras, No. 498/77 G, dated 28th February 1899.

Circulated to

ORDER.

No. 289 Marine 28.3.99.

The Port Officer, Pámban, reported, in his letter No. 894/54 W, dated 30th December 1898, that he ordered the detention of Dhoney "Mahomed Samdany" of 76 tons, as it was, in his opinion, overloaded and unseaworthy. In forwarding this report to Government, the Presidency Port Officer added that the tindal and owner of the vessel had refused to take an order by the Port Officer directing the discharge of her cargo, and recommended that they should be prosecuted under the Indian Ports Act.

2. In memo. 22 378. dated 19th January 1899 for the information was called for ~~what was the~~ ~~discrepancy in the estimate of the~~ ~~quantity~~ and it was suggested to the Presidency Port Officer that it would be the simplest plan to take legal advice in the first instance and then come up to Government for orders to prosecute, if necessary.

3. The Government Solicitor, who was thereupon consulted, suggests that the Master should be prosecuted under Section 336, Indian Penal Code, for committing an act endangering the life or personal safety of others. He also suggests prosecution under several Sections of the Port rules, but the Presidency Port Officer does not propose any action under these rules. He considers that prosecutions should be instituted under Section 336 of the Penal Code, and under Sections 62, 63 of the Sea Customs Act, the

Flag I

prints are given

Flag V

The Presidency Port Officer will take the requisite steps.

5. The question of proceeding under the Sea Customs Act will be considered in the Revenue Department.

R.P.

and
25/3/99

Presidency Port Officer,
Government Solicitor,
Revenue Department with
note by H.E.

Decided
18/9

C.A. 10
I don't know where
para 1 is objectionable
but P.P.O.'s letter might
be placed before W.
Magras, 7. 4. 18.
H.W. 99.
Dear Russell,

Please look
at para 1 of G.O.
enclosed. I presume
that this is Mr. Pearson's
doing. Surely it was
unnecessary to refer
to a mistake of the
nature specified?
Yours sincerely
H. A. Theist

If the question might be
presented to Govt. in a
form admitting of orders
being passed. In such
cases, my endeavour is
to make my remarks
as colourless as possible.
It is not always possible
within a short space of
time, to keep all
such remarks out of
the draft of a Govt.
order; but when the
final result issues
as a Procuring of
Govt., it is not, it is
submitted, becoming on
the part of an officer
to whom the order is
addressed to attribute it
to any authority lower
than the Government,
or to assume that a
person in the position of
a Secretariat Assistant
exercises any influence
on the proceedings of the
Governor in Council.

As regards the
particular remark
objected to by the P.P.O.,
it is submitted that
it is not out of place
in the Govt. order, and
that the act of careles-
sness which it indicates
is intended in the mildest

W.
I respectfully submit
that the Presidency Port
affair is quite out of
order in associating my
name with orders of
Govt. in the manner
done in his d/o to D.W.
Seeing that a Procuring
of Govt. is an act of
His Excellency the Governor
in Council, it is not
respectful to this authority
to assume that a Secre-
tariat Assistant is its
responsible author.
This is not the first
occasion on which the
P.P.O. has thus made
an attack on me
personally. I submit
that my duties are
frequently of a delicate
character. They involve
the analysis and
criticism of proposals
from various high officials.
It is obvious that work
of this kind cannot
be faithfully performed
unless all communica-
tions between the
Secretary and his
Assistant are strictly

Please inform P.P.O. that
his letter is quite irregular
he has no right to assume
that Mr. Parsons had
anything to do with the
removal of the S.O. in
Guantanamo.

It appears that P.P.O. did
write to Mr. Parsons & section
it was handled out. If
he has any complaint to make
he should do so in the
usual way.

Ans
17/4/99

possible manner. I have
seen many cases in
which officers have
been directly censured
by Gov. for similar
acts of carelessness.
A misquotation of this
kind gives much trouble
generally to the person
first called on to deal
with it.

R.S.

12 Apr 99

P.A.W.

Substance of W's re-
marks communicated
by D.D. to P.P.O.

