

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. <i>607</i>	Press ~~Mis.~~
<i>201-308</i>	
Dated <i>27-4-</i>	<i>1864</i>

9/10

Not to be folded or roughly handled

Read the following papers:—

No. 301. From W. ROBINSON, Esq., Inspector General of Madras Police; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort Saint George, dated Kotigheri, 29th March 1864, No. 635.

General Department.

I beg to state on the subject of the reference* from the Government of Bombay that I am of opinion that *Sub-Magistrates* of 2nd Class should be empowered to try trivial cases of theft from a dwelling, &c., under Section 380 of the Indian Penal Code.

* Government Order, 12th March 1864, No. 355.

2. This may be done by bringing Section 380, Indian Penal Code, within the operation of Act XXXIII of 1862, 1st Section.

3. The question of conferring greater power generally on *Sub-Magistrates* requires consideration. It may, I think, soon be done; but I would prefer waiting until these officers have more experience.

No. 302. From G. A. BALLARD, Esq., Magistrate of Malabar; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Calicut, 21st March 1864, No. 31.

Adverting to the subject of Government Order, dated 12th instant, No. 355, I have the honor to observe that considerable, and as it appears to me unnecessary, inconvenience does arise from the provision of the present law confining jurisdiction in all cases of "theft in a dwelling" to Magistrates with full powers.

2. But I would certainly deprecate conferring full powers on a larger number of Magisterial officers on this account, and am respectfully of opinion that the proper remedy lies in alteration of the existing law.

3. I think the jurisdiction on theft in a dwelling might with advantage be assimilated to that

* *Sub-Magistrates* are expected to pass sentence when the amount of property stolen is under the value of Rupees 10—Vide G. O. S. C. dated 10th February 1862. They have discretion to refer it if the amount of property stolen does not exceed the value of Rupees 50—Vide G. O. S. C. dated 10th February 1862. If value of the property stolen is above Rupees 50 *Sub-Magistrates* commit, and aggravating circumstances of course may render committal necessary in the other cases also.

on simple theft, similar* circumscribed discretion being left to the *Sub-Magistracy* in the former case as is now left in the latter to sentence, refer, or commit, as the circumstances of each case require or render advisable. The dwellings, it must be remembered in this country, are often

so open and insecure that abstraction of property from them does not require any great amount of skill and determination in crime, the implied presence of which, I presume, was one reason for drawing the distinction between theft in a dwelling and simple theft.

It would rest with the Higher Courts to check any tendency to use this discretion injudiciously.

P. S.—I have the enclosed Statement of the cases of theft in a dwelling in 1863 in Calicut Zillah compiled from the Magisterial Returns to show the action of the law on the question now discussed.

(Signed) G. A. BALLARD,
Magistrate.

STATEMENT of cases of Theft in a dwelling in 1863, in Calicut Zillah.

Names of Courts to which the cases were committed.	No. of Cases.	Amount of property involved.			Remarks.
		RS.	A.	P.	
1. Calicut Session Court.....	4	476	9	4	*The cases marked thus * would, if the jurisdiction on these cases was the same as in cases of simple theft, have probably been adjudged by a Sub-Magistrate. Out of a total of 38, there are 28 such cases. 80 cases were also dismissed by the Sub-Magistrates, most of which involved petty amounts, but these also had there been evidence sufficient would have involved committal.
		1892	0	0	
		0	12	0	
		1	0	0	
		0	3	6	
		1	8	5	
		1	0	0	
		6	15	7	
		18	12	8	
		3	8	0	
2. Do, Principal Sudder Amin's Court.	8	23	3	0	
3. District Magistrate.....	1	3	2	0	*The cases marked thus * would, if the jurisdiction on these cases was the same as in cases of simple theft, have probably been adjudged by a Sub-Magistrate. Out of a total of 38, there are 28 such cases. 80 cases were also dismissed by the Sub-Magistrates, most of which involved petty amounts, but these also had there been evidence sufficient would have involved committal.
		23	10	0	
		10	15	0	
		2	5	8	
		0	8	0	
		2	8	0	
		1	12	0	
		3	2	0	
		0	11	5	
		18	0	0	
4. Head Assistant Magistrate.....	6	4	10	0	
		0	8	8	*The cases marked thus * would, if the jurisdiction on these cases was the same as in cases of simple theft, have probably been adjudged by a Sub-Magistrate. Out of a total of 38, there are 28 such cases. 80 cases were also dismissed by the Sub-Magistrates, most of which involved petty amounts, but these also had there been evidence sufficient would have involved committal.
		1	8	2	
		0	4	0	
		7	8	0	
		1	8	0	
		7	0	0	
		3	5	2	
		2	0	0	
		30	0	0	
		2	8	0	
5. Deputy Magistrate, Southern Division.	2	5	0	0	
		167	4	9	*The cases marked thus * would, if the jurisdiction on these cases was the same as in cases of simple theft, have probably been adjudged by a Sub-Magistrate. Out of a total of 38, there are 28 such cases. 80 cases were also dismissed by the Sub-Magistrates, most of which involved petty amounts, but these also had there been evidence sufficient would have involved committal.
		1	0	0	
		2	3	0	
		1	8	0	
		32	4	0	
6. Cochin Joint Magistrate.....	10				
7. Assistant Magistrate.....	4				*The cases marked thus * would, if the jurisdiction on these cases was the same as in cases of simple theft, have probably been adjudged by a Sub-Magistrate. Out of a total of 38, there are 28 such cases. 80 cases were also dismissed by the Sub-Magistrates, most of which involved petty amounts, but these also had there been evidence sufficient would have involved committal.
8. Wynad Deputy Magistrate.....	3				
	38				

