

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	<i>843</i>	Press
<i>82-83</i>		Mis.
Dated	<i>7.6.1864</i>	79

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
7th June 1864.*

No. 82. Read the following letter from G. A. BALLARD, Esq., Magistrate of Malabar; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Malapuram, 26th May 1864, No. 60.

I have the honor respectfully to solicit instructions on the following subject:—

2. In paragraph 2 of the Proceedings of the High Court, dated 29th February last, it is said that a Magistrate of a division of a District is “a person who in a particular part of a District has such jurisdiction over such part as the Magistrate of the District has over the whole.”

3. By this I should have understood that my previous impression was correct; and that *e. g.* the Joint Magistrate of Malabar, the Head Assistant Magistrate, or the Deputy Magistrate Wynad, being Magistrates with full powers, have such jurisdiction over their respective divisions or parts of Malabar, as the Magistrate of Malabar has over the whole of the District including its parts abovesaid.

4. The Magistrate of the District clearly cannot reverse the sentence or interfere with the proceedings of a Joint, Assistant, or Deputy Magistrate, if these Officers have been invested with

the full powers of a Magistrate; but the sentence* which follows the one I have quoted above from the High Court's Proceedings leads me to

ask if the Magistrate of the District is debarred from taking up a case, occurring in one of the divisions of his District, ordinarily under a Joint, Assistant, or Deputy Magistrate with full powers, direct, if he sees† cause so to do? Is

he debarred from directing a Sub-Magistrate in one of such divisions to take up, or commit direct to himself (the Magistrate of the District)

a case occurring in one of them? or debarred from interfering with such a case, entered on by such Sub-Magistrate, though not previously taken cognizance of by the Magistrate with full powers in immediate charge of the division?

5. However the above questions may be answered, I presume the Magistrate of the District

retains certain general executive powers and that any circular orders he may issue,‡ have force throughout his District including divisions thereof immediately under Joint, Assistant or Deputy Magistrates with full powers?

6. Having reason to know that other District Magistrates, as well as I, have felt considerable dubiety on these points, I trust Government will not deem I am troubling it unnecessarily in soliciting that they may be authoritatively explained.

No. 83. ORDER THEREON, 7th June 1864, No. 843.

The Magistrate of Malabar should apply to the High Court for a more full exposition of their views as to his powers with reference to cases within the local jurisdiction of the Subordinate Magistrates in the District under his charge.

2. Mr. Ballard will submit for the information of Government the reply he may receive from the High Court to the reference to be made by him in pursuance of these orders.

(True Extract.)

Chief Secretary.

To the Magistrate of Malabar.

Exd. T. O'Connor.

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Proceedings of the High Court of Judicature at Madras, 29th February 1864.

1. The Chief Justice and Judges of the High Court have, in consequence of fuller information and discussion, seen occasion to reconsider their ruling of the 2nd December 1862, that Talook Magistrates are Magistrates, in charge of a Division of a District.

2. By the terms of Section 18, the local jurisdiction of the Magistrate of a Division of a District is that of a Magistrate, "other than the Magistrate of a District," having local jurisdiction in a particular part of a District. The natural meaning of these words is, that he is a person who in a particular part of a District has such jurisdiction over such part as the Magistrate of the District has over the whole. It is by its very definition a jurisdiction which excludes the jurisdiction of the Magistrate of the District.

3. But the term Magistrate of a Division of a District is not itself defined. By Section 15, the term "Magistrate" means a person exercising any of the powers of a Magistrate, and so read in Section 17, the definition of a Division of a District is wide enough to include within its ordinary meaning the local jurisdiction of a Magistrate exercising less than full powers.

4. The provisions however of Sections 36, 68, 74, 127, 273 and 308 shew clearly that the local jurisdiction of any Magistrate could not have been meant. Section 273 more especially implies, that he is a person who, for its purposes, is in the same position as the Magistrate of the District; and that he must have Magistrates subordinate to him. The intention apparent from these Sections can only be given full effect to by construing the 18th Section to mean such jurisdiction over the part as the District Magistrate exercises over the whole District.

5. The Judges are therefore of opinion, that the Talook Magistrate, inasmuch as his jurisdiction in no way excludes that of the Magistrate of the District, is never a Magistrate in charge of a Division of a District; and that the only Officer who is so in charge is a Magistrate invested in a particular portion of a District with the full powers of a Magistrate. Subjecting all the provisions of the Code to this construction, they are all consistent with one another. That the construction also obviates much practical mischief there can be no question.

(True Extract.)

C. F. CHAMIER,

Registrar,

Appellate Side.

To

The Session Judge of

Judicial department

Proceedings of the Madras Government

Recd the following letter from the
Magistrate of Malabar

(received 26th May 1864 No. 111)

Order thereon 7th June 1864 No. 111.

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should apply to the High
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