

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	851	Press Mis.
/21-22.		
Dated	10-6-1870	19

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
10th June 1870.*

No. 121. Read the following Proceedings of the Board of Revenue, dated 31st May 1870:—

Read again Board's Proceedings, dated 8th March 1870, No. 1,611, and 6th May 1870, No. 3,002.

Read also the following Proceedings of the Session Court of Calicut, dated 23rd February 1870.

READ Criminal Petition No. 15 of 1870, presented by Ramjee Govindjee, defendant in Calendar No. 2 of 1870 on the file of the Officiating Magistrate of Malabar, appealing against the conviction and sentence in the said case.

2. The prisoner in this case was tried under two heads of charge, alleging that he had committed the offence, first, of exporting or attempting to export, from the port of Calicut, opium which, by Schedule B., Act VI. of 1844, can only be exported with a Permit; and, secondly, of having signed a false declaration relative to the contents of the packages.

3. The prisoner was found guilty on both charges, and was sentenced for the first offence to pay a fine of one thousand Rupees, or, in default, to suffer imprisonment for six months, and that the opium seized be confiscated; and for the second offence, to pay a fine of one thousand Rupees, or, in default, to suffer imprisonment for six months, the said imprisonment to take effect on the expiration of sentence awarded for the first offence. The sentences being awarded under Sections 24 and 216 of the Consolidated Customs Act VI. of 1863.

4. The prisoner having paid the cumulative fine, appealed from the sentence on the grounds that both offences formed parts of one continuous transaction, and therefore that he should only be sentenced for the principal offence; and also that the punishment was excessive.

5. After a perusal of the record of the case the Court can only concur with the Magistrate's finding that the prisoner was guilty of both offences; and as the case was an aggravated one (the opium having been concealed in packages of pomegranate-bark, and in the durkhast, in which the prisoner declared that the contents and value of the packages were truly stated, the packages being entered as only pomegranate-bark) the Magistrate was justified in passing an exemplary and severe punishment to check the illicit trade which, he has reason to believe, is on the increase.

6. But if the two offences form only parts of one continuous transaction, and are not intrinsically separate deeds, it would appear that the Magistrate should only have awarded punishment for the principal offence, though in so doing he might reasonably take into consideration the whole circumstances of the case.

7. In this case the signing the false declaration was not only a part, but a necessary part of the attempt to export the opium; for unless the prisoner had signed the durkhast, his packages could not have been shipped; and unless it were false, he would have had no chance of evading the Custom-house, and so committing the principal offence. In fact, the offences are more decidedly parts of one integral and continuous transaction, than such separate actions as house-breaking with intent to commit theft and theft, or rape and house-trespass by night.

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"The object of multiplying the heads of charge where the offence has been a continuous transaction is not to accumulate punishment, but to provide against the event of the evidence failing to establish the primary charge." For these reasons the Court is of opinion that the Magistrate was in error in sentencing the prisoner on both charges, and reverses that portion of the sentence which directs the prisoner to pay one thousand Rupees fine, or, in default, an additional six months' imprisonment under Section 216, Act VI. of 1863.

8. The remaining part of the sentence is confirmed.

(True Extract.)

(Signed) F. C. CARR,
Officiating Sessions Judge.

SUBMITTED for the information of Government.

No. 122.

ORDER THEREON, 10th June 1870, No. 851.

Miscellaneous.

ORDERED to be recorded.

(True Extract.)

(Signed) H. WELLESLEY,
Acting Under-Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 8th March 1870.

I HAVE, with reference to my letter dated 10th ultimo, No. 14, the honour to report, for the information of the Board, that the man Ramjee Govindjee, who was charged with illegally exporting opium from the port of Calicut, was convicted by me and sentenced to a fine of Rupees 2,000—Rupees 1,000 for exporting the opium and Rupees 1,000 for presenting a false application to the Sea Customs authorities.

3. As this was a very flagrant case, and as opium smuggling appears to be on the increase, I considered an example necessary and therefore fined the defendant the full amount of the penalty. A copy of my decision is enclosed. The opium has been confiscated, and will, after the expiration of the period fixed by law, be sold. I anticipate that it will fetch about 2,000 rupees, and I request the permission of the Board to distribute the whole amount as rewards to the Custom House officials. The matter was brought to light by the Sea Customs Manager, and he is, therefore, entitled to a greater part of the reward. ~~The grant of the whole of the sale proceeds~~ as rewards will incite other Custom House officials to be on the look out. One package bore a

4. I may mention that the opium appears to have come from Madras. One package bore a parcel label of the Madras Railway as follows:—

T (16 A)
 Madras Railway,
 West.
 Madras to Beypore,
 not
 Paid.
 E x

ENCLOSURE No. 1.