(Signed) G. A. BALLARD,
Magistrate.

No. 303. From D. F. CARMICHAEL, Esq., Magistrate of Vizagapatam; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Vizagapatam, 22nd March 1864, No. 43.

In acknowledging the Order of Government, Judicial, No. 355 of 12th instant, I have the honor to state that a remedy for the evil complained of by the Bombay Government has been found by prosecuting thefts in a dwelling house (Section 380 of the Indian Penal Code) under the head of House Trespass with intent to commit theft (Section 451, concluding clause); for under Section 451, a subordinate Magistrate of the 1st Class has jurisdiction.

No. 304. From C. W. READE, Esq., Magistrate of South Arcot; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Gingee, 22nd March 1864, No. 16.

I have the honor to acknowledge the receipt of the Orders of Government, referring for report the working of Section 380 of the Penal Code, in reference to a despatch on the subject from the Bombay Government.

2. I believe the inconveniences pointed out by the Bombay Government, as arising under the operation of Section 380 of the Code, to be very generally felt throughout the country, and I see no adequate remedy for those inconveniences except by legislative interference.

3. Although the amount of property stolen may not afford a correct standard by which to estimate the crime of theft under Section 380, or the punishment due for its commission, yet it is my belief that the majority of cases coming under the provisions of that Section are such as might with perfect propriety and with great public advantage be made subject to the jurisdiction of the Magistracy of all grades.

4. It is, of course, the accuser and his witnesses who are the sufferers under the operation of the law as it stands, and no doubt a great deal of petty theft in dwelling houses, &c., goes on unknown to the authorities, because uncomplained of by the losers who, from being unable to prosecute their case to its final close before the Sub-Magistrate of their village or division, prefer the first loss which may be comparatively trivial to the heavy additional cost and inconvenience inseparable from having to attend before a full Magistrate's Court, which is often very distant from their own houses. This one effect of the present law is in itself a serious evil, and is precisely that which might naturally be looked for, and it is I think sufficiently suggestive of the necessity for some legislative remedy.

5. The Sub-Magistracy exercise power over offences of a graver character than many thefts coming under the definitions laid down in Section 380 of the Penal Code, and I am of opinion that it would be a wise and judicious modification of the present law if the value of the property stolen were permitted as of old to regulate the jurisdiction by whom cases of the kind were adjudicable.

6. Under the old Code of Regulations, thefts of the description in question were cognizable by officers holding positions of authority inferior to that of our present Sub-Magistrates, where the amount stolen did not exceed 3 Rupees, and where the offence was unaccompanied by any circumstances in aggravation. The European Magistracy, whose jurisdiction was also proportionately limited before the introduction of the Penal Code, were likewise empowered to dispose of such cases when the property did not exceed in value Rupees 50, and in all other instances the offender was alone amenable to the Criminal Courts.

7. Without entering into my reasons why I would modify the respective amounts formerly prescribed, my proposal would be that 5 Rupees be the limit within which the Sub-Magistracy of the 2nd Class should adjudicate in cases of theft, under Section 380: and for Sub-Magistrates of the 1st Class I would lay down Rupees 30, as the limit for the exercise of their jurisdiction.

