

MADRAS RECORD OFFICE.

Government of Madras.

Judicial

DEPARTMENT.

G.O. No. 1570-71

Press
Mis.

33-36
Dated 3 . 11

1865.

34/35

Not to be folded or roughly handled

No. 1570.

FROM

A. J. ARBUTHNOT, Esq.,
Chief Secretary to the Government of Fort Saint George,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

HOME DEPARTMENT.

SIR,

The Government of Bombay having furnished this Government with copies of their letters noted in the margin, I am directed to express the entire concurrence of this Government, in their recommendations as to the advisability of amending the Schedule annexed to the Code of Criminal Procedure, so as to make the offences punishable under Sections 277, 278, 290, 291, 380, and 381 of the Penal Code triable by any Magistrate.

2. I am at the same time to transmit, for submission to the Government of India, a copy of the papers noted in the margin. The correspondence recorded therein, which originated with a reference from the Government of Bombay, will sufficiently illustrate the inconvenience which is felt in this Presidency, owing to the law, as it now stands, confining the jurisdiction in cases of theft in a building, tent, or vessel to the Session Judges and District Magistrates.

Proceedings, 12th March 1864, No. 355.
" 27th April " " 608.
" 18th June " " 895.

ence from the Government of Bombay, will sufficiently illustrate the inconvenience which is felt in this Presidency, owing to the law, as it now stands, confining the jurisdiction in cases of theft in a building, tent, or vessel to the Session Judges and District Magistrates.

I have the honor to be,

Sir,

Your most obedient Servant,

*Chief Secretary.*FORT SAINT GEORGE,
3rd November 1865.

Exd. J. Tulloch.

3
JUDICIAL DEPARTMENT.

No. 1571.

To

THE SECRETARY TO THE GOVERNMENT OF BOMBAY.

SIR,

In acknowledging the receipt of your letter of the 27th September, No. 3203, I am directed to transmit, for the information of the Government of Bombay, the annexed copy of a letter this day addressed to the Government of India.

I have the honor to be,

Sir,

Your most obedient Servant,

FORT SAINT GEORGE,
3rd November 1865.

Chief Secretary.

Exd, J. Tulloch.

N^o 3203 of 1865

Bombay 20

Judicial Department, 27th Sept 1865.

Sir,

With reference to the last
para of your letter of the 27th
April 1864, N^o 608, I am directed
to transmit for the information
of the Government of Madras
copies of the Letters noted
Letter N^o 3354 of the 5th Nov^r 64. } in the margin
with accompaniments }
Ditto - N^o 3061 dated 15th Sept 65 } which have
with accompaniments } been addressed
by this Government to the
Government of India on the subject
of amending the schedule to the
Code of Criminal Procedure so as
to give to Subordinate Magistrates
the power of trying certain
petty cases which under the
existing Law are required to
be tried by an officer exercising

To,
The Chief Secretary to the Government
of Fort St George.

the full powers of a Magistrate,
under the Code.

I have the honour to be,

Sir,

Your most Obedient Servant

J. Bidwood

Under Secretary

N^o 3354 of 1864.

Judicial Department.

To,

The Secretary to the Government
of India.

Home Department

Sir,

I am directed by the
Honble the Governor in Council
to forward to you the accom-
panying copy of a letter from
the Acting Registrar of Her
Majesty's High Court of Judicature
at this Presidency, N^o 1080, dated
the 4th Ultimo, with enclosure,
and to request that you
will be so good as to sub-
mit for the consideration

f

of the Government of India
the opinion expressed in the
last para: of M^r Gounes
letter.

A transcript
of the docu-
ments referred
to in the same
letter is hereto
annexed.

Precis of opinions on the
inconvenience and hardship
resulting from obliging every
case coming under section 382
of the Indian Penal Code
Theft in a building tent
or vessel to be tried by a
Full Power Magistrate
only.
Summary of replies of the Session Judges
on the subject of the practice of holding
periodical sessions and of the letters
from the Governments of Bengal & Madras
regarding the trial of trivial cases by
Full Power Magistrates.
Government letter to the acting Re-
gistrar of the High Court dated 29th
August 1864 N^o 2572.

Bombay Castle
8th November 1864.

I have the honor to be Sir,
Sigs. C. Gounes
Acting Secy to Govt

N^o 1080 of 1864.

Her Majesty's High Court of
Judicature Bombay 4th October 1864.

