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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	395	Press
224-225		~~Mis.~~
Dated	18-3	~~18~~ 1864

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
18th March 1864.*

No. 224. Read the following letter from J. SILVER, Esq., Magistrate of Tinnevely; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Trichendoor, 21st January 1864, No. 34.

I have the honor to forward, for the consideration of Government, copy of a letter from the British Resident of Travancore, dated the 15th ultimo, No. 1893, regarding the execution in British territory of the warrants issued by the Travancore authorities for the apprehension of persons charged with offences committed in that State, and I request that the Government will be pleased to favor me with their instructions as to whether the warrants of the Travancore authorities can be backed and executed by the Sub-Magistrates of this District, without the intervention of the District Magistrate, under Section 84 of the Code of Criminal Procedure, as requested by the Resident.

From W. FISHER, Esq., Resident in Travancore and Cochin; to J. SILVER, Esq., Magistrate of Tinnevely, dated 15th December 1863, No. 1893.

I have the honor to acknowledge receipt of your letter, No. 704 of the 5th instant, and to thank you for the prompt assistance rendered. At the same time I desire to reply to your letter No. 564 of the 10th September last, which through oversight has been left unanswered.

2. When I last addressed you I was under the impression that a warrant issued by a Travancore local Magistrate for the apprehension of a person charged with a criminal offence might be forwarded by post to the Magistrate within whose jurisdiction the individual was supposed to be, and that the warrant would be endorsed by that Magistrate, and the party against whom the warrant issued would, if apprehended, be forwarded by the Magistrate who endorsed the warrant to the officer who issued it.

3. After full consideration of my request, you are of opinion that the warrants of the Travancore authorities should not be sent direct to any Magistrate subordinate to you, but should be sent to you (the Magistrate of the District), through my agent.

4. It certainly appears from Section 86, Code of Criminal Procedure, that a Magistrate issuing a warrant for the arrest of a person out of his jurisdiction, should direct the warrant to the Magistrate of the District in which such person is supposed to be. It also appears from the same Section that if the person named in the warrant is apprehended, he shall be carried before the Magistrate who endorsed the warrant, and shall be dealt with by such Magistrate as provided in Section 84.

5. This latter Section, however, provides that "when any person against whom a warrant is issued by a Magistrate shall escape, go into, or be in any place out of the jurisdiction of the Magistrate issuing such warrant, the warrant may be executed in such place; and if the person against whom the warrant is issued is arrested in such place, the Police officer or other person executing the warrant shall carry him before the Magistrate of the District, or some other Magistrate within whose jurisdiction the arrest was made."

6. The Magistrate within whose jurisdiction the arrest is made is authorized also by the above Section, under certain circumstances, to forward the person apprehended to the Magistrate who issued the warrant.

7. It follows then that one Magistrate can back the warrant of another Magistrate, and on its execution bail the prisoner, or forward him to the Magistrate who issued the warrant, without the intervention of the Magistrate of the District, and it is this power that I seek for, when the parties are respectively Magistrates in British territory, and Travancore.

8. I am of course aware that the provisions of the Code of Criminal Procedure do not necessarily affect foreign territory, but it is very desirable to introduce in Travancore all improvements in Criminal Procedure adopted in British territory, and this is being done; but if your reading of Section 86 is to be the rule of procedure without reference to the provisions of Section 84, it will prove so slow and cumbersome that it will seldom if ever be resorted to.

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9. You do not allow the warrant of the Magistrate to be sent to you by post direct as provided for in the Section you quote, but a Travancore Magistrate's warrant must be transmitted through the Dewan Peshcar of the Division to the Dewan, and thence to me, and from my office to yours.

10. Having endorsed the warrant and caused the apprehension of the party named therein, he or she must be sent to your Cutcherry or Camp wherever you may be, and then must either give bail to appear or be sent to me to be forwarded to the Dewan, and eventually to the Magistrate who issued the warrant.

11. If it is allowable to adopt the method I have proposed for your consideration, and a Magistrate of Travancore and a Magistrate of Tinnevely can act with respect to each other, as two Magistrates in Tinnevely, or one in Tinnevely and another in Madura would, I presume, do under Section 84, all circumlocution would be avoided, and criminal justice would be much facilitated.

12. As no British subject committing an offence in foreign territory could be tried for that offence, if apprehended in British territory by any but British authorities, the assistance I seek only relates to Travancore subjects flying from justice, and whose apprehension must greatly depend on the facilities given by the British authorities.

13. Under these circumstances, I trust that the matter may not be at once decided by reference to Section 86 alone, and without reference to other Sections which seem to admit of more rapid and efficient co-operation of authorities equally interested in suppressing crime.

(True Copy.)

(Signed) J. SILVER,
Magistrate.

No. 225.

ORDER THEREON, 18th March 1864, No. 395.

The foregoing letters have reference to the course to be taken regarding the execution of warrants issued by the Travancore authorities for the apprehension of offenders escaping into the adjoining Districts in British territory.