8. I think that some such modification in the law would quite meet the evil now so commonly felt, and considering the wholesome check to crime which I am sanguine will follow the enforcement of the Whipping Act that has lately passed the Legislature, it is my impression that the public will be amply protected, and that petty crimes, so to speak, of the nature under notice will no longer be suppressed or unreported, and the delinquents be no longer suffered to go unpunished for want of prosecution.

9. If it be fact, as there are too strong grounds to believe, that thefts falling under Section 380 of the Penal Code are far more frequent than our statistics represent, and the reason be, as I assume, that many are suppressed from motives of personal convenience because of the state of the law, the result must be most pernicious on the morale of the people and very detrimental to the security of property. A premium, as it were, is moreover offered to the commission of this description of offence when the evil disposed of a distant village or town discover that no notice is taken of it; that no information is given to the Police; no measures adopted to trace the offender;

and no charge or prosecution is laid before a Magistrate. Thieves are likely to become emboldened by such immunity from prosecution and punishment, and in time under the influence of such immunity crime and insecurity of property will necessarily increase in all places which are remote from any resident authority of competent jurisdiction, so that in view of the general aspect of the question and the evils that may be looked for by any prolonged continuance of the existing law, it is manifest that some change, such as that proposed, is very desirable.

10. In the Bombay Government Secretary's letter it is mooted (paragraph 2) to confer full powers on a larger number of Magisterial officers as one method of meeting the inconveniences complained of; but if I may be permitted, I would venture the opinion that such means if carried out indiscriminately would prove a greater evil than the one it is sought to remedy; for, speaking from my experience in this Presidency, any general extension of powers beyond those now conferred on the subordinate Magistracy whether of the 1st or the 2nd Class would, in my humble judgment, be a very injudicious measure: while if a selection is to be made and the extended powers be granted only to a few who are deemed qualified, the remedy becomes only partial and will be restricted to those localities where the extended powers happen to be exercised. In other places the inhabitants *de facto* will be in precisely the same position as they are now, so that as far as I am able to judge I can see no other mode of accomplishing what is wanted than by prescribing limits as to the value of property in cases of theft defined by Section 380, so as to bring those of a comparatively trifling character within the jurisdiction of every resident and readily accessible authority.

No. 305. From G. L. MORRIS, Esq., Acting Magistrate of South Canara; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Mangalore, 23rd March 1864, No. 7.

I have the honor to acknowledge the receipt of the Government Order, dated 12th March 1864, No. 355, calling upon me to report on the provisions of the Code of Criminal Procedure in regard to the trial of offences punishable under Section 380 of the Indian Penal Code.

2. Immediately on the passing of the Code of Criminal Procedure, my attention was attracted to the extraordinary fact that no officer exercising powers less than those of a District Magistrate, could try any case of theft in a house, no matter how trifling or unimportant the case might be; and I felt certain that either prosecutors and witnesses would be put to extreme inconvenience by having to travel long distances, or that all trivial cases of the kind would be hushed up.

3. Experience in Tanjore showed me that I was not far wrong as regards that District; and a perusal of the file of the Mangalore Principal Sudder Ameen's Calendars also prove the same facts with respect to South Canara.

4. I find from these Calendars that 21 cases were tried by the Principal Sudder Ameen of Mangalore under Section 380 of the Indian Penal Code in 1862, and 19 cases in 1863: that of these, 18 cases in 1862, and 9 cases in 1863 were committed to him by the Mangalore Sub-Magistrate: and that during these two years only 1 case was sent up from Kundapur, the most distant Taluq, and 3 from Udipi, the next furthest off. I think, therefore, that there can be but little doubt that some cases of house theft in the Taluq of Kundapur, at all events, must have been hushed up by the prosecutors, in order to escape being sent 50 miles to attend the Court at Mangalore.

5. Again, these Calendars show that in 14 out of the 40 cases tried in 1862 and 1863, by the Mangalore Principal Sudder Ameen, the amount of property stolen was below 5 Rupees in value in each case, and that they were not, as a general rule, attended with any aggravating circumstances, thus demonstrating that prosecutors and witnesses were needlessly put to much inconvenience in consequence of such petty cases not being at once disposed of by the Sub-Magistrate.