Record.

A.R.

16. 4. 99.

J.H.

regarded as "privileged"
and confidential. The
P.P.O. seems to regard me
as the author of all adverse
remarks appearing in
Gov. Proceedings. In this,
he is greatly mistaken.
~~Mr. Parsons~~ The late H.M.
was himself responsible
for such strictures, and
my intervention has generally
been in the direction of
softening the expressions
when drafting the Pro-
ceedings.

The Marine Dept has
always been a difficult
one to deal with. There
are many intricate ques-
tions involving an in-
imate knowledge of
finance, and a by no
means superficial
acquaintance with
Maritime Law. Judging
by the imperfect manner
in which these questions
come before the Secretary,
the P.P.O. cannot have
a very efficient office
Establishment, and it
has thus been my un-
pleasant duty to indicate
omissions, suggest
amendments, and revise
generally, in order that



Read the following:-

Endorsement from the Collector of Madras, No 20, dated 9th January 1899, with
 letter from the Port Officer, Pamban No $\frac{394}{54}$ W., dated 30th December 1898.
 Endorsement thereon by the Presidency Port Officer Madras, No $\frac{498}{17}$ G., dated 11th
 January 1899.
 Note from the Presidency Port Officer Madras, No $\frac{498}{74}$ G., dated 25th February 1899.

Proposed prosecution

Circulated to

His Excellency the Governor. FOR ORDERS.

Flag I

To the Revenue Department
 for favour of (initials)

The Port Officer, Pamban, reported, in his letter No $\frac{394}{54}$ W., dated 30th December 1898, that he ordered the detention of dhoney "Mahomed Samdany" of 76 tons, as it was in his opinion overloaded and unseaworthy. In forwarding this report to Government, the Presidency Port Officer added that the tindal and owner of the vessel had refused to take an order by the Port Officer directing the discharge of her cargo, and recommended that they should be prosecuted under the Indian Ports Act for wilfully refusing to obey a lawful direction of the Conservator, but wrongly quoting Section 10(2) for Section 8(2).

Flag I

2. In memo. No 37 E, dated 19th January 1899 further information was called for (as to what seemed

discrepancy - as

discrepancies in the Sections of Acts quoted, and it was suggested to the Presidency Port Officer that it would be the simplest plan to take legal advice in the first instance and then come up to Government for orders to prosecute, if necessary.

3. The Government Solicitor, who was thereupon consulted, suggests that the Drafter should be prosecuted under Section 336, Indian Penal Code, for committing an act endangering the life or personal safety of others. He also suggests prosecution under several Sections of the Port rules, but the Presidency Port Officer does not propose any action under these rules. He considers that prosecutions should be instituted under Section 336 of the Penal Code, and under Sections 62 and 164 of the Sea Customs Act, the latter against the tindal for leaving without a port clearance. The prosecution under the Sea Customs Act should perhaps be launched by the Customs authorities under orders in the Revenue Department.

Flag U

Yes. Tindal like to know the result.

A. A. H.

20.3.99

Modified on the independent office into of the Rev. Dept.

22 March 99

6/3/99

M

assisted on strictly

Name

(1899) Department.

CURRENT No. 105

From The Presidency Port Officer

No. 498/77

Dated 28-2-99

Received } 2-3-99

Registered }

Enclosures }

Spare copies.

SUBJECT.

Offering his opinion regarding the prosecution of the owner & tindal of the Dhany Mahomed Samdany for disobedience of an order under Act II of 1880.

Under Section 12 Act VII of 1880 para
2, I have the honour to inform you that
I received a report from the Assistant
Conservator Mandapam with reference
to the seaworthiness of the Dhoni "Mohamed
Samdang" of 76 tons built in 1858 at Per-
patam and registered at Negapatam
on account of alteration in her, but
owned at Mandapam. On the 29th I
went to Mandapam and inspected
the vessel and found that she was in
the first place overloaded and 2nd place
in my opinion unseaworthy unless
repaired. I have therefore detained
her for survey after discharge of cargo.

Doc No 20 General, 499.

