

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

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Dated 5. 5. 1862 10 .

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Not to be folded or roughly handled

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

No. 46. Read the following letter from W. ROBINSON, Esq., Inspector General of Madras Police; to T. PYCROFF, Esq., Chief Secretary to Government, Fort Saint George, dated 24th April 1862.

1. I have the honor to solicit the attention of Government to the fact that, in consequence of Section 34 of Act XXIV of 1859 having been repealed, and the Schedule appended to the Code of Criminal Procedure confining to Magistrates of 1st class the jurisdiction over contempts of Court by non-attendance to Summons, the Sub-Magistrates of this Presidency have practically no longer any power to vindicate their Summonses which require the attendance of witnesses and others. Summonses are neglected; business is obstructed and the time of the Police is being wasted by having to execute Warrants against parties who commit default in regard to Summonses legally served upon them.

2. I need scarcely remind Government that under the old system, Summonses were practically executed as Warrants. The Peon in charge of a Summons brought up the witness or party and produced him before the Court, where he remained under *surveillance* till the case was disposed of. In short arrested him and brought him up with him. I beg to refer on this point to an Order, No. 71, issued by me, under date 14th November 1860. Great abuse was the consequence. But as few persons were found to obey a mere Summons and the Law provided no remedy, the abuse was tolerated for the sake of despatch of business.

3. On the reorganization of the Police it became of the first importance to restra in the acts of the Police within the letter of the Law. And in order to secure obedience to the Summonses of the Sub-Magistrates' Courts, I was instructed by the Government to introduce a provision into the Police Law enabling any Magistrate "within the limits of his ordinary jurisdiction (Section 50)" to fine any person "failing or neglecting to obey a Summons or notice duly served (Section 34.)"

4. When I proceeded to Calcutta in 1859 in charge of the Police Act, I brought this provision of the new Law very earnestly before the Members of the Legislative Council. The principle was approved, the importance of the objects and reasons was admitted and the provision obtained their sanction. Under this provision the Sub-Magistrates of this Presidency have, since the passing of Act XXIV of 1859, been enabled to fine parties neglecting their Summonses without sufficient cause, to the extent of 3 Rupees. The provision has worked remarkably well. The number of fines imposed has been very small and their amount reasonable. Summonses have been used as intended by the Law; parties have promptly obeyed them; public time has not been sacrificed by having to execute both Summonses and Warrants in order to secure the attendance of any party; and, lastly, the hands of the Police have been kept off persons whom the Law clearly intends are not to be arrested or brought under the personal influence of Police Subordinates.

5. As above stated this power has been withdrawn. Sub-Magistrates are now Magistrates of the second class, and as such have no power to vindicate their Processes except by a regular trial before a Superior Court. The inconvenience of this as regards this Presidency is very great. I am within the mark, as shown by the Statistics of Summonses and Warrants, when I state that 80 per cent. of the Criminal and Magisterial Processes issued in this Presidency emanate from the Sub-Magistrates' Courts. These, and not the Magistrates of the first class, are the working Magistracy on whom devolve, irrespective of cases within their own jurisdiction, the preliminary steps in 9-10ths of the criminal cases in the country. But as the Law now stands their Summonses of witnesses and parties are now practically without protection. And Sub-Magistrates are consequently constrained, in self-defence, to substitute a Warrant where Summons is the proper legal procedure; or, where they fail to do so, great delay in the course of justice occurs, and the Police are required to execute a Warrant of arrest in addition to the waste of time and labour already expended on the service of Summons. The wholly unwarrantable additional charge hereby thrown on the State by individuals in contempt of Court must be very great; besides which the Police are engaged, all over the country, in escorting as prisoners, witnesses and persons whom it is obviously the spirit of recent Legislation to keep away from their influence.

5th May 1862.

7. Several Magistrates have brought this subject very earnestly before me. The Court of *Fowjdari Adawlut* has been moved on the matter. But as the Law now stands the limit imposed cannot be extended. I have therefore the honor to recommend *most earnestly* that the Legislature may be moved either to restore the provisions of Section 34 of Act XXIV of 1859 or otherwise provide for the difficulty. The severe penalties of the Penal Code are not required in these cases of petty contempt of *Sub-Magistrates Process*. The power to impose summarily a very moderate fine—such as was provided by Section 34 of XXIV of 1859 limited by Section 50—is all that is required. There is not the smallest danger of the power being abused.

Dated 14th November 1860.

2. The Superintendent is informed that the practice adverted to, which had been prevalent in many Districts, was utterly illegal; and gave rise to the gravest abuses. It cannot therefore be reverted to under any circumstances by the Constabulary. The Police will adhere to the strictest letter of the Law as regards the execution of all legal Processes. Not only because right on principle; but because exceeding their powers, as they would do were they to use a Summons as a Warrant for arrest—is a highly penal offence in a Police Officer and exposes him to Civil action likewise.

No. 47.

(Signed) A. J. ARBUTHNOT,
Acting Chief Secretary.

Exd. T. O'Connor.