ENCLOSURE NO. 1.
In the Court of the Acting Magistrate of Malabar—Calendar No. 2 of 1870.
Ramjee Govindjee.

Regina

versus

Ramjee Govindjee.

Charge.

Charge.
ATTEMPTING to export prohibited goods, punishable under Section 24, Act VI. of 1863, and knowingly signing a document used in the transaction of business relating to Customs, to wit a Shipping bill commonly called a "Durkhast," such document being false in that it did not contain any notice of opium being included in the packages declared to contain pomegranate bark, punishable under Section 216 of Act VI. of 1863.

Finding and Sentence.

The Court finds that Ramjee Govindjee has, on the 8th January 1870, attempted to export from the port of Calicut prohibited goods, namely, 278½ lbs. of opium, and that he has thereby committed an offence punishable under Section 24, Act VI. of 1863, and the Court directs that Ramjee Govindjee pay a fine of 1,000 rupees, or in default suffer imprisonment for six months, and that the opium seized be confiscated.

The Court finds that Ramjee Govindjee did, on the 7th January 1870, knowingly sign a document used in the transaction of business relating to the Customs, to wit a Shipping bill commonly called a durkhast, such document being false in that it did not contain any notice of some opium being included in the packages said to contain pomegranate bark, and that he has thereby committed an offence punishable under Section 216, Act VI. 1863, and the Court directs that the said Ramjee Govindjee pay a fine of (1,000) one thousand rupees, or in default suffer imprisonment for six months—said imprisonment to take effect on expiration of sentence awarded in the first part of this finding.

The Court further directs, under Section 225, Act VI. of 1863, that the said penalties be levied by distress and sale of the goods of the said Ramjee Govindjee found within the Court's jurisdiction.

Statement of the evidence and grounds of conviction.

Defendant is charged with having, on 8th January 1870, exported, or attempted to export from the port of Calicut about 278½ lbs. of opium, an offence punishable under Section 24, Act VI. of 1863. He is further charged with having, on the 7th January 1870, knowingly signed a document used in the transaction of business relating to the Customs, to wit a Shipping bill commonly called a durkhast, such document being false in that it did not contain any notice of some opium being included in the packages declared to contain pomegranate bark, an offence punishable under Section 216, Act VI. of 1863.

The first witness, the Superintendent of Customs at Calicut, states that on the night of Friday, 7th instant, he received information that the defendant was going to ship some opium from the port. The defendant had during the day applied (in Document A.) for permission to ship certain goods to Cochin. As the goods had been shipped before the witness received information, and as the opium might be shipped afterwards with other goods, he waited until the Tindal of the vessel came for his Port clearance. About half past 5 or 6 o'clock in the evening of 8th January the Tindal came for his Port clearance and produced the Manifest, (B.) The witness then signed the Manifest and deputed second witness, his head Goomastah, and a Peon to proceed to the Manji "Mohideen Kaliph" and search the packages shipped by the defendant.

The second witness, about 7 o'clock, returned to the Custom House with all the packages mentioned in Durkhast A. The defendant had followed the second witness on board and returned with them to the Custom House. As the witness was about to open the packages of pomegranate bark the defendant asked him to protect him, and told him that there were only 50 lbs. of opium in them, and when the opening was commenced stated that they contained 150 lbs. of the drug. A packet of opium was found in each of the six packages of pomegranate bark. On one of the packets there was a parcel ticket of the Madras Railway Company. Witness states that defendant did not give him a durkhast applying for permission to ship opium.

The second witness states that, according to orders received from first witness, he went on board the Manji "Mohideen Kaliph" to search the packages shipped by defendant; that defendant followed them in another boat as the witness and the Peon were commencing to search the packages. Defendant admitted that he had a small packet of opium in each of the packages of bark. As the defendant admitted there was opium in the packages they were brought back to the Custom House to be opened in the presence of the Superintendent. On being opened a packet of opium was found in each of the packages of pomegranate bark. The packets were weighed, and, including the weight of the gunny in which the opium was packed, were found to weigh 278½ lbs. Opium is worth at Calicut from 6 to 7 rupees per pound.