Submitted to the Secretary to Govern-
ment, Marine Department, Madras.

Through

Marine

(1899)

Department.

No. 378 d/19 Jan'y 99

CURRENT No.

The Presidency Port Officer
(unofficially).

The Port Officer, Pamban, seems to have acted under Section 11(a) of act VII of 1880 in ordering the discharge of cargo from the dhoney "Mohamed Sam-dang". Why, therefore, do you propose

~~Order~~ that the owner and tindal should, for disobedience of an order under that Act, be prosecuted under quite a different Act?

2. Moreover, the Section of Act X of 1889, under which you propose to prosecute, viz. Sec. 10(2) refers to the "removal of obstructions" within port limits.

3. Section 6 of act X of 1889 also quoted by you seems equally inapplicable. This Section refers to the power of the Local Government to make rules for certain purposes, and has nothing to do with "a lawful direction of the Conservator".

4. The simplest plan would seem to be to take legal advice in the first instance and then come up to Government for orders to prosecute, if necessary.

5. If the tindal is owner of the ship under 12 of Act VIII of 1880.

It seems the writer intends to submit the letter to the Govt. Secy. to Govt. F.O. for consideration. The inf. hereby it seems from the tindal is under Section 46

From The Collector of Madurai

Roc No. 20 of 99
Genl.

Dated 9 January 1899

Received 3/6-1-99

Registered

Enclosures nil

Spare copies

SUBJECT.

Submitting the letter from the Port Officer, Pamban, stating that he has obtained from "Mohamed Sam-dang" for survey under section 12 of Act VIII of 1880.

Submitting
Secy. to Govt. F.O.

for 1/10/99

followed the rash or negligent act complained of.

2. It has struck me, that it might be possible to prosecute the master of the dhony also for a breach of one or more of the Rules made under Section 5 of the Indian Ports Act 1889, such as (a) regulating the time for a vessel to leave a port, possibly (b) for regulating the berths etc to be occupied by vessels in a port or (c) for regulating vessels whilst taking in or discharging cargo in any port and the Stations to be occupied by such vessels.

3. I note that you propose to prosecute the Master of the dhony for leaving the port without a port clearance. This, I take it, will be under sections 62 and 167 of the Sea Customs Act and the penalty may amount to Rs 1000.

I have the honor to be
etc

Sd/- Ernest Barclay
Government Solicitor

/ True Copy /

Sd/- Street

Commander R. J. M.,
Presidency Port Officer.

WJ

Copy: Port Office }
Madras: 28th February 1899 }

Mar 23/99

No 498 of 17 Reply.

1. Act VIII of 1880 does not apply to the vessel in question. See Section 3 (b) Chapter II of Indian Merchant Shipping Act VIII of 1880.
2. Under Indian Ports Act V of 1889, a person disobeying a lawful order of the Conservator can be prosecuted. See Section 8 (2) of that Act. The Section quoted in this office Memorandum etc. 498 G. of 11th January 1899 should have been, as stated above, and not as given therein through an oversight.
3. The matter has been placed before the Government Solicitor, a copy of whose opinion is herewith forwarded. He recommends action being taken under Section 336 of the Indian Penal Code.
4. I have ascertained, that the vessel, since leaving Pamban, and while on her way to Colombo, was wrecked on 6th February.
5. The owner of the vessel is one Mallamcerasah of Mandapam, Madura District, and the Findal, who comes from the same place, is named Mahomed Alias.
6. The questions now for consideration are; (a) whether the owner shall be prosecuted under Section 336 of the Indian Penal Code for doing an act so rashly as to endanger human life and

And (b) whether the Tindal shall be prosecuted
under Section 62 & 167 of Sea Customs Act
for leaving Port without a Port Clearance.

7. In my opinion, it is advisable, that the
men named should be so prosecuted, as it
will have a beneficial effect on the owners &
Tindal of native craft generally, and show
them that the orders of Government cannot
be disobeyed with impunity.

H. A. Street

Commander R. I. M.

Presidency Port Officer.

W. S.

Presy Port Office }
Madras 28 Feb 1899 }