

8-9-86 \$
27-2-04 \$

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 5107

DATED 29 Sept^r

[Despatch Abstract.]

Declining and when under transaction
the prosecution of Mr. V. S. G. Munnappa
Pillai, Extra Asst. Conservator of Forests,
Tinnevely Dist.

BACK PAPERS.

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

FURTHER PAPERS.

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

0 18 12-7-97.

Revenue (189) Department.

CURRENT No.

The Hon Mr Grover C.L.R.

From

The Judicial Dept

For

Orders

*Please see B.P. No 777 Misc
75 - auct 97 when the facts
of the case are fully & completely
stated. The question being one
of sanctioning the prosecution
of a public servant ^{for an offence against} is essentially
a Judicial one. The papers were
transferred to the Judicial*

*25/8
O.N. No. 1780*

Dated 25th August 1897

Received

Registered

Enclosures

Spare copies.

SUBJECT.

*Returning with remarks
B.P. Submitting Complaints
against Mr R By Gurmatta
Pillai, Extra Asst. Commr.
Sivamangalam etc.*

*Dept. that Dept has however
returned them with the
accompanying office note.
I submit that it is prima
facie quite clear that neither
the Extra Asst Commr nor
the Watchman, who acted under
the E.A. C's order, committed
any offence & that therefore
Govt should refuse to grant*

25/8/97 223/9/97

and sanction for the E.A.C. prosecution.

It will be observed that the notification allowing the public the use of the road in question was not cancelled till the 1st July. It was therefore in force

on the 29th June the date of the occurrence. Further as regards the Hukdar in particular the Collector found and informing him that he was not to use the road & that the notification above referred to was being cancelled did not reach the Hukdar till the 30th June. Therefore

the cart & bullocks cannot be held to have been trespassing on the 29th of June.

The E.A.C. however was informed that the road was not open to the public & in particular that it was not open to the Hukdar & his servants. Thus in seizing the bullocks the E.A.C. was acting under a mistake of fact & therefore was protected under sec 79 I.P.C. For, had the notification been not in force on the 29th of June, the E.A.C. would have

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Letter from Hukdar to Mag. K. I don't know. In fact the permission to use the road had been withdrawn on the 20th June. The C.M. also points out that the Hukdar had never seen his letter (signed by Mag. K.) accepted the terms mentioned in the letter & that he was never notified to avoid him self (Encl. 1st dated 5.7.47) so far as I can be aware. The Forest Officer never met any other than the Hukdar. It is interesting that the Hukdar had any permission to use the road but in the meantime was told he had not.

D 1,000-8-4-97.

REVENUE DEPARTMENT.

No.

From

Dated

189

FOR ORDERS.

legally justified in preventing what was in that case, however, a trespass. It is quite clear from the R.P. & papers that the right of way allowed to the Hukdar & public ~~was~~ at the settlement of the forest was along the old road & not along the new road. The non repair of the old road (if it is a fact) ~~was~~ would not ~~be a cause of action~~ create a right of way along the new road though it might possibly be a cause of action for damages.

If, as I submit in the case, the E.A.C. was through bona fide mistake of fact as to the admission of the public to the road, justified legally in preventing the trespass of the bullocks, then it does not appear to affect

FOR ORDERS.

$\frac{D}{4}$ 1,000-9-4-97.

REVENUE DEPARTMENT.

No.

From

Dated

189

FOR ORDERS.

On the other hand, it may be
 hoped that had the E.A.C.
 known that the cart was
 going for a sick man, there
 is no reason why he should
 have detained it even though,
 through his ignorance of the
 notification, he believed
 himself justified in law in
 doing so. But it will be
 observed from Father
 Cruseanels' letter of 29 June
 that apparently the E.A.C.
 & the road father have
 apparently come into collision
 before on more than one
 occasion. Whether the Rd
 or the Collector has touched
 on these past relations between
 the parties. But if the
 present allegations of malice
 have any truth, it would not

7/1/11

his legal liability whether he
 knew or did not know that
 the cart was going to meet
 a sick man. In spite of the
 E.A.C.'s denial I submit there
 can be little doubt that he
 knew of the destination of
 the cart. For, I submit, there is
 no reason to doubt that the cart
 was going to meet the sick
 man and that the bandyman
 knew why he was sent - & this
 being so, surely there can be no
 doubt that the first thing
 he would do on being stopped
 would be to state where he was
 going & why. ^{He says he did so state but the E.A.C. denies it} In the circumstances

I submit that it is very doubt-
 ful if any Court would believe
 the E.A.C.'s denial that the
 bandyman told him of the
 destination of the cart. But,
 as submitted above, the E.A.C.'s
 knowledge of the destination
 of the cart cannot affect
 his legal liability for having
 stopped it for he clearly did
 so in ignorance of the then
 existence of the notification
 throwing it open to the public

More than this the D.F.O.'s
 Order gave him to under-
 stand that the road
 was not open to the
 public.

is hard to understand
I submit, that the E.A.C.
would take an opportunity
to make himself disagreeable
when he bonafide thinks
himself legally justified
in doing so. It is exactly
this sort of venation (which
though legally justifiable is
not morally or departmentally
so) which, I submit,
makes the Forest Dept
so unpopular which
Govt desires to repress.
I submit, therefore, that
Govt, while refusing to
institute any criminal
prosecution, should call
for a report as to the
previous cases alluded to
by Mr. Causse in
order to be better able
to ^{consider} ~~deal with~~ the E.A.C.'s
conduct departmentally.

