M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 296 Press ~~Mis.~~

203-204

Dated 24.2.1863 ~~19~~ .

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 24th February 1863.

No. 203. Read the following Proceedings of the High Court of Judicature at Madras, dated 18th November 1862, No. 31.

Read letter dated the 27th ultimo, from the Acting Session Judge of Chittoor, bringing to notice the defective administration of Criminal Justice by the Subordinate Magistrates of the 2nd Class in his District.

1. The inefficiency of Subordinate Magistrates of the 2nd Class of which the Acting Session Judge complains appears not to be confined to the Chittoor Zillah. In several communications from Session Judges allusion has been made to the errors committed by these Officers in carrying out the plain provisions of the Code of Criminal Procedure, parties being frequently sent for trial before the Court of Session on evidence insufficient for conviction, or charged under Sections of the Indian Penal Code not applicable to the offence committed, or for offences properly triable by the Magistracy, and the proceedings in many instances being very indifferently recorded.

2. The Chief Justice and Judges presume that under the operation of the Rule prescribing a test of examination for Subordinate Magistrates, a more competent class of persons will hereafter be appointed; but they think it expedient and necessary that a power should be vested in the High Court similar to that conferred by Section XXXIX, Act VII of 1843, now repealed, for the dismissal of Uncovenanted Subordinate Magistrates of the 2nd Class in cases of gross official misconduct, ignorance, or inefficiency.

3. These remarks will be communicated to the Government with a view to the subject being brought under the consideration of the Legislative Council, if the Government should concur in the opinion that legislation on the point is desirable.

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government.

From CHARLES COLLETT, Esq., Acting Session Judge of Chittoor; to C. F. CHAMIER, Esq., Registrar of the High Court of Judicature, Madras, dated Chittoor, 27th October 1862.

1. I have the honor to state that I think it my duty no longer to abstain from submitting the opinion I hold as to the very defective administration of Criminal Justice by the Sub-Magistrates of the 2nd Class in this District. I think the evil so serious that I ought not, by my silence, to appear to acquiesce in its continuance.

2. I do not so much complain of the errors arising out of a misapprehension of the new Codes, though these are abundant and often serious enough; but the defects I refer to appear to prove in some of the Sub-Magistrates an incapacity to administer any system of Criminal Law. Cases are often sent up to my Court, the defective preparation of which reflects the greatest discredit upon the committing Officers.

3. The proportion of acquittals in my Court is, I am sorry to say, very serious; and it too often happens that the heaviest cases break down. As a large number of cases are tried by Jury, I cannot impute this altogether to an over-fastidiousness on my own part. In acquitting in several serious cases I have been very painfully impressed that had the case been prepared by a competent Magistrate the result would have probably been very different. It is not always from want of zeal that the Sub-Magistrates err. Too often the depositions are excessively long, full of the grossest hearsay and other irrelevant or inadmissible matter.

4. It is known to the Court that this District is notorious for crime. I have been given to understand by good authority that a large proportion of it never reaches my Court. I believe that the Inspector General is not altogether satisfied with the operations of the Police; but I shall not attempt to apportion the blame between the Sub-Magistracy and the Police; all I may say is that the apparent inefficiency of some of the Sub-Magistrates is enough to baffle the efforts of the best Police.

5. I do not mean to occupy the time of the Court by going into particular cases. And, though, I will go so far as to mention that the Sub-Magistrates who have most prominently attracted my attention are the Sub-Magistrate of Palmanair (now under suspension), the Sub-Magistrate of Guriyatum, the Sub-Magistrate of Narayanavanam, and the Sub-Magistrate of Madurpauk,* yet I wish not to be thought as condemning them in particular. I cannot say whether they are more or less inefficient than others; but I may fairly expect that the Magistrate of the District will satisfy himself whether the errors I have occasion to notice have arisen from carelessness or from incompetency; and if from the latter cause that he will take steps to remove those of his Subordinates who are incapable of performing their Magisterial duties.

* NOTE.—Another, the Sub-Magistrate of Arnee, has, I believe, been lately pensioned.

6. I have hitherto been silent because I had reason to know that the Magistrate of the District was attending to the matter and was carefully inquiring into the efficiency of his Sub-Magistrates and endeavouring to remove those whom he considers incompetent. I should have continued silent but that I understand that the Board of Revenue the appellate authority (an authority which, as I trust I may without offence remark, is in no way responsible for the administration of Justice) is not in accordance with the Magistrate on this subject.

