

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 559	Press Mis.
63-64	
Dated 5.4.1862	#

Not to be folded or roughly handled

559

*Proceedings of the Madras Government, Judicial Department,
5th April 1862.*

No. 63. Read the following letter from A. M. MONTEATH, Esq., Under Secretary to the Government of India; to M. J. SHAW STEWART, Esq., Acting Secretary to the Government of Bombay, dated Fort William, the 15th March 1862, No. 1,395.

Home Department.
Judicial.

I am directed to acknowledge the receipt of your letter No. 13, dated the 21st of January, transmitting for the consideration of this Government a reference from the Sudder Foujdary Adawlut regarding the Officers who have the powers to prepare and commit cases for trial to the Sessions under the Code of Criminal Procedure, Act XXV of 1861.

2. Your communication having been submitted to the Governor General in Council, I am directed to state for the information of the Government of Bombay that His Excellency in Council is of opinion that the Sudder Foujdary Adawlut of Bombay is right in considering that every Subordinate Magistrate, and every Officer vested with any of the powers of a Magistrate, is not authorized to commit for trial under the Code of Criminal Procedure.

3. The Governor General in Council is also of opinion that the Court is right in saying that Chapter XII is not free from ambiguity in that respect, and that if it stood alone and unqualified the inference to be drawn from it would be that every such Officer as above described is vested with full powers of committal.

4. But as at present advised, the Governor General in Council is not of opinion that the omission to give this power to all such Officers arose from oversight, or that it is a defect in the Code of Criminal Procedure.

5. If it be considered right that every Officer who has any Magisterial powers should have power to commit to the Session Court, the Government has the remedy in its own hands by investing all such Officers expressly in the order appointing them, or by separate order, with power to commit to the Sessions. Any Officer thus expressly authorized will be clearly a Magistrate within the meaning of Chapter XII. or of the Interpretation Clause, and no inference will arise from any of the Clauses cited by the Court, or from any other Clauses in the Code, that he was not intended to exercise the power of commitment.

6. The only reason for inferring that all Officers exercising any of the powers of a Magistrate have not authority to commit to the Sessions is that in some of the provisions of the Act it is clearly assumed that there are some Officers exercising some of the powers of a Magistrate who have not power to commit. Besides Sections 171 and 176 cited by the Court, Sections 273, 276, and 278, in the Chapter relating to Subordinate Magistrates, show that some Subordinate Magistrates were considered by the Legislature not to be competent to commit for trial. But these Sections also show that the Legislature considered that some Subordinate Magistrates were competent to commit, and the only line of distinction that can be drawn is between those who have and those who have not been vested by Government with the power to commit. When the full powers of a Magistrate have been entrusted to an Officer, the authority to commit will exist without any special words in the appointment. When less than full powers are given it will be necessary that the power to commit shall be given by express words in order to authorize the Officer to commit.

7. The Governor General in Council is of opinion that the ambiguity in the Code is sufficient to make it worth while to amend it by expressly declaring the Law to be as above stated, whenever any other general amendments of the Code are made. But His Excellency in Council does not think that either the ambiguity referred to, or any difficulty in which Magisterial Officers or the Public are placed by the existing Law, is sufficient to make it worth while to bring in a Bill solely for the purpose of clearing up such doubt as there may be on the subject.

8. With reference to the substance of the supposed defect in the Code, the Governor General in Council does not think that the Law would be improved by vesting indiscriminately in every Officer entrusted with any of the powers of a Magistrate, however limited his power may be, authority to commit to the Sessions Court. His Excellency in Council thinks it better that the discretion of arming Subordinate Magistrates with this authority should rest, as he thinks it does at present, with the Government.

*Proceedings of the Madras Government, Judicial Department,
5th April 1862.*

No. 1,396.

Copy forwarded to the Government of Madras for information.

(Signed) A. M. MONTEATH,
Under Secretary to the Government of India.

No. 64.

ORDER THEREON, 5th April 1862, No. 559.

A copy of this letter will be forwarded to the Sudder Court, who will suggest what orders should be issued in reference to it, and on what Officers exercising some of the powers of a Magistrate should be conferred the power of committal to the Sessions Court.

(Signed) T. PYCROFT,
Chief Secretary.

Judicial 1862 Sept.

No. 559.

*Proceedings of the
Madras Government*

Dated 5th April 1862

Ch. 718.

*With reference to a letter
from the Govt of India
enquiring under of the
Sudder Court as to what
Magisterial Officers
should be empowered
to commit cases to the
Sessions Court.*

Exd. T. O'Connor.

No. 559-5 April 1862

*A copy of this letter will
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der Court, who will suggest
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sued in reference to it, &
on what Officers exercising
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gistrate should be conferred
the power of committal to
the Sessions Court.*

MM
WU

JP

The Sudder Court. Sept 5th

Proc of April
Judicial 1862 Sept

From
The Under Secy to the
Govt of India. Home Dept
1396.

Of 15th &
Of 28th } March /62.
5 spare copies
No 621

Forwarding for information
a copy of a letter
addressed to the Bombay Govt
relative to the desirability of
the dissection of assigning sub-
ordinate Magistrates & offi-
cers vested with any of the powers
of a Magistrate with power
of Commitment of Cases to the Ses-
sions Court, resting with
the Government.

63. 64.
copy made
22 April

With an Order.