To,

The Honble H. L. Anderson,
Chief Secretary to the Govt in the
Judicial Department.
Bombay.

Sir,

I have the honor to acknow-
ledge the receipt of your letter
N^o 2572 dated the 29th August
last forwarding a Summary of
the opinions of the Session Judges
on the merits of the system of
holding periodical sessions as
compared with that in force
before the Code of Criminal
Procedure came into operation
in this Presidency and request-
ing the opinion of the Honble the
Judges of Her Majesty's High Court

f

of Judicature as to whether they consider an alteration in the law necessary for remedying the inconvenience and hardship felt by parties from every case coming under Section 380 of the Indian Penal Code being required, under the Code of Criminal Procedure to be tried by a Full Power Magistrate -

2 In reply, I am directed to forward for the information of His Excellency the Governor in Council copy of a Circular about to be issued to the District Judges as expressing the views of the Honble the Acting Chief Justice and Judges of Her Majesty's High Court of Judicature on the subject of the time of holding periodical sittings.

3 I am also directed to add that in the opinion of their Lordships the law should be altered and the offences punishable under Sections 277, 278, 290, 291, 380, and 381 should be declared triable by any Magistrate -

I have the honor to be Sir,
Sd/- R. G. G. G.
Acting Registrar.

All this
very
unpleasant
inconvenient
1892

E.V.

Precis of opinions on the inconvenience and hardship resulting from obliging every case coming under Section 380 of the Indian Penal Code (Theft in a building, tent or vessel) to be tried by a Full Power Magistrate only.

In October last Mr. F. S. Chapman, the Magistrate of Satterlee, brought to the notice of Government the very serious practical inconvenience and hardship resulting from making the offences defined in Section 380 of the Indian Penal Code (Theft in a dwelling, tent, or vessel) triable by Full Power Magistrates only. As an instance he mentions that in 20 cases of this description disposed of in September 29 prisoners and 100 witnesses had to travel in all 9298 miles - the total value of the property stolen was under Rupees 400. In one case particularly the value was only 3 pice and 8 people besides Police men had to travel 180 miles and back for its disposal.

2. Mr. Chapman thinks the framers of the law must have been under the impression that F.P. Magistrates would have been more numerous and accessible than they

they really are, at least in this Presidency-
and that they (the Framers) could not have
contemplated the inconvenience and hardship
above alluded to.

3. In his opinion a similar alteration
in the law as made by Act XXXIII of 1861
is urgently required, and proposes that for
the words "Court of Session or Magistrate
of the District" the words "Court of Session
or any Magistrate" should be read in the
Schedule annexed to the Criminal Procedure
Code.

4. Mr. Chapman subjoins a Circular
issued by him before Sattara was brought
under the Regulations in which he had directed
trivial cases coming under Sec. 380 to be tried
under Sec. 479 which he deemed would not
involve any illegality. The High Court,
however, considered the course illegal.

5. An extract from Mr. Chapman's
letter was sent to the several District Magis-
trates for report in detail as to whether and
to what extent the inconvenience complained
of was felt in their respective Districts, and
how each one proposed to remedy it, whether
by an alteration of the law, or by conferring
Full

13
Full Powers on a greater number of Subor-
dinate Magistrates. The substance of each
Magistrate's report and proposition is as follows.
Ahmedabad. Mr. W. H. Probert, the Acting 1st
Assistant Magistrate in charge, Ahmedabad,
states that the want of jurisdiction on the
part of Subordinate Magistrates under
Sections 380 & 381 of the Penal Code is certainly
the first and foremost objection to the Code
of Criminal Procedure. He appends extract
of a letter addressed by Mr. Hope the late
Magistrate to the Police Commissioner A.D.
in which that officer says that "the most
fruitful source of trouble to all parties
is the provision that offences under Sections
380 & 381 of the Indian Penal Code, and
these offences combined as they usually
are, with offences under Sections 451, 454,
457, 461 or 462 shall not in any case be
tried by 2nd Class Subordinate Magis-
trates, and I feel no doubt that it deters
parties from coming forward to prosecute.
They might at least be empowered to try all
cases in which the amount stolen does not
exceed Rupees 10 and 1st Class Subordinate
Magistrates might well be allowed to try
cases

'cases under Sections 380 & 381 in which the amount stolen does not exceed Rupees 50'.

Mr. Probst thinks the course proposed by the Magistrate of Sattara (vide para 3 of this paper) as a remedy should be at once adopted.