7. I beg to repeat that I express no opinion upon the competency or otherwise of any Sub-Magistrate in particular, nor upon what remedy should be applied; but when I see little prospect of any effective remedy being applied, I think myself bound to take the exceptional course of submitting my opinion to the High Court in order that if it shall appear fit to the Chief Justice and Judges the attention of Government may be drawn to the subject.

(True Copy.)

(Signed) C. P. CHAMIER,
Registrar.

No. 204. ORDER THEREON, 24th February 1863, No. 296.

Under Section XXXIX, Act VII of 1843, it was competent to the Court of Foujdaree Adawlut, now a branch of the High Court, to dismiss any Native Officer of Police for gross misconduct, which may have come under the observation of a Session Judge, Subordinate Judge, or Principal Sudr Ameen, and which may have been reported by the Session Judge to the higher Court. When the Act in question was passed, the functions of the Police and Magistracy were combined in the same Officers, and acts done by the Tahsildars as Heads of Taluq Police which may have been done by them partly in the exercise of their functions as Police Officers, and partly in the exercise of their functions as committing Magistrates, could be brought by the Session Judge under the review of the Court of Foujdaree Adawlut, and if necessary could be punished by that Court, under the provisions of the law above quoted.

2. The Section in question is one of those repealed by Act XXIV of 1859, (the Madras Police Act) of which however the repealing Section (II) contains the proviso that nothing in it shall be construed to affect any judicial functions or jurisdiction original and appellate, which by any existing law may be exercised by any of the Officers mentioned in the enactments above repealed.

3. In the letter above recorded, the Honorable the Judges of the High Court adverting to representations which have been made to them of gross inefficiency on the part of Subordinate Magistrates of the 2nd Class, express the opinion that "a power should be vested in the High Court, similar to that conferred by Section XXXIX, Act VII of 1843, now repealed, for the dismissal of Subordinate Magistrates of the 2nd Class, in cases of gross official misconduct, ignorance or inefficiency;" and suggest that if the Government concur in thinking legislation on the point desirable, the subject should be brought under the consideration of the Legislative Council.

4. His Excellency the Governor in Council has felt some doubt as to whether the proviso in Section II, Act XXIV of 1859, has not the effect of keeping in force the provisions of Section XXXIX, Act VII of 1843, as regards the Officers who now exercise that part of the functions of

the Native Officers of Police therein referred to, which belonged to them in their capacity as Magistrates. The object of the legislature in repealing Section XXXIX, Act VII of 1843, was clearly to restrict to the Inspector General of Police, subject to the authority of the local Government, the power of punishing the Officers of his force, and it could have had no reference to the Officers of the Magistracy, who now exercise the Magisterial functions formerly entrusted to the Native Officers of Police. If therefore the exercise of the power vested in the Court of Foujdaree Adawlut by Section XXXIX, Act VII of 1843, were held to be the exercise of a judicial function, it would follow that that power is still vested in the High Court (which has taken the place of the Court of Foujdaree Adawlut) in regard to Native Officers of the Magistracy performing the duties which formerly devolved on the Native Officers of Police in their capacity as Subordinate Officers of the Magistracy.

5. The Honorable the Judges of the High Court apparently are of opinion that the exercise of the power in question is not a judicial, but an administrative Act, but under this view of the case, it appears to the Governor in Council that although the provisions of Section XXXIX, Act VII of 1843, would no longer be applicable, it does not follow that a legislative enactment is necessary to enable the High Court to exercise such a power. Provided there be no law to the contrary, the executive Government has clearly the power of dismissing any of its Officers, and can delegate that power to any Court, Board or individual Public Officer to whom it may deem it proper to entrust it. The Governor in Council accordingly resolves to invest the Honorable the Judges of the High Court with authority to dismiss any Subordinate Magistrate of the 2nd Class, not being a member of the Covenanted Civil Service, for gross official misconduct, ignorance, or inefficiency in the discharge of his Magisterial duties shown in trials before the Criminal Courts. In all such cases it will be open to the person dismissed to appeal to Government.

6. The powers of the Board of Revenue in regard to the dismissal of Officers of this class will in future be confined to cases of misconduct or inefficiency shown by them in the discharge of their Revenue duties.

