

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1634	Press Min.
¹²⁶⁻¹²⁷ Dated	15 - 11 -	19 1864

Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,
15th November 1864.

No. 126. Read the following letter from C. W. READE, Esq., Magistrate of South Arcot; to the Honourable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Cuddalore 29th October 1864, No. 71.

In their orders under date the 20th September last, No. 1382, recorded on a review of the Annual Statements of Criminal Processes issued by the Magistracy for the year 1863, submitted by Mr. Robinson, the Government desire explanation regarding the excessive number of persons compelled to appear before the Courts in my District in petty cases; and, further, "myself and other Magistrates are required to report what steps have been taken to put a stop to the issue of warrants in cases where summonses would suffice."

2. Long prior to the receipt of the previous orders of Government quoted in those now under acknowledgment, the remissness on the part of the Subordinate

Enclosure No. 1.
No. 24, dated 18th January 1864.
" 24 " 1864 " "
" 24 " 18th March " "
Enclosure No. 2.
No. 24, dated 1st June 1864.
" 24, dated 20th August 1864.

Magistracy, in regard to all the points noticed, had had my earnest attention, as may be gathered from the accompanying printed orders issued from time to time on the dates noted in the margin.

3. Before the passing of Act I of 1863 the large number of warrants issued on the disobedience of summonses are, I think, sufficiently accounted for; as it must be remembered that that Act only came into force on the 1st June 1863, and thus it was impossible to keep down the issue of warrants within reasonable limits for the first half of the past year, the Sub-Magistrates having no other means of enforcing obedience to their authority than by causing service of warrants where a summons had been disobeyed; and if the Returns submitted by Mr. Robinson were analysed, it would, doubtless, be found that the majority of warrants for the year under review were issued during the first half of it, and that subsequent to the passing of the Act in question there had been a very visible decrease; and it is my belief that since then the future Returns will show a still more marked diminution in the issue of unnecessary warrants. At the same time it is difficult altogether to prevent or prevent what has already occurred; and I believe that, so far as my own District is concerned, no more can be done than has been done by me in view to check any abuse of the power of issuing warrants.

4. Likewise, in the matter of bail, the enclosed printed order, of the date indicated in the margin, will satisfy Government that it is a point which has not escaped me; and that I have endeavoured by every legitimate means to ensure the carrying out of the provisions of Section 161 of the Criminal Procedure Code.

5. As regards the excessive number of persons compelled to appear before the lower Courts in my District, I really am unable to offer explanation. I believe that this is, in a great degree, beyond any Magistrate's control; for if a person is compelled to appear "ad Elitum," and if the law leaves it discretionary with the Magistrate to examine witnesses, I do not see how interference is to be had, unless specific instances of obvious abuse are brought to notice, or those where the discretion allowed has clearly been improperly and carelessly exercised.

6. In the case of defective witnesses it is obligatory, not optional, to examine all who may be cited by an accused unless voluntarily dispensed with; and I do not think, on the whole, that the cases are frequent when the witnesses examined for

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the prosecution have been needlessly numerous. Of course there are such cases, because every Native Sub-Magistrate is not equally gifted; and it is very few who are really able rightly to appreciate evidence so as to discern between the relative value of quantity and quality, and thus oftentimes it is, no doubt, attempted to supply the one by the other. But without instances in point where there has been such abuse or any undue summoning of parties it would be impossible to remedy the evil; meanwhile, I do not believe that any great blame can reasonably be attached to the executive in this matter, and the cause, I think, is to be found in the close and active attention to their duties displayed by the Sub-Magistracy generally, and to their readiness at all times to enter on complaints rather than to any grave indiscretion on their part in exercising the authority which the law allows them. It is further to be borne in mind that offences have quadrupled under our new Penal Code, and there is no possibility of checking complaints which must be accepted and disposed of as presented.

7. Government may not, perhaps, be aware that interference with a Sub-Magistrate is a somewhat delicate and difficult matter as the law at present stands, for the whole construction of our new Penal and Procedure Codes clearly tends to support the free and independent action of the Subordinate Magistracy, and does not admit of that interference with, or surveillance over, proceedings and proceedings which was formerly practicable when the Police and Magisterial functions were blended; and I conceive it to have been the intention of the Legislature that every tribunal from the lowest to the highest should, to the utmost limit, be free and unfettered in the exercise of the judicial powers conferred on them by the law.