6. The Bombay Government suggest that the evil can be remedied either by conferring full powers on a larger number of Magisterial officers, or by altering the law, so that cases of theft in

a dwelling house shall be made triable by officers exercising powers less than those of a Magistrate.

7. The latter appears to me to be the best and simplest plan. It is in no way desirable that the full powers of a Magistrate should be needlessly conferred on persons who are not fitted to exercise those powers; whilst, on the other hand, I see no good reason why a Sub-Magistrate of the 2nd Class should not try trivial cases of theft in a house in the same way as other cases of theft.

8. I beg therefore to propose that the Schedule annexed to the Code of Criminal Procedure be amended, and that the words "Court of Session or any Magistrate" be substituted for the words "Court of Session or Magistrate of District" in column 7 of the Schedule annexed to the aforesaid Code, referring to Section 380 of the Indian Penal Code.

No. 306. From P. GRANT, Esq., Magistrate of Coimbatore; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Coimbatore, 6th April 1864, No. 19.

I have received Proceedings of Government, Judicial Department, and their Order thereon, dated 12th March 1864, No. 355, and in reply beg to state that I am of opinion that where there is no breaking, and the theft is committed during the day, cases that now fall under Section 380 of the Indian Penal Code might be dealt with by all Magistrates as simple theft under Section 379, to the extent of their respective powers of punishment under the existing rules of practice.

No. 307. ORDER THEREON, 27th April 1864, No. 607.

The Governor in Council concurs in the opinion expressed by the Inspector General of Police and the Magistrates of South Arcot, Malabar, and South Canara that an alteration of the existing provisions of the Code of Criminal Procedure, in regard to the trial of offences punishable under Section 380 of the Indian Penal Code, is very desirable.

2. It is observed that the course stated by Mr. Carmichael to have been found to remedy the existing inconvenience in the Vizagapatam District can only be followed when the theft is not actually committed, and the offence specified in Section 180 of the Indian Penal Code is therefore not completed.

3. Resolved that the following letter be despatched.

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

No. 308. To the Secretary to the Government of Bombay, dated Fort Saint George, 27th April 1864, No. 608.

I am directed by His Excellency the Governor in Council to acknowledge the receipt of your letter of the 3rd ultimo, No. 762.

2. The question discussed in it not having been previously brought to the notice of this Government, His Excellency in Council resolved before replying to your letter to call for reports on the subject from the more experienced of the Magistrates in the Provinces, in order that the opinion which I have now to communicate might be based as much as possible on the actual results of the operation of the law throughout the Presidency.

3. The reports received make it evident that the difficulties found by the Bombay Government to have arisen from the provisions of the Code of Criminal Procedure in regard to the trial of offences punishable under Section 380 of the Indian Penal Code, have been felt in an equal degree in this Presidency. There can be little doubt in His Excellency's opinion that the present law has not only been in many cases productive of great and unnecessary hardship to the prosecutors and witnesses concerned in petty cases of theft coming under the head of those specified in Section 380 of the Indian Penal Code, but has also led to a failure of justice from the often successful efforts of the owners of the stolen property to conceal the commission of these thefts from the Police.

6 *Proceedings of the Madras Government, Judicial Department,*
27th April 1864.

4. His Excellency fully concurs therefore in the opinion expressed by the Government of Bombay of the necessity of taking early measures for the remedy of so serious an evil; but the remedy is to be found, in his opinion, only in an alteration of the law, similar to that already made in respect of cases of simple theft by Act XXXIII of 1861.

5. The alternative remedy which it is stated has been suggested to the Government of Bombay, viz., the conferring of full powers on a large number of Magistrates would, it would seem, be at best a half measure (for the number of such Magistrate, in a single district must always be very limited) and would, in His Excellency's opinion, be open to very great objection on general grounds; while on the other hand there is nothing, His Excellency believes, in the great majority of the cases which are brought before the Courts to be tried under Section 180 of the Indian Penal Code, which would make their adjudication exclusively by Magistrates with full powers desirable, or which in fact would distinguish the offence in respect to the degree of criminality attaching to it from simple theft.

6. Dwellings in this country are often so open and insecure that the abstraction of property from them does not require any great amount of skill or determination in crime, the implied presence of which is, it is presumed, one reason for drawing the distinction between theft in a dwelling and simple theft while the value of the property stolen is often very trifling.