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

Exd. T. McMeetry.

Judicial Department

Proceedings of the Madras Govt.

Letter from the Registrar of the High Court of Judicature at Madras — } Dated 15th Novr 1862 No 31.

Order thereon 24th Feby 1863 No 296

Under Section ~~XXXIX~~
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Judge, or Principal Sudr
Ameen, and which may
have been reported by the
Sessions Judge to the higher
Court. When the Act in
question was passed, the
functions of the Police and
Magistracy were combined
in the same Officers, and
Acts done by the Tahsildars
as Heads of Taluq Police which
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partly

partly in the Exercise of their functions as Police Officers, and partly in the Exercise of their Functions as Committing Magistrates, could be brought by the Sessions Judge under the review of the Court of Foujdaree Adawlut, and if necessary could be punished by that Court under the provisions of the law above quoted.

2 The Section in question is one of those repealed by Act XXIV of 1859 (the Madras Police Act) of which however the repealing Section (II) contains the proviso that nothing in it shall be construed to affect any judicial function or jurisdiction original and Appellate, which by any Existing Law may be Exercised by any of the Officers mentioned in the Enactments above repealed.

3. In the letter above recorded, the Honorable the Judges of the High Court adverting to representations which have been made to them of gross inefficiency on the part of Subordinate Magistrates of the 2nd Class, express the opinion that "a power should be vested in the High Court, Similar to that conferred by Section XXXIX Act VII of 1843, now repealed for the dismissal of Subordinate Magistrates of the 2nd Class, in cases of gross official misconduct, ignorance or inefficiency" and suggest that if the Government concur in thinking legislation on the point desirable, the subject should be brought under the consideration of the Legislative Council.

4 H.E. the Governor in Council has felt some doubt as to whether the proviso in Section II Act XXIV of 1859 has not the effect of keeping in force the provisions of Section XXXIX Act VII of 1843, as regards the Officers who now Exercise that part of the functions of the native Officers of Police therein referred to, which belonged to them in their capacity as Magistrates. The object of the legislature in repealing Section XXXIX Act VII of 1843 was clearly to restrict to the Inspector General of Police, subject to

to the authority of the local Government, the power of punishing the Officers of his force, and it could have had no reference to the Officers of the Magistracy, who now exercise the Magisterial functions formerly entrusted to the Native Officers of Police. If therefore the exercise of the power vested in the Court of Fouzdaree Adawlut by Section XXXIX Act VII of 1843 was held to be the exercise of a judicial function, it would follow that that power is still vested in the High Court (which has taken the place of the Court of Fouzdaree Adawlut) in regard to Native Officers of the Magistracy performing the duties which formerly devolved on the Native Officers of Police in their capacity as Subordinate Officers of the Magistracy.

5 The Hon'ble the Judges of the High Court apparently are of opinion that the exercise of the power in question is not a judicial, but an administrative Act, but under this view of the case it appears to

to the Governor in Council that although the provisions of Section XXXIX Act VII of 1843 would no longer be applicable, it does not follow that a legislative Enactment is necessary to enable the High Court to exercise such a power. Provided there be no law to the contrary, the Executive Government has clearly the power of dismissing any of its Officers, and can delegate that power to any Court, Board or individual public Officer to whom it may deem it proper to entrust it. The Governor in Council accordingly resolves to invest the Hon'ble the Judges of the High Court with authority to dismiss any Subordinate Magistrate of the 2nd Class, not being a Member of the Covenanted Civil Service, for gross official

Official misconduct ig-
norance or inefficiency in
the discharge of his Magis-
terial duties shewn in
trials before the Criminal
Courts. In all such cases
it will be open to the person
dismissed to appeal to
Government.

6. The powers of the Board
of Revenue in regard to the
dismissal of Officers of this
Class will in future be con-
fined to cases of misconduct
or inefficiency shewn by them
in the discharge of their Rev.
Duties.

Initials

To the Hon'ble the Judges of the High Court
" Revenue Board
" Revenue Depart.

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Judicial 1863 Dept.

№ 296

Proceedings of the
Madras Govt.

Dated 24th Feb.y 1863

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" 2471.
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Authorizing the High Court
to dismiss Sub Magtes
of the 2d Class for official
misconduct, ignorance
or inefficiency in the Dis-
-charge of Magisterial
Duties.—

203 to 204