

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No.	187	Press
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Dated	16 - 2 -	~~19~~ 1864

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*Proceedings of the Madras Government, Judicial Department,
16th February 1864.*

No. 86. Read the following Extract from the Proceedings of the Right Honorable the Governor General of India in Council, in the Home Department, under date the 23rd January 1864: No. 563.

Read the undermentioned papers relating to the question of the authority of Police Officers invested with Magisterial powers:—

Extract from the Proceedings of the Government of the North Western Provinces for June 1863, Police Department, Part II., Entry No. 29.

Report of the Police Commission assembled at Nynce Tal, 1863.

Notification of the Government of the North Western Provinces, No. 677A, dated the 2nd of July 1861.

From Lieutenant Colonel H. BRUCE, c.s., Inspector General of Police in India; to E. C. BAYLEY, Esq., Secretary to the Government of India, No. 138, dated Allahabad, the 17th October 1863.—(a.)

I venture to draw the attention of the Government of India to the proceedings of the North Western Provinces Government for June 1863, (herewith returned,) Nos. 29 and 30, dated 21st February 1863, by which it will be perceived that, in consequence of the illegal appointment of Police Officers to be Magistrates, there would appear to be no appellate authority whatsoever against their decisions.

2. I would likewise draw attention to the remarks made by the Nynce Tal Police Commission in the 52nd paragraph of their Report, dated 1st September 1863, upon this important subject.

3. As I understand that other Governments have been led into error by the appointment made by the Government of the North Western Provinces, *vide* Resolution No. 677A, dated 2nd July 1861, of all Police Officers to the powers of Magistrate, I would recommend that it be intimated to the different Governments and Administrations that the vesting of Police Officers with such powers is contrary to law, and that, wherever it may have been done, it should be cancelled.

From T. D. FORSYTH, Esq., Officiating Secretary to the Government of Punjab and its Dependencies; to the Secretary to the Government of India, Foreign Department, at the Presidency, No. 174, dated Murree, the 17th October 1863.—(b.)

Diversity of opinion exists regarding the interpretation of Section 6 of Act V of 1861; and as the Judicial Commissioner for this Province and the Inspector General of Police hold diametrically opposite views regarding it, I am directed to submit the question for the decision of the Legal Advisers of the Government.

2. The Section provides that "the Local Government may vest any District Superintendent with all or any of the powers of a Magistrate within such limits as it may deem proper; but such Officers respectively shall exercise the powers with which they shall be so invested only so far as may be necessary for the preservation of the peace, the prevention of crime, and the detection, apprehension and detention of offenders, in order to their being brought before a Magistrate, and so far as may be necessary for the performance of the duties assigned to them by this Act."

3. In accordance with this Section, District Superintendents in the Punjab have been invested with the powers of a Magistrate.

4. One of the powers of a Magistrate is to issue a warrant for the apprehension of criminals, and it is the exercise of this power by the District Superintendent for which the Inspector General contends, and against which the Judicial Commissioner protests.

5. Both Officers are agreed on this point, that the District Superintendent, as Magistrate, has no judicial functions conferred on him by this Section, but the question is—What Magisterial power is thus entrusted to him?

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6. The Inspector General asks what power, as a Magistrate, can a District Superintendent have for apprehension, if it be not that of issuing a warrant, in cases where, as simply a Police Officer, he could not make an arrest.

7. He further asks—"Does Section 133, Act XXV of 1861, which provides that no Police Officer, without an express order of a Magistrate, can take cognizance of certain offences, apply to a District Superintendent of Police who has been appointed Magistrate under Section 6, Act VI?

"Or does the following Section 134, which says that Section 133 is not to interfere with any powers vested in a Police Officer by any special or local Law, give authority to a District Superintendent, as Magistrate, to take cognizance of such cases, he having received the powers of a Magistrate by a special Law?"

8. The Judicial Commissioner considers that the position occupied by the Inspector General is totally erroneous, and that the District Superintendent is not a Magistrate in the sense contemplated by the Code of Criminal Procedure.