As remarked by the
Bd, the watchman who actually
arrested the bullock, appears
to be entirely protected by section
76 V.R. having acted bona
fide under his superior's orders.

FOR ORDERS.

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1,000-9-4-97.

REVENUE DEPARTMENT.

No.

From

Dated

189

FOR ORDERS.

Sec 76 V.R. seems to cover
the removal of the cart to
silence. If the seizure of
the bullock was ^(in the circumstances) no offence
knowing the cart was not
anything a reasonable
man could complain of.

1/8/97
14-9-97

Please see answer to Mr. C.

Myself

P. T. O

FOR ORDERS.

[G.
73]
101-15-4 94.

DEPARTMENT
Juricial DEPART

1. Govt. should not give sanction unless it is satisfied that a prima facie offence has been committed. Here there is no such presumption. First, because the Govt. servant was as a fact within his rights; the servant of Father Caussezel was a trespasser (one who makes a peaceful but a wrongful entry on another's land), though not a criminal trespasser since at the time the permission given to Father Caussezel to use the road had been withdrawn. Secondly, even if the servant of Father Caussezel was not a trespasser the Forest officers are protected because they were under a mistake of fact, namely, they thought with good reason that no permission to use the road was in existence. (Section 79 of the Indian Penal Code.)

2. From a legal point of view with which we are alone concerned, the fact that the cart was needed for a sick man and that he died afterwards are entirely beside the matter. The death is not the direct effect of the Forest officer's action. When a man wounds another and dies of tetanus the party is not guilty of murder.

3. As the Board points out there is no liability for vexatious seizure of property, because seizure was bona fide and the Forest officers are protected under section 61 of the Forest Act. As malice on the part of the Extra Asst.

servator, I would point out that it is immaterial whether the bandyman told him the cart was for a sickman or not. The material question is whether even if the bandyman said so the Extra Asst. Conservator had reasonable grounds to believe him. I doubt much whether under similar circumstances I should believe such a statement. I submit that in this case there is no ground to sanction the prosecution and that it is not a case even for departmental notice.

Aug 1/97

There is not "prima facie" evidence to believe that an offence was committed & sanction under Sec 19, C.P.C. must be refused

JG
28/9/97

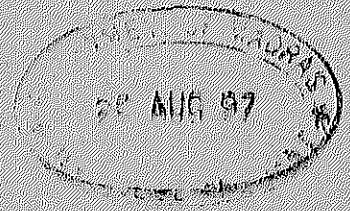
Nor do I see sufficient reason for calling on the Sec for report.

JG

[73]
100-155-96

Judicial DEPARTMENT

OFFICE NOTE No. 1780.



Dated 25th August 1897.

From
THE CHIEF SECRETARY, Judl. Dept.
To
THE SECRETARY, Revenue DEPARTMENT. (with reference to)

here and there of the
Can mind of
1/2/97

In returning the accompanying paper transferred to the Judl. Dept., the undersigned has the honor to state that the question of sanctioning the prosecution of the Asst. Conservator ^{like opinion} should be decided in the Rev. Dept. Each Dept. in practice, sanctions the prosecution of its own subordinates except where any of them have both Rev. and Judicial functions, in which cases the question is disposed of by the Rev. or Judl. Dept. according as the charge is one against the officer in his Revenue or judicial capacity.

11/2
21-A-97
1/23 897
Sednialice
Chief Secretary

Revenue (1897) Department.

CURRENT No.



From

The Board of Revenue, Land Revenue
Madras.

Secy

Encl. Order R. No 1526 d 13 Aug 97

Transferred to the

Forest No. 777 Hse.

Judicial Department

W. Marimuthu
11.8.97

to Asst Secy to Govt

Dated 5th August 1897

Received

Registered

Enclosures 4 file

Spare copies.

Ootacamund
13th Aug 1897

To:

The Judicial Department

By 17/8/97

Recd 21/8/97

SUBJECT.