8. My own experience justifies my expressing the opinion that possibly in this respect an error has been committed, because the almost unrestricted authority with which a Sub-Magistrate is now vested, must necessarily be open to serious abuse, and by the facilities thus afforded to corruption a wide door of temptation is unquestionably opened, so that it behoves all officers, with whose selection the selection of the Native Sub-Magistracy, to be most cautious and judicious in their choice of men to fill these highly responsible positions.

9. The necessity for uniformity of habits and mode of conducting business in the several Native offices, noticed by Government in previous orders, had already attracted my attention, and I have now fixed the hours of office, and a printed notice has been issued to every Sub-Magistrate's Court throughout the District for the information of the public, so that the evils complained of in this respect are not likely again to occur.

No. 127. Ombudsman, 15th November 1864, No. 1631.
Communicated to the Inspector General of Police.

*(True Extract.)

Chief Secretary.

To the Magistrate of South Arcot,
Inspector General of Police,
Sd. J. Tulloh.

MAGISTRATE'S CIRCULAR No. 22.

The subject of remands by the Native Magistrate has been brought to the Magistrate's notice. The practice too commonly obtains of remanding a case from day to day instead of fixing a specific date, when it is likely all the important parties may be present to proceed with the investigation. In all cases as far as possible the date should be mentioned on which the witnesses and others whose attendance may have been required are likely to appear, and the remand of the accused should be for each date. It may not always be practicable to fix the correct date, but in such cases it is only justice and important notice to the parties, the Native Sub-Magistrate will himself exercise a more careful discretion than hitherto in this matter, and as far as they are able they will remind counsel for each case as they may reasonably expect to have it in their power to go on with the trial.

C. W. BEADY,

Magistrate.

MAGISTRATE'S CIRCULAR No. 23.

The attention of the Subordinate Magistrate, through the District, is called to the fact that the Code of Criminal Procedure, passed at length in the month of May, and the Magistrate's duties are being put on the shore of the new Code, for a strict adherence of the provisions of the law. Any instance of delay in the trial of cases will subject the Magistrate to severe censure if not to a heavier penalty.

C. W. BEADY,

Magistrate.

Magistrate's Office in Court,
Villupuram, 15th Nov. 1864.

MAGISTRATE'S CIRCULAR No. 24.

The number of warrants, in petty cases, issued by the Sub-Magistracy of the 2nd Class has frequently attracted notice. In some Taluqs the number of these warrants is excessive. The cause is explained by the inability of Officers to find persons summoned having failed to appear, the issue of a warrant was necessary. It is before the Legislature is asked to extend to Sub-Magistrates of the 2nd Class the power of issuing for disobedience of a summons, at present conferred only on the superior Magistrate by Section 174 of the Indian Penal Code that meanwhile the instances of

such disobedience might be greatly checked if occasionally the Sub-Magistracy were to commit to the Division Magistrate parties guilty of this offence. There can be no doubt that if punishment were inflicted on a few cases in different parts of the District, such penal consequences would very speedily put a stop to the prevailing indifference with which summonses are commonly treated. The exemption from any penalty hitherto as a rule has of course encouraged this indifference, and therefore the Sub-Magistrates are enjoined hereafter to pay greater attention to this subject, and they will occasionally in each month commit to the Division Magistrate those who may disobey a summons duly served on them, and notice of the punishment which follows such commitment might with advantage be placed in some prominent place at the Court of the Sub-Magistrate. Until an alteration in the law, the above course may at all events greatly operate to reduce the number of warrants at present issued.

C. W. BEADY,

Magistrate.

Magistrate's Office in Court,
Villupuram, 15th Nov. 1864.

MAGISTRATE'S CIRCULAR.

Instances have lately come before the Magistrate where accused parties have been detained in custody on charges which under the Penal Code were not strictly indictable, but which charges on trial enquiry were found to be merely false or groundless. Section 217 of the Procedure Code provides

namely for cases of this kind that alleged a distinction in the Magistrate's which seems generally to be overlooked by all the Subordinate Magistrates, and accordingly their attention is most called to this valuable provision of the law, and in future all offences are required to state themselves without delay with the prosecution presumption of the party or otherwise of accused parties charged with indictable offences, and where such presumption is wanting they will inevitably accept bail as provided in the Section which. Any other course may involve an injury and injustice to persons who may be wrongfully accused of crimes of which they are wholly innocent, and hereafter all Sub-Magistrates will be held responsible for the exercise of the discretionary power of their order, and instances of willful neglect to do so will be severely noticed.