2. The Governor in Council observes that foreigners charged with offences committed in foreign territory can only be dealt with under Act VII of 1854. The course to be taken is laid down in this Act, which provides that in ordinary cases a requisition for the extradition of the accused shall be made to the local Government, whose order is necessary before the accused can be arrested. But under Section 19 of the Act, when the immediate apprehension of the accused is, in the judgment of a Magistrate, necessary for the ends of justice, it is open to him to apprehend and proceed against the accused person; but he cannot deliver up the accused to the authorities of a foreign State on whose requisition the arrest has been made, without an order of Government.

3. It may be a question whether the arrest can be made by a subordinate Magistrate not invested with the full powers of a Magistrate under the Code of Criminal Procedure. The Governor in Council is of opinion that it can; but before furnishing the Magistrates of Tinnevely and Madura with instructions on this point, he resolves to refer it for the opinion of the Advocate General.

(True Extract.)

Chief Secretary.

To the Government Solicitor

Exd. J. Tulloch.

Memo.

The Resident states in his letter that his proposition relates only to subjects of the Rajah of Travancore, who evade apprehension by going into British territory.

The proposition made is that the Sub Magistrates in the Tinnevely district should be authorised to endorse warrants, which they may receive from the Travancore authorities, & surrender Travancore subjects apprehended in British territory, under such warrants without reference to the Magistrate of the District.

The

The President urges that an analogous procedure is established in British territory under the Criminal Code, but admits that that enactment does not extend to warrants issued in a foreign state.

The law applicable to the question is Act VII-54, subject to the reservation as regards Native British subjects provided for in Act I-49.

Sections I to XVII of the Act of '54 (excluding the parts repealed by India Act XVII-'62) provides for the apprehension, detention or committal,

Extract from the repealing Act —

Act VII-54 — So much of the Act as relates to "warrants issued otherwise than as provided by the provisions of the Act."

committal, & extradition of persons accused of "heinous offences" committed in territories not under British dominion. The rule established is that the requisition must be made to the Govt., upon whose order any Magistrate (or Justice of the Peace) can proceed to sanction arrest, to investigation, release, commit, or grant bail. On committal, a report must be made to the Govt., who, "after examining the case" may direct delivery or discharge of the prisoner.

But § XIX opens a shorter course. It says when "immediate apprehension — x — x — shall, in the judgment

of

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"of a Magistrate — x —

"be necessary for the ends

"of justice — x — x —

"the person accused may

"without an order of Govt.

"be apprehended or

"proceeded against

"in the same manner

"as when the Magistrate

"has jurisdiction, but

"the person accused is

"not to be delivered

"up without an order

"of Govt."

According to the last

section, "unless where

"a contrary intention

"appears from the con-

"text, x — x — the word

"Magistrate" as used in

"this Act, is intended

"to include a Joint Ma-

"gistrate, or any person

"lawfully exercising

"the powers of a Magis-

"trate." The question

is

whether the words un-
derscored include a
Subordinate Magis-
trate. Under the Crimi-
nal Code, § 16, the words
powers of a Magistrate
shall imply the full powers
of a Magistrate, &
~~of~~ apply only to Head
Assistants & those Sub-
ordinate Magistrates,
who have ^{been} specially
invested with full
powers. But looking
to the intention of §
XIX of the Extradition
Act, & to the circum-
stance that the "rei-
nons offences" to which
it specially applies, are
not triable by the Sub-
ordinate Magistracy,
there seems to be no objec-
tion to Subordinate Ma-
gistrates acting under
§ XIX. Their action
would be confined
to arresting on infor-
mation

This has not been
properly verified.

information received direct from the foreign authorities & reporting to the Head Assistant, Joint Magistrate, or District Magistrate in immediate charge.

The Act limits extradition to three cases:—

I. When the charge is on acct. of a "heinous offence", i.e., one of those specified in § XXI.

Treason (in H. M's dominions.)

Murder.

Attempting to murder.

Rape.

Great personal violence.

Kidnapping.

Sacrilege.

Thuggery

Robbery

Burglary

Knowingly receiving property

obtained by dacoity, robbery, or burglary.

Cattle-stealing.

Breaking & entering a dwelling & stealing therein.

Arson.

Setting fire to a village, house, or town.

Forgery, or uttering forged documents.

Counterfeiting current coin.

Knowingly uttering base or counterfeit coin.

Perjury.

Subornation of perjury.

Enticement whether by a public officer or other person, &

Being an accessory to any of the above-mentioned offences.

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II. Any offences for which, by any Treaty in force, the Govt. are bound to make over offenders.

III. Any other offences which, in the judgment of the Govt., may be serious or aggravated, & to which Act I. & 29 may not apply.

The Travancore Treaties do not appear to contain any stipulations for the surrender of criminals or other offenders.

The Penal Code, if not the Criminal Code also, has been adopted in Travancore.