M.R. O. 1—82,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1802	Press Mis-	
163-165 Dated	14-12-	19 1864	

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Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department, 14th December 1864.

Read the following papers:—

No. 163. From W. ROBINSON, Esq., Inspector General of Police, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Kotagherry, 29th September 1864, No. 2039.

General Department.

Some doubts have arisen as to the powers of Officers Commanding Regiments (under the Articles of War) at stations not Military Bazar Stations. For instance under Section 84.

2. At Berhampore, the Colonel of the Regiment asserts authority, which somewhat interferes with the action of the Police. At Vellore, the Station Officer (he has I conceive, nothing to do with the matter) has informed the Assistant Superintendent of Police, that he must in future send all cases in which persons are arrested by the Police, for committing nuisance within the prescribed limits, to the Officer Commanding the Regiment, who will, he states, give instructions as to further disposal. These cases have hitherto been prosecuted before the Civil Magistracy.

3. I solicit the instruction of Government on this point. It is obvious that a distinct procedure had better be laid down, as the question is frequently arising in these small Military stations.

Referred for the opinion of the Advocate General.

(Signed) J. D. SIM,
Secretary to Government.

5th October 1864.

No. 164. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras; dated 23rd November 1864, No. 609.

I have the honor to acknowledge the Order of Government noted in the margin, relative to the powers of Officers Commanding Regiments (under the Articles of War) at stations not being Military Bazar Stations.

Dated 5th October 1864, and made on letter from the Inspector General of Police to Government, of 29th September 1864, No 2039.

2. Having obtained further information from the Inspector General of Police, I submitted it, with the papers above referred to, for the consideration of the Advocate General, with whom I have also conferred; and,

3. I now forward a copy of his Opinion, and return the Order above noted.

COPY—OPINION.

I am clearly of opinion that, under Article 84 of Act XXIX of 1861, the Commanding Officer has power to apprehend, try, sentence, and punish any of the class specified in that Article, for a breach of any Cantonment Rules, or Regulations.

2. I do not think he has any power to employ the Police in carrying out his powers. A case has just been submitted to me by the Superintendent of Police, in which the Cantonment Commanding Officer of Vellore called upon the Police to assist him, by distraining the property of an offender, who refused to pay a fine inflicted upon him. On its being pointed out that the only power, in default of non-payment, was to imprison, the Commandant issued a warrant to

the Police, who, under it, received charge of, and locked up, the offender in the Police lock-up, for a period of 20 days.

3. The *proper* course is pointed out in Article 84. The offender sentenced to be imprisoned is to be sent to the *Jail*, and the warrant, spoken of in the Article, is to be directed to the Jailer, who is bound to recognize and act upon it.

4. It appears to me that in the case referred to above, in paragraph 3, the offender, while in the Police lock-up, was not in legal custody. It is true that Section 21 of Act XXIV of 1859 says that the Police are to execute all warrants lawfully issued to them. But the Commanding Officer has no power, under Article 84, to issue a warrant to any other than the *Jailer*; and he must send the offender to Jail under a Military escort.

5. Though the words of Section 21 are very wide, they must be read *secundum subjectam materiem*. The preamble of the Act shows that the warrants spoken of are only those issued by the Magistracy. And Section 55 only enables a Policeman to justify, in any action brought against him, by pleading the warrant of a *Magistrate*.

6. Very serious consequences may follow this unauthorized use of the Police, and too great caution cannot be used in defining the exact authority and duties of the Military and Police, where they may happen to have concurrent jurisdiction.

7. I do not know what the Rules and Regulations of the Cantonment of Vellore are; or whether there is, or is not, one set for all Cantonments. I assume that all formalities have been gone through requisite to make them binding; and, if so, the Commanding Officer has clearly power to enforce them under Article 84.

8. But Article 84 does not take away from the Magistrate, or the Police, any authority vested in them by Act XXIV of 1859.

9. It may be that the Rules and Regulations do not refer to any such offences as are specified in Section 48 of Act XXIV of 1859; in which case there could be no collision, because there would not be any concurrent jurisdiction.

10. On the other hand, the Rules and Regulations probably may be framed against precisely the same offences as Section 48 of Act XXIV of 1859. They were in force, I apprehend, long prior to that Act; and were, in point of fact, the only rules under which, previous to the Police Act, such offences were punishable in Cantonments.

11. It appears to me quite unnecessary that there should be two tribunals within a Cantonment, by either of which one and the same offence may be punished. It may lead to unpleasant consequences; and it will probably be found the most expedient course to have the Magistracy and Police to deal with all the offences specified in Section 48 of Act XXIV of 1859, leaving to the Military tribunal all such offences as peculiarly affect discipline, &c.

12. I think, therefore, that it would be very advisable to review the Cantonment Rules and Regulations. They should be collated with Section 48 of Act XXIV of 1859, and whenever the same offence is found to be provided for by both the Act, and the Rules and Regulations, the better plan, in my judgment, would be to strike it out of the latter.

(Signed) J. B. NORTON,
Advocate General.

19th November 1864.

(True Copy.)

(Signed) J. R. BOYSON,
Govt. Solicitor.

No. 165. ORDER THEREON, 14th December 1864, No. 1802.

The Governor in Council directs that the foregoing Opinion of the Advocate General be communicated to the Inspector General of Police, and also to the Military Department.

Proceedings of the Madras Government, Judicial Department,
14th December 1864.

2. Pending the passing of the Bill for the Administration of Military Cantonments in this Presidency, which is now before the Government of India, the Governor in Council deems it unnecessary to act on the suggestion made at the conclusion of Mr. Norton's Opinion.

(True Extract).

Chief Secretary.

To the Inspector General of Police.
" Military Department.
" Government Solicitor.
" Legislative Department.

Exd. J. H. Burns.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters.

From the Inspector Genl of Police — dated 29th September 1864, No 2039

From the Government Solicitor — — — 23d Nov 1864, No 609.

Order thereon 14th December 1864, No 1802.

The Governor in Council directs that the foregoing opinion of the Advocate General be communicated to the Inspector General of Police and also to the Military Dept.

2. Pending the passing of the Bill for the better protection of Military Cantonments in this Presidency which is now before the Government of India, the Governor in Council deems it unnecessary to act on the suggestion made at the conclusion of Mr Norton's Opinion.

To the Inspector General of Police
The Military Secretary
The Government Solicitor

Financial 1864. *Department.*

No. 1802.

PROCEEDINGS of GOVERNMENT.

Dated 14 Dec 64

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