M.R.O. 1—19,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 700	Press ~~Mis.~~
40-41	
Dated 6.5.1863	~~19~~

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 6th May 1863.

No. 40. Read the following Proceedings of the High Court of Judicature at Madras, 9th February 1863, No. 24.

Read Proceedings of the High Court, dated 17th October 1862.

Read letter, dated 20th ultimo, from the Acting Agent to the Governor at Vizagapatam, inquiring whether there is any remedy open to the Prosecutor where a Subordinate Magistrate erroneously dismisses a case referrable to a Magistrate with full powers under Section 356 of the Code of Criminal Procedure.

No provision is made in the Code for the interference of the Magistrate in such cases. The several Magistrates of Districts will be called upon to report whether any cases have come to their notice in which there has been a failure of justice from the absence of this authority, and whether, in their opinion, it would be advisable to confer on the superior Magistracy a power similar to that conferred by Section 435 on a Session Judge in like cases.

Read also the replies of the District Magistrates to the above question.

1. The majority of the District Magistrates report that no case of the kind has come to their knowledge; but in some Districts it is said that several instances have occurred in which complaints of offences triable by the superior Magistracy have been erroneously dismissed by the Subordinate Magistrates to whom such complaints were preferred.

2. All the District Magistrates, however, concur in opinion that it would be advisable to invest every Magistrate exercising full power with authority to interfere in such cases.

3. The High Court see no objection to this course. They observe that a Subordinate Magistrate acts ministerially in inquiring into many classes of offences triable by a Magistrate with full powers, as he does in the case of offences triable by the Court of Session; and there, therefore, appears to be no reason why his order dismissing a complaint should be binding upon the superior Magistrate, while it is not so upon the Court of Session.

4. The High Court accordingly recommend that the legislature be moved to pass a Law investing every Officer exercising the full powers of a Magistrate with authority similar to that possessed by the Courts of Session under Section 435 of the Code of Criminal Procedure, viz., to direct the Subordinate Magistrate to refer for his orders the case of any person whom he may have discharged upon complaint of an offence triable by a Magistrate exercising full powers, but not by the Subordinate Magistrate; or to order an inquiry into any complaint of the same nature which the Subordinate Magistrate may have dismissed without inquiry.

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government.

No. 41. ORDER THEREON, 6th May 1863, No. 700.

His Excellency the Governor in Council does not think that sufficient grounds have been shown for resorting to the special legislation in the matter referred to in the foregoing Proceedings.

2. It is not desirable that the Codes of Procedure passed by the Imperial Legislature should be altered by the Local Legislatures, except upon the strongest grounds.

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

Exd. T. McMootry.

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6 May 1863 No 700.

P. E. the S. in C. does not think that sufficient grounds have been shown for resorting to the special legislation in the matter referred to in the foregoing proceedings. It is not desirable that the Courts of Procedure established by the Legislature should be altered by the local legislatures except upon the strongest grounds.

To the Hon^ble the Judges of the High Courts &c &c &c