7. Mr. J. W. Hadow states that the same inconvenience has been experienced in his District also, but not to the same extent as in Sattara. His opinion also is that the remedy proposed by Mr. Chapman should be resorted to, making thefts exceeding Rupees 50, or old offenders triable by F. P. Magistrates.

8. Mr. J. G. White the Acting Joint District Magistrate shows that the inconvenience complained of has not been felt so much in the districts under him as in others. He is nevertheless of opinion that in view of the hardship to witnesses, especially in the rainy season, an alteration of the law is much required and is preferable to conferring Full Powers on a greater number of Subordinate Magistrates.

9. Mr. A. Rogers forwards Surat a statement giving full details of the cases tried under Section 380 of the Penal Code, and states that no further proof

proof than the Statement affords is required to show as far as his Magistracy is concerned the great inconvenience to private individuals & the expense to the State that have arisen from the provisions of the law on this point. He forwards letters from his 3^d Assistant, Mr. S. H. Stewart, and the Hoogoor Deputy Magistrate, Mr. Motiram Dulputram, fully bearing out the views expressed as to the inconvenience and expense of the existing arrangement. Mr. Stewart suggests that the jurisdiction of Subordinate Magistrates extend to Rs. 10 & that of the 1st class to Rs. 30. and Mr. Motiram Dulputram suggests that Rs. 20 & Rs. 50 be the limits respectively.

10. Mr. Rogers would adopt the latter limit for 2nd class Subordinate Magistrate, but recommends that Subordinate Magistrates of the 1st class have jurisdiction up to Rs. 100 & that thefts committed in outhouses or buildings

things not used for religious purposes, such as temples, or for human habitation, only be cognisable by 2nd class subordinate Magistrates.

Tanna.

11. Mr. C. P. Robertson reports that the inconvenience complained of has been much felt in his Zillah and brought by him to the notice of Mr. Luckin on special Duty, on 20th March 1868. As a remedy he suggests that offences under Section 380 be made triable by a Subordinate Magistrate of the 1st class, and that all the Mamuldaris & Mahaldars be gazetted to that rank, & their 1st Class Rooms to Subordinate Magistrates of the 2nd class. The Police officers should be instructed to send cases to the nearest 1st class Subordinate Magistrate in the absence of the Talooka Magistrate & not to the full Power Magistrate, unless the case be beyond the power of the first named officer's power.

Khandeish.

12. Mr. L. Ashburner says the

the above evil has been most severely felt in Khandeish from its great extent & he also brought it to the notice of the Police Commissioner together with other similar difficulties in September 1862. The remedy he proposes is to alter the law.

13. One fruitful source of inconvenience he states is the system of having only monthly sessions. In cases triable by the Sessions Court the Prisoners & witnesses have to be forwarded to the Officer who has power to commit, who after preparing the case allows them to return home, & on the day fixed for the sessions they have again to appear at the Sadar Station, especially during the monsoon. There seems no good reason why the Sessions Court should not be always open for the trial of cases. It is impossible to exaggerate the evil effect of the present system in the administration of justice.

Colaba.

14. Mr. C. W. Ravenscroft the joint

joint Magistrate agrees with the
Magistrate of Satara that the law
requires alteration which would be a
better remedy than the grant of full Powers
to a greater number of Subordinate Magis-
trates.

Ahmednuggur.

15. Mr. W. D. Ogle states that
the inconvenience complained of has
been severely felt in his Collectorate
since the introduction of the new Codes.
His predecessor Mr. Sytler had brought
the subject to the notice of the late Sudr
Faujdar Adawlut, & himself twice ad-
dressed the Police Commissioner and
once Mr. Martin when on Special Duty.
He believes it is held that Sec. 296 of the
Code of Criminal Procedure precludes
an accused person being tried for a
minor offence in cases in which a more
serious charge will be. Owing to the
inconvenience experienced persons who
are unfortunate enough to have property
stolen out of their houses conceal the
fact.

Aw.

16. An alteration of the law is in his
opinion, indispensable to remedy the evil petty
cases should be tried by the Mamlatdar in
his Magisterial capacity, anything short
of this will not meet the requirements of the
case. It is out of question to invest all Mam-
latdars with full Powers as Magistrates¹⁹.