7. His Excellency in Council therefore sees no reason why the jurisdiction over theft in a dwelling should not be assimilated to that over simple theft, care being of course taken, as is now done in respect to the jurisdiction conferred by Act XXXIII of 1861, to check any tendency on the part of the subordinate Magistracy to use this discretion injudiciously with reference either to the value of the property stolen or the character of the offence.

8. The Bombay Government having initiated the question, I am desired to say that the Madras Government will cordially concur in any representation to this effect that the Bombay Government may make to the Government of India, and to request the favor of early intimation of the course which they propose to adopt.

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

Exd. J. Tulloch.

Indicium Department

Read again letter from the Offg. Secretary }
Govt. of Bombay forwarded in Dros. 10th March/64 No. 355 } dated 3rd March 1864

Read also the following letters.
From Inspector Genl. of Madras Police (Recd. entry 27th March/64 No. 635)
" Magistrate of Malabar (Recd. entry 21st March/64 No. 31)
" " Vizagapatnam (Do - 22nd Do No. 43)
" " S. Arcot (Do - 22nd Do No. 16)
" " S. Canara (Do - 23rd Do No. 7)
" " Coimbatore (Do - 6th April/64 No. 17)

Order thereon 27 April 1864 No. 604.

The Gov. in Council concurs in the opinion expressed by the Insp. Genl. of Police & the Magistrate of South Arcot, ~~Coimbatore~~, Malabar & South Canara that an alteration of the existing provisions of the Code of Criminal Procedure in regard to the trial of offences punishable under Section 180 of the Indian Penal Code is very desirable.

It is observed that the course stated by Mr. Carmichael to have been found to remedy the existing inconvenience in the Vizagapatnam District can only be followed when the theft is not actually committed & the offence

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HS
Wm.
JP

Specified in Section 100 of the
Indian Penal Code is therefore
not completed.

~~Resolved~~
* Resolved that the following
letter be despatched.

~~to the~~

3 To the Inspector General of Police &
" Magistrate of Malabar.
" — " — of Nagapattinam.
" — " — of South Arcot.
" — " — of South Canara.
" — " — of Coimbatore.

desp. 29/4

desp. 30/4

3072 308

Trial of offenders from
the number 380
of the Penal Code

Recd of C. J. 1874

Oct 20 1875

Place Aug 24 1871

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607

Judicial 1874

Concise

India (Department)
No. 1008,

The Secretary to the Government

of India. Bombay

Department,

Sir,

I am directed by His Ex-
cellency the Governor in Council to
acknowledge the receipt of your let-
ter of the 3rd ultimo 1872.

The question ~~is~~ ^{is} ~~not~~ ^{not} ~~disputed~~ ^{disputed} ~~is~~ ^{is}
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to the notice of this Government,
His Excellency in Council resolved
before replying to your letter to call
for reports on the subject from the
more experienced of the Magistrates
in the Provinces, in order that the
opinion which I have now to com-
municate might be based as
much as possible on the actual
results of the operation of the law
throughout the Presidency.

The reports received make
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of the Code of Criminal Procedure

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5 The alternative remedy
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6 Dwellings in this
country

Country are often so open and insecure that the abstraction of property from them does not require any great amount of skill or determination in crime, the implied presence of which is it is presumed one reason for drawing the distinction between theft in a dwelling and simple theft while the value of the property stolen is often very trifling.

His Excellency in Council therefore sees no reason why the jurisdiction over theft in a dwelling should not be assimilated to that over simple theft, care being of course taken as is now done in respect to ~~cases of simple~~ the jurisdiction conferred by Act XXXIII of 1844 to check any tendency on the part of the subordinate Magistracy to use this discretion injudiciously with reference either to the value of the property stolen or the character of the offence.

The Bombay Government having initiated the question I am desired to say

that

that the Madras Government will cordially concur in any representation to this effect that the Bombay Government may make to the Government of India, and to request the favor of early intimation of the course which they propose to adopt.

W.C.A.

Fort St. George
27 April 1864

Po. No. $\frac{148.149}{123.64}$

608

General 1854 Defunct

1868

To the Secy. of the Govt
 of New York

Off. 2085/65.

At No. 18 June 1854. At 103 87 1/2
 Sailed 29 June 1854

Attesting that an
 attestation of the existing
 provisions of the Municipal
 Procurement Code in regard
 to the trial of offences
 punishable under section
 380 of the Penal Code is very
 desirable. -

308