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EAST AFR PROT
32799

REC'D
REG'D 11 JUL 16

9/6

To: Balfour
1916
13 June
Last previous Paper
10059

Sedition
Case of K. T. Sarvedi.

Sends report by Atty Genl together with ^{internal} proceedings of proceedings by military Court.

See ~~Butler~~ ^{Mr Thompson}
See ~~Butler~~ ^{Mr Butler}

(I am sorry I have been unable to go into this matter before, but pressure of other work has been very great)

The history of the case appears to be somewhat as follows:

He accused an Indian clerk in the High Court, was arrested on August 1st 1915 and tried on Dec 3rd 1915. His house had been searched & papers removed from it by the military on August 2nd.

There were three charges:

- 1. Using language intended to promote hostility against G. B. King's troops

To Sec. East Africa
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Next subsequent Paper

subjects and officials

- (2) Circulating or having in his possession seditious publications
- (3) Committing an act likely to cast discredit on H.M.'s forces or to cause disaffection or bad feeling between the troops and the public.

The prisoner was found not guilty under counts (1) & (3), but found guilty under count (2) and condemned to death. General Macleson commuted the death sentence to one of 20 years' penal servitude, and General Tighe reduced this to 14 years' rigorous imprisonment.

The proceedings were not referred to the civil authorities, and the Attorney General of the East first saw the papers when the suspension of Weshwalee from his Protectorate office came before the Executive Council.

Turning now to the case against Weshwalee on the

charge of having seditious publications
 in his possession, the prosecution
 was based on three documents (or
 sets of documents) - A, B & C -
 A. B. & C. stated to have been found
 among the papers of the prisoner when
 his house was searched by the
 military.

A. a letter from one Sita Ram
 dated 10th July 1915. (We
 had this before us in the case
 of Mr. Rishi who is mentioned
 in the letter.) This letter is
 thoroughly seditious; it has
 reference to current events in
 P. Africa & its possession would
 certainly seem a good ground
 for conviction. But it appears
 doubtful whether the accused had
 really any knowledge of it. When
 found it was quite clean &
 appeared never to have been
 opened. Moreover it was not
 immediately discovered when all

was found in
 A's house.

Subjects and official

- (2) Circulating or having in his possession seditious publications
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The proceedings were not referred to the civil authorities, and the Attorney General of the East first saw the papers when the suspension of Kesavalal from his Protectorate Office came before the Executive Council.

Turning now to the case against Kesavalal on the

charge of having seditious publications in his possession, the prosecution was based on three documents (or sets of documents) - A, B & C - which stated to have been found among the papers of the prisoner when his house was searched by the military.

A. a letter from one Sita Ram dated 17th July 1915. (We had this before us in the case of Mr. Ritch who is mentioned in the letter.) This letter is thoroughly seditious; it has reference to current events in E. Africa & its possession would certainly seem a good ground for conviction. But it appears doubtful whether the accused had really any knowledge of it when found. It was quite clean & appeared never to have been opened. However, it was not immediately discovered when all

was found in
his house

the papers were removed, but only
some weeks later, and it seems
that it could not be definitely
identified as one of those which
had been removed from the prisoner's
home.

B. A set of extracts, cuttings etc
in a collection in a small book
found in the house when searched.
Some of these papers are most
objectionable, but by themselves
they are hardly sufficient to
justify conviction. It was pointed
out that they were all old
(none later than 1910) and no
reference to present conditions
that they were mixed up with
other cuttings etc which were
not seditious & that their
kind was of theoretical rather
than practical import. The
prisoner admitted having seen
B, but said he never looked
into it.

Found in Savala's
home - nothing but
translation of his
home to connect
(Keshawal with it)

See above

C. A letter from Sita Ram
writing to A. B. at Savala
prison for sedition at the same
time as Keshawal. This letter
(I think we also saw it in
connection with the Ritch case)
was the strongest piece of
evidence against Keshawal, in
the opinion of his counsel. It is
like A, only stronger and at the
end of it occurs the sentence:
"I have written to Kesho Datt
for his views."

The defence apparently was that
this paper also was not definitely
found among mine after the papers
of the accused had been removed
from his house for some weeks. It is
suggested that a personal enemy
of the accused might have
written or copied the letter with
the incriminating sentence in it
and that it might have been
introduced on purpose amongst the
papers removed from Keshawal's
house.

[O.B. I note here that most unfortunately there are two things which do not definitely appear from these papers: (1) what became of the fellow prisoner Savale (2) was Lita Ram ever identified or found]

Finally it should be stated that an amount of evidence was given as to the record of the prisoner and that it was all of a very favorable nature.

It seems to me that if C was genuine (and there is very little said in the papers as regards the evidence in favour of and against its genuineness) it is difficult to get over, but that apart from it (and including it, unless there was definite proof as to its authenticity) the case

against the prisoner is a very weak one, and is certainly not such as to justify the death penalty or 14 years' rigorous imprisonment.

The matter is, of course, primarily one for the War Office. Should we, as a first step, simply send them copies of Govt. despatches and enclosures and of the Counsel's memorandum (explaining that it has been received privately) and ask for their views as to the proceedings and the wisdom of the decision and the penalty inflicted?

So proceed? 20/10/16
 The military authorities had to deal with a dangerous condition of India at that time and it is not surprising that they inclined to the death penalty in this case. As regards A (if received before arrest) & the B papers, Keshab was an active member of several organizations & must have received a lot of circulated matter, and it does not follow that

he was in sympathy with the addressed action.

It was not found in his house & there is nothing to show that Sitaram did write to him. If he did, the letter was the evidence destroyed.