Submitting for the orders of Govt.
under section 197 Criminal Procedure
Code complaints against Extra Asst
Conservator, M.P. By V.S. Guruswami -
Pillai in connection with the sei-
zure of a cart and a pair of bul-
locks on the Papanasam Forest Road,
Sinnavelly District.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Proceedings of the Board of Revenue
(Land Revenue)

Forest NO 777 Misc, dated 5th August 1907.

Read endorsement of the Conservator of Forests, Southern Circle, dated 27th July 1907, P.O. NO 557 forwarding letter from the Collector of Tinnevely, dated 24th July 1907, P.O. C. (M). NO 13.

Read letter from the Conservator of Forests, Southern Circle, dated 2nd August 1907, NO- submitting to the Board further remarks on the complaint against Extra Assistant Conservator Mr. Guruswami Pillai in connection with his stopping a cart on the Papamasham Forest Road.

Resolution.

The letters read above will be submitted for the orders of Government.

The Revd. Father Gausman, Superior of the Jesuit Mission at Palamootah is the proprietor of Kattalamalai, a large private forest estate situated within the Papamasham Reserve. When the Papamasham Forest was constituted a Reserved Forest a right of way to the Kattalamalai Estate was allowed along an old road to Travan-core which traversed the forest before its reservation. Some years ago a new road was made by the Forest Department for forest purposes, and there has been considerable discussion between the department and the proprietor of the Kattalamalai Estate as to the terms on which the latter should be allowed the use of the new road and of the ferry over the ^{Servar} ~~Sender~~ river, it being impossible to allow such use without consideration, as Kattalamalai is a Forest Estate which competes with the department in the market. A certain amount of information regarding these discussions has been laid before

Government in the papers noted in the margin and need not here be discussed in detail, but the Board thinks

B.P. 1411 in G.O. 4359
25-9-05 1-11-05

B.P. 212 in G.O. 1454
15-3-07

it desirable to mention that when the Forest Officer was in Tinnevely last year, he went carefully through the papers and discussed the question with the Collector and the District Forest Officer,

and was satisfied that although the Local Officers were willing to make every reasonable concession, the attainment of any satisfactory agreement was a matter of extreme difficulty, owing to Father Caussezel's ~~unwavering~~ evidently deeply rooted belief that he had an indefeasible right to all that he claimed, and his consequent proneness to regard every concession as nothing more than a retreat from an untenable position. The Board therefore welcomes the information that Father Caussezel has given notice of his intention to file a suit in a Civil Court for the enforcement of what he believes to be his rights.

3 It was hoped that in the compromise recorded in H.P. 212, d/ 4-2-97 an amicable settlement had at last been arrived at. Acting ~~on the~~ ^{on this} presumption the Collector intimated to Father Caussezel that he was at liberty to use the new road, and he also notified in the District Gazette of the 1st May last that the public would be allowed the use of the road as a concession. Immediately afterwards the Collector received a letter from Father Caussezel that ~~the road must be closed~~ declining to accept the compromise and on the 20th May the Collector informed Father Caussezel that the road must be closed to the carts of the Estate. He omitted, however, to withdraw the notification, allowing the public the use of the road, until the 1st July.

4 Acting in pursuance of the Collector's letter of the 20th May to Father Caussezel the District Forest Officer instructed his subordinates that the Kattalamalai Estate carts were not to be allowed to use the new road, and on the 29th June the District Assistant Conservator stopped a cart on the new road within the limits of the Reserved Forest and had it driven to ~~the village~~ ^{Vikramasingapuram} and deposited with the Head of the village, who was instructed next morning to impound the bullocks and leave the cart where it was.

5 It now appears that this cart had been sent up to bring down a young man named Louis Schofield, who had been very ill with fever. Owing to the non-arrival of the cart the young man had to walk some distance, before he found other means of transit and he died at Palamcottah on the 3rd July. As regards the extent to which the death was due to the stoppage of the cart the District Medical Officer has written to the Collector saying that the only opinion

can express in connection with the case is that the delay and exhaustion consequent on the exertion of walking probably -
 served to diminish to some extent the chances of the boy's recovery. Father Cassanani's servant, the driver of the cart in question, has now brought a criminal complaint against the Extra Assistant Conservator M.R. Py. V. S. Annamatha Pillay, and the Tanna-Char under sections 304-A, 341, 352 and 436 of the Indian Penal Code and section 53 of the Forest Acts. As section 197 of the Criminal Procedure Code provides that ^{no} public servant not removable from his office without the sanction of Government can be prosecuted as such public servant without the previous sanction of Government, the Collector has submitted the papers for orders, and in para 15 of his letter he suggests that if sanction is to be given for prosecution it should be given in general terms for such offences as may be shown to have been committed by the seizure of the cart and bullocks. The High Court, however, has decided that a general sanction is illegal (I.L.R. 16 Mad. 468).

6 The offences charged are:---

Section 304-A I.P.C causing death by rash or negligent act.

