

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	161	Press
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Dated	9.2.1884	~~10~~

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
9th February 1864.*

Read the following papers:—

No. 40. From W. ROBINSON, Esq., Inspector General of Madras Police; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort Saint George, dated Madras, 19th November 1863, No. 3123.

General Department.

I have the honor to forward a concise precis of the circumstances under which a head Constable has been sentenced by the Sub-Judge of Ooty, under Section 500, Indian Penal Code.

2. The head Constable reported to his departmental superior that a certain individual in the public service was drunk and riotous.

3. The Inspector very improperly neglected to make inquiry as to the truth of the statement, but went to the individual's superior and reported it.

4. Criminal proceedings were instituted. The head Constable failed to justify his statement, and there was an appearance of bad faith about it. He was convicted, and sentenced with exceptional severity.

5. Without remarking on this special case, I feel that there is an obvious point of law, involved in the matter, on which a competent legal opinion and explanation of the law should at once be obtained, for the protection, guidance, and warning of the force generally.

6. I therefore beg that I may be permitted to consult Mr. Mayne, who drew up the Act under which the force is enrolled, and to lay the subject in its various bearings before him, with a view to obtain a full exposition of law as affecting Police communications, informations, and the like.

Head Constable Narrainsamy Naidoo was in charge of Kaudle Sub-station, Ooty.

The manager of the office of Conservator of Forests also resided at Kaudle.

Head Constable Narrainsamy reported to Inspector Percy that this Manager, Appavoo, was continually getting drunk, very riotous, and on these occasions used to abuse the Police roundly. The head Constable said the abuse of course was immaterial, but the disturbances created by the man required notice.

Inspector Percy communicated this information to Captain Beddome, the Conservator of Forests, who expressed very great surprise, as the Manager held an unexceptional character, was of very good family, and most unlikely to so commit himself.

Captain Beddome requested inquiry and threatened Penal proceedings.

Head Constable Narrainsamy quoted certain witnesses, some of them Police Constables.

Inspector Percy at first appeared inclined to give credit to the charge, but subsequently reported that the head Constable's witnesses all broke down, turned out they had been tutored, and that the charge had been made in consequence of private transactions between the Manager and the head Constable.

The Manager lodged a charge under Sections 500 and 503 before the Sub-Judge of Ootacamund (acting for Joint Magistrate) retaining Mr. Branson, Junior, to prosecute.

The case was tried before Mr. Nesbitt, Sub-Judge. Prisoner convicted under Section 500 and sentenced to eighteen months' simple imprisonment and fine.

From the reports received by me from Mr. Percy, it appeared that extensive subornation of false evidence by head Constable came out on the trial. All his witnesses including Constables were reported to have broken down utterly on examination, and some to have acknowledged solicitation on part of the head Constable.

Inspector Percy reported so very strongly on the conduct of the head Constable and his witnesses, that I did not think it advisable to interfere in any way, though I consider there were many irregularities, if not illegalities, in the case.

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In the first place the statement or libel may be pleaded to have been a privileged communication made to the *Inspector*: it was the latter who caused risk of injury to the person named, as it was the *Inspector* who informed Captain Beddome. This he appears to have done hastily without making full inquiry into truth of the report.

When after informing Captain Beddome, inquiry was made by the *Inspector*, he found that he, the *Inspector*, had been misinforming Captain Beddome, or at least had made a premature report on the subject.

In English law "publication" would have to be averred and proved; but under the Penal Code (Indian) simple utterance would appear sufficient to constitute the offence.

"Good faith" can be the only extenuating plea in the case.

This is a question of fact which the Court decided against the head Constable.

The nature of the evidence proposed by the head Constable has most probably led to the infliction of exemplary punishment, though I must say that all through he had everything against him. All the advantage was on the side of the prosecution.

I have very great doubt if the trial itself was legal. The complaint was lodged before Sub-Judge.

I take it the Courts of Subordinate Judges and Principal Sudder Ameen are not Courts of original jurisdiction ordinarily.

On the whole case, I am impressed with a belief that the head Constable was influenced by private motives and a certain amount of malice when he made the communication charged, to the *Inspector*.

(Signed) T. WELDON,
Superintendent of Police.

Order, 24th November 1863, No. 1818.

The Governor in Council authorises the *Inspector General of Police* to consult Mr. Mayne, who drew up the Police Act, on the point referred to in the foregoing letter.

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

From G. A. BALLARD, Esq., Collector of Malabar; to the Chief Secretary to Government, Fort Saint George, dated Cochin, 18th November 1863, No. 129.