There was room for a good deal of suspicion, & if that is good enough for a military court Keshaw's case hardly be released during operations in East Africa. As to what is to be done later, it is a pity that we shall not have the advantage of the views of Lt. H. Muller, the prosecutor, who a Prot. Magistrate who has been killed in action recently.

L.M. 19.8.16

This should be considered from two points of view.

- (1) Was the conviction legal
- (2) Was it justified by the evidence.

As to (1) the charge was one of being in possession of "publications". Only B. has a "publication" & both A & C therefore are of importance only as corroborative evidence. As to (2) having regard to the fact that all the extracts were dated before the war, the strength of the charge in respect of it is much weakened.

Technically however B. seems to ^{comply} have publications coming within Regulation 4 (2) of the Martial Law Regulations of 10th Dec. 1914. 551 544

As to (2) The question seems to be was Keshaw's possession of B. a criminal possession. If so, did he know that he had B. or was it in his house purely by accident & (possibly) was there any suggestion about his possession.

In this connexion A & C are of great importance, we have to decide whether these were genuine documents - whether A had really been addressed to Keshaw & whether C showed a real commerce between him & seditious character.

As to this the ~~question~~ ^{question} in which the documents formed in

Keshav's house, were dealt
with certainly, made it
possible for this Counsel
to argue with some
effect that there was no
proof of ~~the~~ A) ever having
been in Keshav's possession.

However, this is a question
of fact on which we
can hardly question the
Court's decision.

As to C) I do not think
that Mr. Cresswell deals
with this effectively -
in particular his argu-
ment at the top of p. 7.
of his memo is based
on a misstatement of fact,
as the document was not
found in Keshav's house
but in Savale's.

Mr. Cresswell admits that
this document if genuine
throws grave suspicion
on Keshav & he seems
not to have succeeded

at all in showing 552
that it was not ge-
-nuine. 548

Obviously we, who have
never even seen
the document cannot
form any opinion as
to this.

It seems to me therefore
that the conviction was
on the whole justified,
but I think we should
if possible get some fur-
ther light on the matter.
In particular we ought
to have a full report
of the Savale proceedings
& we should try to find
out something about Lita
Rao, who seems actually
to have been employed at
Voi (whence the letters were
written) on the Uganda
Railway at the date when

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& we should try to find
out something about Lita
Rama, who seems actually
to have been employed at
Voi (whence the letters were
written) on the Uganda
Railway at the date when

Key were written.

I send you a copy
of the file's despatch
of 18th June of
Mr. Cresswell memo
asking for info
on 1. The Savale case
& Sitn Ram

& ask for full
reports on the same
Subjects.

G.
23/8/46

Sub 6.5.20.7-16
23.8.46

Am 14.8

Waikiki.

June 12. 1916.

My dear Reed,

With reference to the L. O. Kilgus
 May 2. relating to the trial and
 sentence of Keohakaloa Keiwaiki by a
 Military Court. I send you, with the
 approval of the Chief Justice, some papers
 which were furnished to him by Counsel
 at the prisoner. I send them in this
 way because Hamilton has said that
 its contents may not be divulged locally.

It is very difficult to get any satisfactory
accounts of the proceedings of these
Military Coms, but such information as
we have been able to get from G. H.
goes to show under cover of official despatches
by this mail, and I thought you had
before have these papers in the same

based on the principle, in that the
accusation must prove its case, but that
prisoner must prove his innocence.
and this keeping reasonably busy.
has just concluded a week of legislation
and Conference, and now was
respecting a big mail from Gen. Lamason.

The proceedings of the Coms appear
to have been so curious so their conduct
and we have all considered them the more
ought to be released. Here responsible
of military law would seem to have

little kindness regards and all this
Yours very sincerely
H. Conway, President.
Keep the Enclosures.

Copy this only

555

EAST AFRICA PROTECTORATE

CONFIDENTIAL No. 59

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.

13th June 1916.

32799
REC^d
REG^d 11 JUL 16

Sir,

See 10950

From Attorney
General. 9.6.16.

Proceedings

In accordance with the request contained in your telegram of the 2nd ultimo, I have the honour to transmit herewith a copy of a letter from the Attorney General, together with a copy of the proceedings in the trial of Keshavlal V. Dwivedi.

I have the honour to be,

Sir,

Your humble, obedient servant,

A. Conway Beyard

GOVERNOR.

THE RIGHT HONOURABLE

ANDREW BONAR LAW, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWING STREET, LONDON, S.W.

2799/1916.

552
556

PARAPHRASE OF TELEGRAM from the Secretary of State
for the Colonies to the Governor of the East Africa
Protectorate.

(Sent 3.10 p.m. 25th August, 1916.)

August 26.

With reference to

Your despatch 13th June 69 confidential
send by mail full reports on cases of Savale and
Sita Ram which are referred to in papers forwarded.

BONAR LAW.

No. 32799

Cap. Cot

557

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29 August 1950

Confidential

DRAFT

10950

The Secretary
War Office

Eqn 2578/b

No. Boules 20 f.3.

20/8

18 June

32799

attached to 32799

to
 letter ref. to the letter
 from the Dept. of May 3rd
 relating to the trial of
 a military court in
 East Africa of the
 Lieutenant Dwyer on
 the charge of circulating
 or having in his
 possession seditious
 publications, I am etc
 to transmit to you, to
 be paid before the ac
 the accompanying copy of
 a despatch with enclosure,
 from the Foreign Office
 E.A.F. ~~to the~~
 together with a copy of
 a memorandum by the
 Principal Counsel which
 has been received