C. W. BEADY,

Magistrate.

Magistrate's Office,
Villupuram, 15th Nov. 1864.

Dec 10 MAGISTRATE'S CIRCULAR

The subject of the large number of prisoners issued by the Subordinate Magistracy of the 2nd Class has been under the careful consideration of the Magistrate of the District, and he has further had under his consideration the improper issue of warrants where summons would have sufficed. The matter is very important and the Subordinate Magistracy do not seem sufficiently alive to the evils arising from a careless exercise of the discretionary power allowed to them under the Law. The number of prisoners in this District for the past year averaged 1 to every 20 persons of the entire population as worked out in the office of the Inspector-General of Police, and this proportion for example what it is in all other Districts of the Presidency, indicating that the Subordinate Magistracy of South Arcot have not paid proper heed to the various orders which from time to time have been issued on this subject. The Magistrate has called upon the European Officers of the District to aid him in vigorously checking the abuses under notice, and which have attracted the attention of the Government; and meanwhile all Sub-Magistrates are warned that any future instance of the unnecessary issue of prisoners or of the issue of warrants where a summons would suffice will be held to evidence a carelessness in the conduct of their office proceedings of an offence; and in order to leave this class of officers without excuse hereafter it is now directed that before issuing either warrant or summons, a Sub-Magistrate shall minutely examine every complaint in his appearance before him, and where adequate grounds are wanting for further procedure the complaint shall be rejected after having carefully considered it to that effect, retaining a copy of such endorsement in a book or register to be kept for that purpose; and in all cases where it is found necessary to issue a warrant instead of a summons, the fact shall be noted with reasons in full at the foot of the Complaint, so that the existing authority may at once be able to see that the discretion has been properly exercised. The Magistrate expects the most careful and implicit obedience to this order by the Sub-Magistracy throughout the District, and the European Officers in charge of Divisions are requested to take prompt notice of any laxer conduct of or deviation from the course herein laid down, and any repetition of such deviations will render the officer so offending liable to suspension or removal.

C. W. READE,

Magistrate.

MAGISTRATE'S CIRCULAR No. 16.

The Magistrate has had under his consideration the very heavy returns of cases filed and pending before almost every Taluk and other Sub-Magistrate throughout the District; and it is subject of complaint with the Police Department that an amount of labour is thrown on it in connection with these cases the majority of which, it is believed, might be disposed of so soon as filed.

2. There is little doubt that great laxity prevails on the part of many Sub-Magistrates, and particularly those named in the margin; in the matter of filing complaints. Petitions whole-sale are accepted and are laid aside for a more convenient season, the greater number of which, had they been at once examined into at the time, might have been disposed or disposed of immediately in accordance with Section 47 of the Criminal Procedure Code, and the interference of the Magistrate seems imperatively called for in an executive matter wherein the Magistrate would have preferred to have left the course of proceeding entirely discretionary; but the heavy state of the files and the disproportion of cases disposed of render it necessary that some method be laid down by which the existing state of things may, in future, be avoided to the relief, as much of the public, as of the officers concerned. It is therefore ordered that hereafter only complaints are to be received by a Subordinate Magistrate which he can at once hear and dispose of either by demand or by summons or warrant, as the case may be, and as prescribed by Section 47 of the Criminal Procedure Code, and no amount should any Magisterial petitions be received personally beyond this number.

3. There are innumerable complaints on the various files which might have been got rid of at the time of presentation, and by the adoption of the system now ordered, in a short while, no one will present a complaint who has not some real cause of grievance; and thus the applicants for redress will be greatly reduced and the register of arrears will gradually disappear; and it should be a leading principle with all Subordinate Magistrates that they only accept such day such complaints regarding which they are able to take some kind of definite action and further, henceforth, no Magisterial petitions by Post should under any pretext be filed; but all such complaints should be rejected by simple endorsement attached to the warrant requiring their personal attendance or refusing the redress sought.

4. The careful attention of every Subordinate Magistrate throughout South Arcot is drawn to the foregoing remarks and instructions, which are issued for their special information and guidance.

C. W. READE,

Magistrate.

Nov 20 1834

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