Sec. 341 I.P.C wrongful restraint.

Sec. 352 I.P.C Assault or use of criminal force.

Sec. 436 I.P.C Mischief.

Sec. 53 Forest Act Vexatiously and unnecessarily seizing -
 property.

7 With regard to section 304-A the Collector expresses no definite opinion as to whether sanction for prosecution should be accorded, apparently because he recommends that any sanction given should be expressed in general terms. He believes that in the circumstances of the case any sanction accorded would in all probability be inoperative, but adds that at the same time he has no wish to hurke enquiry, especially in circumstances so sad as those which supervened ^{on} the action of the Extra Assistant Conservator. The Board, of course, has as little desire as the Collector to hurke enquiry, but it considers that as the law has thrown on the Government the duty of protecting its officers from harassing or unnecessary prosecution, sanction ought not to be accorded unless there is some reasonable ground for believing that the offence

charged has probably been committed. However, this seems to be the view taken by the High Court which has pointed out, in the judgment already quoted, that the intention of the Legislature clearly was that the authority empowered to grant a sanction under section 197 should take the responsibility of deciding whether there are reasonable grounds for a prosecution. The death of Mr. Louis Schofield, and its association in however indirect a manner with the disturbances about the right of way, are most regrettable incidents and the

Board deeply sympathised with Father Gausman, but the Prince Assistant Conservator and those who were with him distinctly deny that they were told that the cart was being taken for the use of a sick gentleman and from the complaint it appears that Father Gausman has no independent evidence to support his own statement on the point. The Board sees no reason to doubt Mr. Gurusatha Pillai's word in the matter, but even if he had been told by the driver why the cart was required and had believed the statement, it still remains impossible to say that the death of Mr. Schofield was caused by the stoppage of the cart. If the Board believed that the Prince Assistant Conservator had really stopped the cart with the knowledge that he was endangering any one's life, it would have been prepared to leave the question as to whether his action had caused death to be determined by a Criminal Court; but as the allegation that he had such knowledge is denied by Mr. Gurusatha Pillai, and is on the face of the papers incapable of being proved, the Board considers it to be its duty to recommend that sanction be refused. As required by the Conservator the Forest Officer can personally testify to the ordinarily peaceful and kind demeanour of Mr. Gurusatha Pillai.

8 The charge under section 541 I.P.C., wrongful restraint, depends as the Collector points out, on whether the person restrained had a right to proceed in the direction in which he was going and this right he denies though he does not go so far as to deny the refusal of sanction to issue a licence. The question may be raised at the trial of the Tammahar for whether prosecution is required. The Board is unable to follow the Collector in his argument but it may remain an open

that it does not see how the point can be raised at the trial of the Thammadhar, or how in fact the proceedings against the Thammadhar can be carried as far as trial as it is being obviously acted in good faith under the orders of his superior officer. The question for decision, however, is ^{the} validity of the charges against the Extra Assistant Conservator and it seems to the Board to be clear that in stopping the cart he was acting within his rights.

The writ notification throwing open the use of the road to the public was not a statutory notification having the force of law, but a mere notice regarding a departmental road ^{with} departmental funds for departmental purposes, and the special information to Father Causamal that the road was no longer open to his carts, was, in the Board's opinion, a valid notice irrespective of the delay in the withdrawal of the general notification. Even if the Board be wrong in this contention, the Extra Assistant Conservator knew that the road was a forest road, that it had been closed to Father Causamal and had been opened to him under an agreement. When therefore he was told by his superior officer that persons need not stop any carts belonging to the Kattalamal Estate that might attempt to pass along it, he naturally presumed that the facts were as stated, and in obeying his orders he is protected by section 79 of the I.P.C. which provides that nothing is an offence which is done by any person who by reason of a mistake of fact believes himself to be justified by law in doing it.

The Collector considers that there is prima facie ground for a trial under section 53 of the Forest Act as the Extra Assistant Conservator exceeded his powers in seizing the cart although he was within his rights in seizing the bullocks and impounding them. The Board entirely disagrees with the Collector and considers that for the reasons given in connection with the charges under section 341 I.P.C. the action of the Extra Assistant Conservator is covered by section 61 of the Forest Act, which provides that no criminal prosecution shall lie against any public servant for anything done in good faith under the Act. The Collector argues that in moving the cart, as well as the bullocks, the Extra Assistant Conservator

Serg. Geo.

Aug 19/97

Read Am No 7375

Ed. misc. no 5107 & 129 Sept 97

The Govt agrees with the Board and sees no reason to grant sanction for the prosecution of the Extra Assistant Conservator.

Wds
29-8-87
129.9.97

Bo of Rev L.R. 2286
misc. no. 5107

Classified
1/10/97

When given for copying _____
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189

READ AGAIN C.O., No
189

PATENT

COPY No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DITTO

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