9. In so far as the judicial functions of the Magistrate are concerned, the Inspector General entirely agrees with the Judicial Commissioner, and, in fact, there can be no doubt about this; but the question yet remains to be solved whether the Magisterial powers, conferred on the District Superintendent by Section 6 of Act V of 1861, do or do not give that Officer the power of issuing a warrant for the apprehension of a criminal in view to his being brought before a Magistrate (not a Police Officer) for trial.

No. 330.

Transferred to the Home Department for disposal.

(By Order.)

(Signed) J. T. WHEELER,

Asst. Secy. to the Govt. of India.

FOREIGN DEPARTMENT,
The 25th November 1863.

FROM J. GRAHAM, Esq., Officiating Advocate General; to J. W. S. WYLLIE, Esq., Under Secretary to the Government of India, dated the 29th December 1863.—(c.)

In reply to your letter No. 7763, dated 12 instant, with enclosures, I have the honor to state my opinion on the several points raised in the correspondence.

I.—With regard to the Punjab Government reference, I think that Section 6 of the Act V of 1861 does, in cases of necessity, authorize Police Officers, who have been entrusted therewith, with the powers of a Magistrate, to issue warrants for the apprehension of offenders.

The aim of the Legislature is admitted to be the separation of the Judicial and Police functions. That general principle is not lightly to be departed from. The Police may, in the instance of the graver offences specified in the Criminal Procedure Act, arrest without warrant. But for lesser offences, and such as are more difficult of proof, it is provided that the Magistrate shall issue a summons or warrant.

The definitions of the term 'Magistrate' in the Criminal Procedure and Police Acts are identical. A Police Officer vested with power is a Magistrate, but Section 6 of the Police Act expressly confines his exercise of Magisterial authority to certain specified objects, one being the apprehension of offenders.

The issuing of the warrant is not a merely ministerial act, it is of the nature of the judicial act made in the discretion of the Magistrate on some inquiry. Therefore, as I understand the general intent of the Criminal Procedure Act, this step in the Procedure is purposely entrusted to the Magistrate, and not to the Police Officer. But in some cases, when the Magistrate is absent or otherwise unavailable, it may be to the interests of justice that Police Officers, qualified as Magistrates, should exercise this function for the apprehension of offenders who might otherwise escape. Accordingly in urgent cases of such or a similar kind, and in such only, (as it appears to me,) warrants may be issued by Police Officers vested with powers under Section 6 of the Police Act.

II.—As regards Colonel Bruce's reference, I agree in the view of the Committee, in paragraph 52 of their Report, that the words in "Section 6," so far as may be necessary for the performance "of the duties assigned to them by this Act," do not authorize the conferring on

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Police Officers of any powers of trial of offenders in the Police Force; and I think that so much of the notification ought to be rescinded. Whether or not it may be convenient, for the ends of discipline, that such authority over their men should be conferred on Officers of the Police, may be a question. I am of opinion, however, that the Law clearly intended that offenders, under Section 29 of the Police Act, should be dealt with by a Magistrate other than a Police Officer—in other words, by the ordinary tribunals.

The enclosures with your letter are herewith returned.

Ordered that a copy of the last mentioned letter be forwarded for information to the Governments of the North Western Provinces and of the Punjab, and to the Inspector General of Police in India.

Ordered also that a copy of the papers marked (a), (b) and (c) be forwarded for information to the Foreign Department, to the Governments of Madras, Bombay, and Bengal, to the Chief Commissioners of Oudh, the Central Provinces, and British Burmah, and to the Resident at Hyderabad.

(True Extract.)

(Signed) J. W. S. WYLLIE,

Under Secretary to the Government of India.

No. 87.

ORDER THEREON, 16th February 1864, No. 189.

Communicated to the Inspector General of Police.

(Signed) A. J. ARBUTHNOT,

Chief Secretary.

Recd of 23^d July.

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