Under Section 50 of the Police Act, charges against Police Officers above the rank of a Private are only to be adjudicated by European functionaries in all cases of conviction under that Act.

2. By the opinion of the Government Pleader* Sub-Magistrates acting under the Penal Code, or Code of Criminal Procedure, have no jurisdiction over Officers of Police "in contravention of the restriction enacted by the law which constitutes the (Police) force."

3. It appears to me that it still remains doubtful whether other Magistrate than a European Magistrate can, or cannot take up a charge of a general nature against a Police Officer above the rank of Private.

4. It seems to me that Section 50 of the Police Act is intended to restrict the adjudication of charges brought against a Police Officer as such, i. e., of charges of abuse of authority, neglect of duty, &c.

5. But is every Magistrate other than a European Magistrate debarred from adjudicating in a charge of murder, theft, or such like (not connected in any way with the accused's official capacity), against a Police Officer above the rank of Private? If so, is the restriction only against passing sentence, or committing without reference in such general cases? or does it also debar entering on preliminary examination? If a Sub-Magistrate is debarred from entering on preliminary examination in the first instance, can such cases be referred by a European Magistrate for

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inquiry by the Sub-Magistrate? and if so, can sentence be passed by the superior Magistrate on the record of such inquiry?

6. Early authoritative answers on these points are much required.

From E. B. FOORD, Esq., Acting Magistrate of the Kistna District; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Judicial Department, Fort Saint George, dated Masulipatam, 19th November 1863, No. 425.

With reference to Order of Government, Judicial Department, dated 7th October 1863, No. 1611, communicating the opinion of the Government Pleader, that Section 50 of the Police Act precludes a Sub-Magistrate acting under the Penal or Criminal Procedure Codes from jurisdiction over Police Officers above the rank of a Private, I would submit that if Mr. Dale's opinion be acted on (and if it be good law, it must be), it is necessary that the law constituting the Police force should be amended.

2. The Police in large Districts are stationed at places upwards of 50 miles from the nearest European Magistrate, and I submit that to tell a man, who had been assaulted by a Deputy Constable* at such a station, that he must make a journey of 50 miles to obtain redress, would amount to an absolute denial of justice.

3. I cannot think either that it is for the good of the Police Force that they should be able to commit offences with the impunity the present state of the law (as expounded by Mr. Dale) affords them.

Order, 25th November 1863, No. 1830.

The *Inspector General of Police* will consult Mr. Mayne on the points referred to in the foregoing letters.

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

No. 44. From W. ROBINSON, Esq., *Inspector General of Police*; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort Saint George, dated Madras, 29th January 1864, No. 209.

General Department.

I have the honor to submit, for the information of Government, and with reference to Government Proceedings, Nos. 1818 and 1830, dated 24th and 25th November 1863, Judicial Department, the opinion of Mr. Mayne on the two matters referred to therein.

2. I would, with the consent of Government, circulate it for the guidance of Police Officers.

From J. D. MAYNE, Esq., Barrister at Law, &c., &c., &c.; to W. ROBINSON, Esq., *Inspector General of the Madras Police*, dated Madras, 11th December 1863.

With reference to the Proceedings of the Madras Government, Judicial Department, Nos. 1818 and 1830, dated 24th and 25th November 1863, I have the honor to state the following as my opinion upon the matters proposed for my consideration in those Proceedings, and by yourself in personal conference.

2. First, as regards the Constable Narraissamy Naidoo.

There can be no doubt that the report made by him in regard to Appavoo was an imputation of a defamatory character within the terms of Section 499 of the Penal Code, Explanation 4, and was therefore indictable, unless protected by any of the exceptions in the same Section.

Had it appeared that the imputation was made in good faith for the protection of the interests of any other person, or for the public good, it would not have been defamation (Exception 9th). But, in this case, the circumstances reported conclusively negative the existence of good faith, and, therefore, the conviction was a proper one.

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3. All legitimate communications made by the members of the Police Force to each other,

8th Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

9th Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

10th Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested.

The amount of care and attention, as to the truth of a statement, which is required, will vary much according to the way in which the imputation is made. A Police Officer, whose duty it is to collect all reports which he hears on matters affecting public safety, would be justified in communicating confidentially to his superior that a particular person was generally suspected of having committed an offence, even without inquiring into the truth of the report. But he would not be justified in spreading the report abroad, or in preferring a charge upon the strength of it.

