

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1655	Press ~~Mis.~~
	30-31	
Dated	8-11-	19-10-57

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 10th November 1857.

No. 30. Read the following letter from Mr. H. B. SAUNDERS; to the Secretary to Government, Judicial Department, Madras.

SIR,

I beg to forward the enclosed petition on behalf of 6 prisoners in the Jail at Salem, understood to have been sentenced respectively to 14 years transportation, by the Commissioner appointed under Section 7, Act XIV of 1857, for the consideration of the Right Honorable the Governor in Council.

In the absence of all documents, I am necessarily restricted to the question of jurisdiction, and in order to afford proof of the period of committal, I moved the Sudder Judges to apply for copy of the Thasildar's return, but the Court did not deem it advisable to do otherwise than refer me to the Government, and I therefore enclose this respectful appeal on behalf of my clients.

I enclose a Vakalutnama and the Commissioner's endorsement on an application for copy of the sentence.

31, Mowbray road, }
2nd November 1857. }

(Signed) H. B. SAUNDERS,
Vakeel to the Prisoners.

To the Right Honorable the Governor in Council of Fort Saint George.

The humble petition of Aromogam Chetty, Sillar Saib, Mahomed Saib, Syed Mea, Chendamea, and Retty Kiah, respectively, prisoners in the Zillah Jail at Salem, presented by their Vakeel H. B. Saunders.

HUMBLY SHEWETH,

1. That your petitioners were jointly tried by the Commissioner, appointed to the Salem District with powers given under Section 7, Act XIV of 1857, (as they believe) on a charge of robbery with open violence, and sentenced respectively (as they believe) to 14-years' transportation with hard labor in irons; but of which they have no record, and have been refused copies thereof, though the right to such copies was part of the existing Criminal Law which has not been abrogated by any enactment under which the above Commission sat.

2. Against the above proceedings your petitioners humbly appeal, for the following reasons:

3. Because the offence of which they were convicted, was stated to have been committed on or about February last, being 4 months before the Act above referred to was in existence, and consequently it could be no offence against that Act.

4. Because your petitioners have in effect been tried by an *ex post facto* law for although the amount of punishment for the alleged offence remained the same, yet the established forms of procedure, the guardians of individual rights, were in this instance taken away from your petitioners, who were in no way identified with the cause of their suspension.

5. Because the Commission in question did not supersede the established tribunals of the District, but had only concurrent jurisdiction.

6. Because Judicial powers must necessarily be limited and retrospective powers cannot be given by your Government under the authority of an Act of the Legislature, which does not expressly authorize the same.

7. Because although not expressly stated in Section 7, Act XIV of 1857, that such Commission should only take cognizance of crimes and offences "committed after a day specified," yet such must be the obvious reading; all Legislative enactments being only operative *in futuro* when not expressly provided otherwise.

8. Because in Section 7, Act XIV of 1857, a reference is made to Sections 1 and 2, of Act XI of 1857, which Sections are connected with Clause 1, Section 3, of the same Act, in which the words occur "after a day to be specified in the Commission" and the obvious construction of Acts requires that parts of other Acts referred to or connected in sense, should be read together.

9. Because your petitioners were sent for trial after a detention of 45 days (as they believe) in the custody of the Tahsildar who has no power to examine upon oath or to commit for trial

That part of Act XIV which relates to the

Fort St. George, Judicial Consultation, 10th November 1857.

on a charge of robbery with violence, but can only forward such cases to the Magistrate or committing Officer.

10. Because by Section 10, of the above Act under which the Commission sat, your petitioners, if triable, should have been sent up for trial by a Magistrate or other Officer having power to commit for trial.

For the above reasons your Honorable Council will perceive that the proceedings of the Commission were illegal.

Firstly.—As having no jurisdiction over an offence alleged to have been committed within a District, and at a time when the powers of the above Commission were not in being.

Secondly.—The committal not being according to Law, subsequent proceedings based upon it must be bad also.

Your humble petitioners therefore submit to your Honorable Council that having been charged with committing an offence when the public safety did not call for an emergent law, they were amenable only to the established tribunals of the country and having been illegally tried and convicted, they humbly pray to be relieved from undergoing an illegal sentence and that they may be forthwith discharged, and your humble petitioners as in duty bound will ever pray.

Madras, 2nd November 1857,
31, Mowbary road near Sudder
Court.

(For)

ARMOGUM CHETTY,
and five others by their Vakeel
H. B. SAUNDERS,

No. 31.

ORDER THEREON, No. 1455; dated 9th November 1857.

