M.R.O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 958-959 Press Mis.

135-137

Dated 16-12-1929

6/6

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 16th December 1863.

No. 135. Read the following letter from J. W. B. DYKES, Esq., Magistrate of Nellore; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Nellore, 5th December 1863, No. 32.

Under Section 426 of the Criminal Procedure Code, it is ruled that, on revision, the Appellate Court may reduce the punishment awarded by a Court of competent jurisdiction, if of opinion that a larger amount of punishment has been awarded than could be for the offence of which in the opinion of the Appellate Court the accused ought to have been found guilty; from which, it would appear that any Appellate Court has jurisdiction on "revision" where the limit of punishment assigned for a particular offence has been over-stepped.

2. By Section 434 however of the same Code, it is ruled, that no Appellate Court save the Sudder (now High Court) has power to alter any sentence of a Subordinate Court except on "appeal."

3. And the hands of the local Appellate Courts being thus tied to "appeals," I do myself the honor to submit for the consideration of Government, whether it is not desirable that measures should be taken for amending the law in this respect. During the late adjournment of the High Court, an illegal sentence was passed by a Subordinate Magistrate in this District and would have been carried out before the Court sat again, had I not interposed and suspended its execution, pending the result of a reference* of which I enclose copies. And as such cases may frequently occur, and it is not right that the people should be thus deprived of protection, when the means are at hand, I beg to recommend that a law be applied for, authorizing the Sessions Court, and, in the absence of the Sessions Judge, the senior Appellate Court in the District to suspend the execution of any illegal sentence, pending the requisite reference being made to the High Court, under the provisions of Section 434 of the Criminal Procedure Code.

* From the Magistrate of Nellore, to the High Court, Madras, dated 28th October 1863, No. 230.
Proceedings of the High Court, to the Magistrate of Nellore dated 14th November 1863.
From the Magistrate of Nellore, to the High Court, Madras, dated 16th November 1863, No. 248.
Proceedings of the High Court, to the Magistrate of Nellore, dated 25th November 1863.

4. I am aware that all local interference with the Subordinate Magistracy, is opposed to the spirit of the Code, and regret such interference should be necessary. But till a considerable improvement takes place in the administration of the law, I believe the proposed powers are really required, and are not likely to be abused, as no Magistrate is anxious to expose himself to censure to which he cannot reply.

Proceedings of the High Court of Judicature at Madras, Appellate side, dated 14th November 1863.

From J. W. B. DYKES, Esq., Magistrate of Nellore; to C. F. CHAMIER, Esq., Registrar to the High Court of Judicature, Madras, dated Nellore, 28th October 1863, No. 230.

I have the honor to state for the consideration and orders of the High Court, that in a Case No. 156 of 1863 on the file of the 2nd Class Subordinate Magistrate of Venkatagiri, two individuals being charged with having removed the fence around some grain heaped in a field of the complainant and having stolen a portion of grain; and having been indicted under the two Courts of (1) Criminal trespass and (2) theft punishable under Sections 447 and 379 of the Indian Penal Code respectively, the Sub-Magistrate sentenced each prisoner on the 20th August last to two months' rigorous imprisonment, one month under each count, and I thereon reduced the sentence on the 10th September last to one month's imprisonment in the absence of any appeal in accordance to the ruling of the High Court of the 31st March last.

2. Had I not adopted this course and waited instead, till the High Court met again, the sentence would have been undergone before the orders of the Court could have been obtained. And I therefore took upon myself an authority not properly vested in the Ma[illegible]

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1. No inconvenience could justify the Magistrate in exercising a power vested by Law in the High Court alone.

2. The High Court annul the sentence of one month's imprisonment awarded under Section 379 of the Penal Code.

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

To the Magistrate of North Arcot.

Proceedings of the High Court of Judicature at Madras, Appellate side, dated 25th November 1863.