Where the imputation is of a character to be privileged under the above exceptions, if made in good faith, it is provided by Act 18 of 1864, Section 27, that "good faith shall be presumed unless the contrary appears." This act does not apply to the Mofussil Courts, but it is in accordance with the principles of the common law, and ought to be universally followed. Of course, the contrary would appear whenever it was shown that the charge was known to be untrue, and was preferred to gratify private spite; that false evidence was knowingly produced in support of it, or the like.

4. As regards Diaries kept by the Police, in which matter of a defamatory character may often be entered, the special Diary which is kept under Section 154 of the Criminal Procedure Code is expressly made liable to the inspection of the Magistrate of the District, who is defined to be the Chief Executive Officer in criminal matters. (Section 14). No inferior Magistrate has a right to inspect. This provision does not, however, apply to such private note books and Memoranda as a Police Officer may make for his own use, or the information of his superiors.

If any Diaries, Note Books, or Memoranda kept by the Police were called for in the course of a judicial proceeding, for the purpose of founding a charge against the writer of them, or for the purpose of tracing the channel through which information reached the Police, I am of opinion that their production ought to be refused, and that the Judge, &c., is bound to allow the refusal. The principle is that evidence of matters which concern the administration of penal justice is excluded, where the disclosure would be prejudicial to the public interest. As Lord Chief Justice Eyre has said, "There is a rule which has universally obtained on account of its importance to the public for the detection of crime, that those persons who are the channel by means of which that detection is made, should not be unnecessarily exposed."

5. With regard to Section 50 of Act 24 of 1859, I have no doubt that it is still in force. Numerous Sections of that Act have been repealed by Act 17 of 1862, but this Section has been left. But the letters from Messrs. Ballard and Foord, which are quoted in the Proceedings of Government, No. 1830, show that there is a good deal of misapprehension as to the operation of that Section.

6. The Police Act created a number of offences, and gave powers of summary conviction to Magistrates in respect both of these offences and of many others which were criminal under the existing Penal Law. Section 50 only applies to Magistrates exercising powers of summary conviction given them by that Act. The only offences for which a Police Officer is liable to conviction under Act 24 of 1859 are those stated in Sections 18, 20, 44, 45 and 46. None of these refer to "charges of murder, theft, and such like, not connected in any way with the accused's official capacity." Therefore the question stated in the beginning of paragraph 3 of Mr. Bal-

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lard's letter may be answered at once in the negative. If the charge against a Police Officer above the rank of a Private is one which is only punishable by summary conviction under Act 24 of 1859, then it can only be adjudicated on by a European functionary. But if the offence is punishable both by summary conviction under Act 24, and by prosecution under the ordinary Criminal law, then the option of proceeding by the latter law is expressly preserved by Section 51. If the party aggrieved selects the latter method, he may proceed before any functionary, European or Native, who under the Criminal Procedure Code has cognizance of the offence, subject only to the limitations laid down, and the protection afforded by Sections 53 and 54. If, however, he selects the remedy by summary conviction, he is bound to resort to a European Magistrate, if the offender is of a higher rank than that of Private. For instance, to take the case put by Mr. Foord in paragraph 2—If the party assaulted is satisfied with the punishment which can be inflicted under Section 44, as for "unwarrantable personal violence," he may proceed by summary process before a European functionary. If, however, he desires to have the act punished under Section 330 of the Penal Code, as an attempt to extort a confession by causing hurt, he may lay his complaint before any Magistrate who has power to commit to the Sessions Court, and the final trial must take place before that tribunal.

No. 41.

ORDER THEREON, 9th February 1864, No. 161.

The Inspector General of Police is authorized to circulate Mr. Mayne's opinion for the guidance of Police Officers.

Proceedings, 24th November 1863, No. 1816.

" 24th " " 1859.

2. Ordered also that copies of these Proceedings, and of the papers noted in the margin, be furnished to all Magistrates of Districts.

(Signed) A. J. ARBUTHNOT,

Chief Secretary.

Exd. J. Tulloch.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the Inspector
Genl. of Police ——— dated 29. Jan'y. 64 N^o. 209.

Order — 9. February 1864 N^o. 161.

The Inspector Genl. of
Police is authorised to
circulate Mr. Mayne's opi-
nion for the guidance of
Police Officers.

Pres: 24. Nov. 63 N^o. 1818.
" 25. ——— " 1830.

2. Ordered also that copies
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ed to all Magistrates
of Districts.

The Inspector Genl. of Police,
Magistrate of the several districts } with

N^o. 1818 & 1830
of 1863.

March 1864. Department.

No. 111

PROCEEDINGS of GOVERNMENT.

Dated 9th February 1864

W. H. 901-1864

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