This appeal is grounded on an illegal want of jurisdiction and as respects this ground, the Right Honorable the Governor in Council resolves to reject it. The offence for which the prisoners were tried was punishable by Law previous to the passing of Act XIV of 1857, and no new punishment was inflicted upon them. It is also to be observed that under Section X, of the Act, a Tahsildar or Head of Police, has power to commit for trial.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

*This is evidently
a very important
point - which has
totally altered the
view - whether a
Tahsildar is a
committing officer
or not.
The ordinary view
is that the Country
Magistrate is a
Magistrate & a
Magistrate -
It is clear from
the Act that
cannot commit
the Act which
almost says.
H*

*This draft is re-circulated for orders in
consequence of the note which the Honble Mr.
Morehead has appended to it.*

*He proposes to omit the passage which says
that Tahsildars or Heads of Police have power
to commit for trial. In his opinion Tahsildars
have not that power, & of this opinion
is right every trial hitherto held is illegal.
The subject is therefore of much importance.*

*I cannot agree in Mr. Morehead's view of the
Act, and some of the Magistrates or Commis-
sioners have viewed it in the light he does.*

*In considering Act XIV it appears proper
to consider it without any reference to the
Police System which prevails in Bengal. The
Act will be found to be perfect in itself,
entirely
& unconnected with any other Act, except
that to avoid repetition it refers to
2 Sections of Act XI to show the crimes
which the Commissioners have authority to
punish.*

That part of Act XIV which relates to the

trial & punishment of civil or non-military offenders, for crimes against the State & heinous offences is brief & clear.

Section VII authorises the Local Govt. to appoint Commissioners to try such offences whenever necessary.

Section IX authorises Magistrates "or other officers having power to commit for trial within the district" to forward cases to the Commissioner for trial.

The Commissioner thus takes the place of the ordinary criminal tribunals and I can feel no doubt on this point because as Head of Police ^{under the} ordinary Regulations the same power of committing for trial as a Magistrate, & seems therefore widely embraced in Section IX.

If it is not so I do not see how any cases are to reach the Commissioner, as our Magistrates do not commit direct to the Session Court on ordinary occasions ~~and consequently~~ but commit like Heads of Police to the subordinate

by which the case is referred if the Sub Judge sees fit, to the Session Court. Consequently the same arrangement which would prevent a Head of Police committing to the Commissioner ^{Magistrate} applies to them also.

But I presume that no one will say that a Magistrate is not to commit offenders for trial to the Commissioner and it seems clear that the act never intended cases to reach the Commissioner through the subordinate Courts, after a double enquiry. The object was to simplify & expedite the administration of justice - for which purpose the Commissioner takes the place of the ordinary ^{Criminal} Courts receiving cases for trial from the Magistrate & Heads of Police & may hold his Court (Section VIII) in any part of the district he chooses to move to, an arrangement quite consistent with cases having to pass first through a subordinate Court & then always at the head quarters of the district.

I would therefore urge the following

3043A

two points in consideration

1st that "the other officers having power to commit for trial within the District" referred to in ~~Section~~ cannot be Subordinate Judges & Principal Sd Officers, because Magistrates have not the power of commitment which they have & are not "Committing Officers" of that term is to be held as applying only to officers who commit to the Sd Court

2nd Those "other officers" must be Heads of Police as they have primary powers of commitment like Magistrates & are on an equality with them in this respect.

This reading also agrees with the tenor & scope of the Act, as well as with our judicial system.

It has been necessary to bring forward the question at once for settlement, because the point of jurisdiction raised in the appeal presented on behalf of the Salem prisoners will not be settled if the last part of the Draft is omitted, and all the prisoners hitherto

sentenced by Commis. must be discharged if Heads of Police are not entitled to commit for trial.

W

Judicial Department

No. 1155

Extract from the Minutes of Consultation
9/9 November 1857.

Read letter from Mr. Saunders presenting an appeal on behalf of the 6 prisoners in Case No 11 of 1857, tried by the Commis. at Salem. -

W
L
H

W
H

This appeal is grounded on an alleged want of jurisdiction & as respect this ground the R. H. the G. in C. does not reject it. - The offence for which

the prisoners were tried was punishable by Law previous to the passing of Act XIV of 1857, and so new punishment was inflicted upon them. It is also to be observed that under Section 7 of the Act, a tahsildar or Head of Police, has power to commit for trial.

The only committing officers in this Presidency are Sub Judges & M. J. - except in one or two cases where Magistrates have the power specially given them in Bengal a Magist.

has the power
of committing
it is therefore a
law-making officer
should not
be last para
J. O.

22 Nov.

Copy to Mr. A. B. Saunders, Dir. of
with 2 orig. Encls.

Judith to Eng.
2 March 12 of 1858

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Historical 1857 Dep. 1st

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Abstract of Minutes of Board

27th November 1857