Defendant admits that he shipped the opium and did not enter it in the Durkhast A., which he acknowledges to have presented to the Customs officers. He states that he shipped it at the request of one Krishnan, a man of the Konkony caste residing at Cochin, whose agent only he was in the transaction; that he and Krishnan bought some of the opium from a Madras man in Calicut, and some from one Kuchchi Shettiar of Calicut. He put the opium in the packages of pomegranate bark at the suggestion of Krishnan because its export was prohibited.

The charge of attempting to export opium from the Calicut port is clearly brought home to the defendant, who also admits the truth of the charge. The Court does not believe the defendant's statement that he did not act as a principal. Defendant has not ~~ass~~ for the export of opium, and by Schedule B., Act VI. of 1844, its export without a permit prohibited. That fraud was intended is proved by the fact of the opium having been concealed in the packages of pomegranate bark.

As regards the second charge the Court is of opinion that in presenting a durkhast for the export of packages stated to contain pomegranate bark, but in which defendant knew that opium was concealed, he has clearly rendered himself liable to the penalty provided in Section 216 of Act VI. of 1863 for signing a false document. Section 123 of the Act provides for application for permission to export being made; and as the application A. was made in accordance with the provisions of that section it must be considered as a document used in the transaction of business relating to the Customs, and its falsification rendered penal by Section 216. The provisions of Sections 149 to 160, relating to the coasting trade, do not appear in the Court's opinion to bear on the case. They do not exclude but are additional to the other provisions of the Act. Opium is, moreover, expressly excluded by Section 149 from the general provision of that section, its transport coast-wise prohibited. Section 151 provides for the local Government framing rules, prescribing on what conditions only certain goods may be carried coast-wise. No such rules have been framed, and the other provisions of the Act are, therefore, not superseded. Section 156 provides for the framing of rules regarding goods carried by coasting steamers. Rules have been framed under this section, but do not bear on the case now before the Court; the Manji being a sailing vessel. Instances of the unlawful export of opium have of late been frequent. A man was convicted and punished a short time ago for a similar offence committed at Shoranore in this district. Similar offences have also occurred quite lately in Tanjore and Tinnevely. The Court considers, therefore, that as this illicit trade appears to be on the increase a severe punishment as warning to others is necessary. The defendant will, therefore, be sentenced to the full penalty allowed by law.

(True Copy.)

(Signed)

A. McC. WEBSTER,
Acting Magistrate.

THE Board consider that the case is creditable to the Sea Customs Manager, Mr. Rodrigues. They will not at present issue any orders regarding the distribution of the sale proceeds as proposed by the Collector. He will report if any appeal against the conviction is preferred.

2. Copies of these Proceedings will be forwarded to the Commissioner of Police, and to the Collector of Sea Customs, Madras.

(True Copies and Extract.)

(Signed)

A. MACGREGOR,
Acting Secretary.

To the Acting Collector of Malabar.
,, the Collector of Sea Customs, Madras.
,, the Commissioner of Police.
,, the Inspector-General of Police.
,, to the Accountant-General.

Exd. J. Tulloch.

Revenue 1870
No 1628
Proceedings of the Board
of Revenue

Dated 31st May 1870

Despd 31 May 70

Submitting for information
of govt copy of Civil Courts
Proceedings in appeal
preferred by one one
Rampjee Govindjee
against decision of the
Magistrate fining him
Rs 2000 &c for exporting
Opium.

Recorded
1870
Shelton or other

Ch. J. J. J. J. J.

not in 1870
1873/1870
1870.

Board of Revenue

MADRAS.

PROCEEDINGS, 31st MARCH 1870, No. 1,611.

Received
2
Encl.

1628/70

Stamp: June 10th 1870

MARCH.
No. 1,611.

Opium—attempted to be exported from port
of Calicut in Malabar District, by one Ram-
jee Govindjee, and seized by Custom House
authorities.—Issue of orders regarding distri-
bution of sale proceeds of, as rewards, deferred,
and Collector requested to report if any appeal
is preferred against his decision fining offender
Rupees 2,000.—Copies of Board's Proceedings,
forwarded to Commissioner of Police and to
Collector of Sea Customs, Madras.