

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1849	Press Mis
213-215	
Dated 20-9-1918	

u/s

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
20th September 1865.*

Read the following papers:—

No. 223. From W. ROBINSON, Esq., Inspector General of Police, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Kotagiri, 24th July 1865, No. 1472.

I have the honor to solicit, if the Government see fit, a legal opinion on the points raised in the accompanying letter. Numerous reference have been made by Police officers on the same matter.

2. With reference to Proceedings of the High Court, dated 22nd May: to whom are the reports of the Police, under Sections 135, 137, and 153, Code of Criminal Procedure, to be made, when the charge is for an offence which a Sub-Magistrate is not competent either to try or commit?

3. Hitherto, all such reports have been made to the Sub-Magistrate of the Taluq or Division, and have been disposed of by him.

4. I doubt not that the law contemplates that the Police should submit these reports direct to the Magistrates having jurisdiction over the charge. But it seems to me very undesirable that it should be left to a Subordinate Police officer to decide whether the Sub-Magistrate has jurisdiction over a certain charge or not. It is further highly expedient that the Police should work with and under the local and nearest Magistracy in all matters; that all the Police work should fall under their eye. For the immediate presence of a Native Magistrate, whom it is difficult to deceive, is a useful check on the Police, and we need to keep up their interest in the Police, which will assuredly diminish if the latter deal with a large class of cases, as it were, outside their jurisdiction and independently of them. If the practice which I would propose be admissable in law, these advantages would be retained, and the superior Officer could, if he see fit, always secure the opinion and advice of his subordinate, when transmitting the reports, in a manner which would materially expedite the disposal of cases before him.

5. I propose that all the above reports be made by the Police to the Local Sub-Magistrate. He will decide whether or not the matter is within his jurisdiction, and when the case is one which he should not entertain, will forward the Police Report Charge Sheet, and anything else connected with it, to his superior for disposal—with, if the Magistrate wish it, any information he may have been able to obtain on the matter. Further reference for inquiry would thus frequently be saved. If this course can be legally adopted, and is in accordance with the views of Government and of the Magistracy in general, no material change need be made in the existing Police practice. It might even be tried as a temporary measure, until the Police are more competent to work independently of their Local Magistracy.

6. The point mooted in the 3rd paragraph of Mr. Thomas' letter is of great importance. The law requires that all persons arrested without warrant shall, where there are good grounds for believing that the accusation is well founded, be sent to the Magistrate within 24 hours. In practice, such persons are now generally placed before a Magistrate within that time. The advantage of this course is so obvious that every possible expedient to continue the practice should be adopted. Can such a prisoner be, even in cases over which a Sub-Magistrate has no jurisdic-

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tion over the offence of which he is charged, be placed before the nearest Sub-Magistrate? And can this Officer grant the special order alluded to, technically termed a "Remand Warrant"? Or can this process be issued by the Magistrate having jurisdiction alone? If to obtain an order to keep a prisoner in custody for further local inquiry it be necessary to convey him to the Magistrate having jurisdiction, I need scarcely add that under this Presidency, great inconvenience must arise to parties and the Public service. If, on the other hand, "a" or any Magistrate may, under the law, give this order, the practice will be precisely the same as at present, and the case will be submitted to "the" Magistrate having jurisdiction in a condition for speedy disposal.

From H. S. THOMAS, Esq., Joint Magistrate of Salem, to Captain R. BEATTY, Assistant Superintendent of Police; dated Oosoor, 6th July 1865, No. 92.

I shall be obliged if you can inform me whether any Departmental instructions have been issued to the Police, with reference to the Proceedings of the High Court of Judicature, dated 22nd May 1865.

2. The Subordinate Magistracy having been therein declared to have no jurisdiction in certain cases, I presume the Police reports made under Sections 135, 137 and 153 will have to be made accordingly, some to them, some to me.

3. To whom are the Police instructed to apply for a Remand Warrant under Section 152: the Local Sub-Magistrate or the Magistrate having jurisdiction in respect of the offence. And to whom are they to forward the accused (Section 151), and to whom the reports (Section 155.)

4. I do not wish to discuss the law, but simply seek information as to what Orders, if any, have been issued on these points.

Referred to the Advocate General for his opinion.

FORT SAINT GEORGE,
12th August 1865.

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

No. 244. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 29th August 1865, No. 496.

I have the honor to acknowledge the Order of Government noted in the margin (with its enclosures) requesting the Advocate General's Opinion on certain questions as to the course of Procedure under Sections 135, 137, 151, 152, 153, and 155 of the Code of Criminal Procedure.

2. I submitted the papers 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 and enclosures above noted.

COPY—OPINION.

I am of opinion that the report must in each case be made to the Magistrate having jurisdiction in that particular case.

2. Section 135 expressly names the "Magistrate having jurisdiction" as the one to whom report is to be made: and I think that where subsequent Sections of the Chapter speak of

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reports to a Magistrate, the Magistrate having jurisdiction must be the one intended. In fact that the wording of Section 135 governs the following Sections. I cannot understand what object would be gained by reporting to any other Magistrate than the one who has jurisdiction to try the case: why the report should be to him is intelligible enough. It can seldom happen that there can be any difficulty on the part of the Police Officer in determining who that Magistrate is. The cases in which doubt can arise must be exceptional and of rare occurrence.

3. Again, Section 152 repeats the language of Section 135, and Section 157 clearly points to the Magistrate who is to try the case.

4. Possibly inconvenience may arise from the necessity of reporting to the Magistrate having jurisdiction; but as the Judges of the High Court have pointed out in their Proceedings of 22nd May 1865, hardships can only be remedied by the Legislature.

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

26th August 1865.

(True Copy).

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

No. 245. ORDER THEREON, 20th September 1865, No. 1349.

The foregoing Opinion of the Advocate General is communicated to the Inspector General of Police.

2. Copies of these Proceedings are likewise furnished to all Magistrates of Districts. The Governor in Council desires that the attention of the Magistracy be drawn to the latter part of Section 135 of the Code of Criminal Procedure, which gives them power, after receiving intimation from the Police, to depute an Officer exercising any of the powers of a Magistrate to make the preliminary inquiry.

(True Extract).

Acting Secretary to Government.

To the Inspector General of Police.

„ Magistrate of

Ed. R. H. Lee.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters:-

From the Inspector Genl.

of Police

Enter 24th July '65 N^o 1472

" the Asst. Solicitor — 29th Augt. — 496

Order — 20th September 1865 No 1349.

The foregoing opinion of the Advocate General is communicated to the Inspector Genl. of Police.

* that the attention of the Magistrates be drawn to the latter part of § 135 of the Code of Cr. Procedure, which gives them power, after receiving intimation from the Police, to depute an officer exercising any of the powers of a Magistrate to make the preliminary enquiry.

2. Copies of these Procs. are likewise furnished to all Magistrates of districts. The Governor in Council desires that

In circulating this I would add a few words drawing the attention

of the Inspector Genl. of Police.

Magistrates of the several districts

of the Magistrate to this latter part of Section 135 (Cr. Proc. which gives them the power after receiving intimation from the Police to depute an officer exercising any of the powers of a Magistrate to

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make the preliminary
survey with the late
orders of the High Court
so materially improved.

Yes. This is far
stated in the prospect
of the High Court 22
last p. 2. Which may
be in whole text to all
members to a text. It is
already done. J.P.

Dated 20 September 1868.

File 2134
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PROCEEDINGS OF GOVERNMENT.

No. 1349.

General 1865 Department.