

# MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

G.O. No. 1682

Press  
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101-102

Dated 13. 10. 1862

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,*  
13th October 1862.

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No. 101. Read the following Proceedings of the High Court of Judicature at Madras, dated 29th September 1862, No. 15.

Read letter, dated 17th instant, from the Session Judge of Salem, reporting that he has carried into effect the sentence of death passed by him on the prisoner "Paupen" in Case No. 115 of 1862, and confirmed by the High Court; and stating that he respectfully but earnestly protests against his being required to perform so painful a duty as superintending the execution of persons whom he has himself sentenced to death.

1. The Chief Justice and Judges remark that, up to the passing of Regulation X of 1816, the Magistrate of the District was in charge of the Zillah Jail. By Section XXVII of that enactment the charge of the Jail was transferred to the Criminal Judge; but, though Judge of the Zillah, he was subordinate to the Provincial Court of Circuit, before which all persons charged with heinous offences were tried.

2. So long as either of these arrangements continued, sentences of death were not carried into execution by the Judge by whom the prisoner had been tried.

3. Section XLVIII, Act VII of 1843, however, enacted that, in Zillahs where there was no Subordinate (Criminal) Judge, the Jail should be under the charge of the Session Judge, who was to take the place of the Provincial Court of Circuit; and, there being now no Subordinate Judges, except one in Coimbatore, whose Court is located at a distance of fifty miles from the Zillah station; the charge of the Jail in every Zillah devolves upon the Session Judge.

4. It thus becomes every Session Judge's duty, in the case of capital offences, first to try the accused person for his life; and then, in the event of conviction, not only to sentence him to suffer the extreme penalty of the law, but also to keep the person he has condemned to death in his custody, pending confirmation of the sentence by the High Court; and finally to superintend his execution.

5. The combination of these duties, which in all Her Majesty's Courts are imposed upon Officers with separate and distinct functions, appears to the Chief Justice and Judges of the High Court so highly objectionable, unseemly, and inexpedient, that they resolve to urge the Government at least to transfer to some other public Officer, whether the Magistrate of the District, or the local Superintendent of Police, or their Deputies, the duty of superintending the execution of all sentences of death.

6. In making this modified recommendation it is not the wish of the Chief Justice and Judges to abandon the proposition of the late Sudder Court, that Session Judges should be wholly relieved of the charge of Jails and the duties connected therewith. They consider that such a measure would not only be proper in itself, but be productive of great public advantage by enabling the Session Judge to devote to strictly Judicial labours the time now occupied in attending to the details of prison discipline, the keeping of accounts, and other duties devolving upon him as the Ministerial Agent of the Inspector of Prisons.

(True Extract.)

(Signed) C. F. CHAMIER,

Registrar.

To the Chief Secretary to Government.

From J. W. CHERRY, Esq., Session Judge of Salem; to C. F. CHAMIER, Esq., Registrar of the High Court of Judicature, Madras, dated 17th September 1862, No. 31.

I have the honor to report for the information of the Judges that the prisoner "Paupen" was executed this morning at 7 A. M., in conformity with the orders passed under the Seal of the High Court, dated 12th instant.

2. I cannot refrain on this occasion from putting on record my respectful but earnest protest against having to perform so painful a duty.

3. In no other civilized country in the world, does the Judge, who tries a man for his life, take charge of the criminal during the period the sentence of death has to be confirmed, and then

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finally superintend the execution and see the last penalty of the Law carried out, as I have had to do on this occasion.

4. With the institution of a new High Court, such incongruous duties, as being in charge of a Jail, should not be continued to be required from the Judge of the station, and the mere fact of the number of Session cases in Salem having increased *four-fold*, makes it almost impossible for me to exercise proper supervision over my Court, in addition to looking after 650 Convicts.

5. I am aware that the Sudder Court in their Proceedings, dated 17th July 1862, forcibly represented to Government the objection of a public Officer combining in his own person the functions of Judge, Jailor and Sheriff; but I trust I may be pardoned for hoping that the High Court, will also move, and again press the subject upon the Madras Government; especially as such anomalous duties are not looked for in other parts of India.

(True Copy.)

(Signed) C. F. CHAMIER,  
*Registrar.*

No. 102.

ORDER THEREON, 13th October 1862, No. 1,682.

The Governor in Council concurs with the High Court that the Sessions Judges should be relieved of the duty of superintending the execution of prisoners whom they themselves have tried.

2. The Magistrates of Districts are requested to arrange for executions being superintended by one of their European Assistants. On the morning appointed for carrying out a capital sentence, the condemned prisoner will be handed over by the Jailor to the European Magistrate for execution, who will furnish a report to the Sessions Judge that the sentence has been duly executed. The High Court will be good enough to prepare instructions on this point in regard to the Warrant, &c.

(Signed) T. PYCROFT,  
*Chief Secretary.*

Exd. F. Cartledge.

*Judicial Department*

*1862*

*High Court of Judicature  
Salem 11th Sep 1862*

*I wish  
the Court to be entrusted  
to make arrangements  
for the execution of  
capital sentences - being  
superintended by  
one of their European  
assistants - on the morning  
of the execution*

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Judicial.  
 Proceedings of the Madras Govt.  
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Order - 13 October 1862 No 1682

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The Chief Justice & Judge  
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Sessions Judge of Sailer.  
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Ans. 6. 1862. Department.

No. 1682

PROCEEDINGS OF GOVERNMENT.

Dated 13 Oct. 1862

St. H. 2124.  
 " 2125.

Receiving the depositions  
 from the body of Magistrates  
 the President of Councils and  
 requesting the Magistrates to  
 to arrange for execution  
 being different from anyone  
 of their Commissioned Agents.

5761 Madras P.

To the Chief Justice & Co. of the High Court  
 " Inspector General of Police  
 " do do  
 " Session Judge of 22 Judges  
 " Magistrate of 19 Magistrates } disp. 14