From J. W. B. DYKES, Esq., Magistrate of Nellore; to C. F. CHAMIER, Esq., Registrar of the High Court of Judicature, Madras, dated Nellore, 16th November 1863, No. 248.

I have the honor to acknowledge the receipt of the Proceedings of the High Court of the 14th instant, ruling that no "inconvenience" could justify the Magistrate in exercising a power vested by the law in the High Court alone.

2. In the case in question, it was illegality not inconvenience. An illegal sentence had been passed, and was being carried out, when I interposed and suspended its execution.

3. And, I have the honor to request, you will ascertain from the High Court whether it is their order, that in future such action is to be held to be unjustifiable; and however illegal the sentence passed by a Subordinate may be, it is the Magistrate's duty to wait till the Court sits, and then bring forward the case for consideration.

The Section of the Code of Criminal Procedure which gives power to annul illegal sentences to the High Court alone, and the order of the Court pointing out its meaning, are so clear as to require no gloss or explanation whatever. The inconvenience was the necessity for waiting for the due course of law. This inconvenience the Magistrate had no right to remove by doing one illegal act to remedy another.

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

To the Magistrate of Nellore.

(True Copies.)

(Signed) J. W. B. DYKES,
Magistrate.

No. 136. ORDER THEREON, 16th December 1863, No. 1958.

The Governor in Council does not see any necessity for legislation on the subject referred to in the foregoing letter. The difficulty to which the Magistrate adverts may be obviated if it be arranged that one of the Judges of the High Court shall remain at the Presidency during the annual adjournment for the purpose of transacting any emergent business that may come before the Court.

2. The Governor in Council resolves to request that the Honorable the Chief Justice will make such arrangements as he may deem proper for providing for the despatch of emergent business during the annual adjournment of the Court.

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

No. 137. To the Honorable Sir C. H. SCOTLAND, Kt., Chief Justice of the High Court of Judicature, dated Fort Saint George, 16th December 1863, No. 1959.

I am directed to transmit for your information, the annexed copy of a letter under date the 5th instant, from the Magistrate of Nellore, and of the order which has been passed thereon by the Honorable the Governor in Council.

2. I request that you will make such arrangements as you may deem proper for providing for the despatch of emergent business during the annual adjournment of the High Court.

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

Exd. T. McMoctry.

[redacted]

Judicial Dept

Memorandum for Orders.

From

Magistrate of Nellore — dated 5th December 1863 No 32

It seems questionable whether any change in the Law is necessary. The difficulty may be met by requiring one of the Judges of the Court to remain at Madras during the adjournment for the purpose of transacting emergent business. This year there were two Judges present in Madras during the whole of the adjournment, and there was therefore no reason why the business of the Court should be entirely stopped.

The Judges should be requested to do as here indicated

JP

Judicial Department

Proceedings of the Madras Government.

Read the following letter from the Magistrate of Salem

(Here Enter 5th December 1863. N.o 32)

Order thereon 16th December 1863. N.o 1958.

The Governor in Council does not see any necessity for legislation on the subject referred to in the foregoing letter. The difficulty to which the Magistrate adverts may be obviated if it be arranged that one of the Judges of the High Court shall remain at the Presidency during the annual adjournment for the purpose of transacting any emergent business that may come before the Court.

The Governor in Council resolves to request that the Honble

Judicial Department

No. 1959.

To

The Honorable Sir L. H. Scotland Kt.
Chief Justice of the High Court of
Judicature

Honble Sir,

I am directed to transmit for your information, the annexed copy of a letter under date the 5th Instant, from the Magistrate of Nellore, and of the order which has been passed thereon by the Honorable the Governor in Council.

2. I am to request that you will make such arrangements as you may deem proper for providing for the despatch of Emergent business during the annual adjournment of the High Court

Fort St. George
16th December 1863

J P

Dispd 18th

To the Chief Justice

will make such arrangements as he may deem

or providing for

the despatch of Emergent

Business during the

Annual adjournment of

the Court

To the Magistrate of Nellore Dispd 18th

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