Mr. D. Ogle takes this opportu-
nity of calling the attention of Government to the
inconvenience caused by Public Nuisance
(Sec. 269 & infra 290 of the Penal Code) being
cognisable by no officer below a subordinate
Magistrate of the 1st class the consequence
being that persons committing ordinary petty
nuisances escape unpunished. He thinks
that such offences should be cognisable
by District officers as subordinate Magistrates
of the 2nd class.

Poona.

17. Mr. J. R. Morgan having lately
taken charge of this District is unable to speak
from his own experience on this subject. He
is however of opinion that the alteration in
the Law suggested by the Magistrate of
Satara would be more advantageous than
Conferring.

conferring at present Full Powers on a greater number of subordinate Magistrates. He gives extracts from replies from his assistants who all agree in the necessity for an alteration of the law in preference to conferring Full Powers on a greater number of subordinate Magistrates.

Sholapur

18 Mr. A. Grey states the mil. has been felt in his District also, and proposes to remedy it by an alteration of the Law as suggested by Mr. Chapman.

Dharwar

19 Mr. L. Reid reports that the same serious inconvenience is felt throughout his district and is of opinion that the remedy proposed by the Magistrate of Satara is preferable to conferring Full Powers on a greater number of subordinate Magistrates.

Belgaum

20 Mr. W. A. Goldfench reports that the inconvenience has been experienced in his District to a very great extent and he entirely concurs in the opinion expressed by Mr. Chapman.

Chapman that Law should be altered so as to allow of the plunder see 380 being disposed of by any Magistrate and sincerely trusts immediate steps will be taken to procure this alteration. He appends copy of his 2nd report to Mr. C. Pitchford report in which the latter Officer points out glaring instances of the inconvenience experienced and makes the same suggestion as Mr. Goldfench as to an alteration of the Law.

Putnagberry

21st Mr. J. W. Robertson gives the reports of his assistants which conclusively show that the provisions of sec. 380 of the Penal Code are conducive of considerable inconvenience in dealing on Govt. caprice in the shape of batthas ^{from the general} no way called, petty amounts of property stolen. The only remedy he thinks is that suggested by the Magistrate of Satara which he urges may be speedily provided. He proposes that Rs 50 should be the amount up to which the authority that would thus be conferred upon subordinate Magistrates of the 2nd class should be extended.

22 Mr. Robertson also suggests cases of receiving stolen property and the Commission

of nuisances being brought within the competence
of 2nd class sub Magistrates when such cases are
trivial

Canara.

Mr. M. J. Shaw Stewart also ad-
dressed the Commr of Police on this subject as
also on Sec 382, 'Larceny' suggesting that the
two offences be made triable by subordinate
Magistrates of the 1st Class. He thinks that
it will not be necessary to make these offences
triable by subordinate Magistrates of
the 2nd Class and that the inconvenience
now felt would be much alleviated if all the
Maukuldars are made subordinate Magts
of the 1st Class & these offences made triable
by them

Commissioner of Police S. D.

Mr. W. North forwards
the letter from the Magistrate of Canara
above referred to & observes that an early
amendment of the Code of Crim. Procedure
to the effect recommended by Mr. Stewart
is highly desirable. The distinction made
in the Code as regards thefts in dwelling
houses

houses &c. is evidently based on the similar
distinction made by the Law in England.
In England it is reasonable but in this coun-
try where dwelling houses partake of the
nature of public thorough fares, and where
most of the petty thefts that take place are
committed in such houses it is very inappro-
-priate as well as inconvenient in practice.

23

Precis.

In October 1863 Mr. F. S. Chapman the Magistrate of Sattara having represented that considerable inconvenience and hardship was felt by parties from every case coming under section 380 of the Penal Code / Theft in a building, tent or vessel / being obliged, under the Criminal Procedure Code, to be tried by Full Power Magistrate only the opinions of the several Magistrates were invited as to to what extent the inconvenience complained of by Mr. Chapman was felt in their respective Districts and the mode in which it should be remedied.

25

A summary of their opinion will be found in Comp. No. 337 of 1864.

Before however taking any action in the matter references were made to the Governments of Bengal and Madras to ascertain whether similar difficulties were felt in those ^{the} provinces and if so how they have been remedied or how it has been proposed to remedy them.

Precis

A Circular was simultaneously issued to the Session Judges requesting them to report at what intervals of time Sessions are held for the trial of Criminal cases and to submit their opinions on the merits of the system of holding periodical Sessions as compared with that in force before the Criminal Procedure code came into operation in this Presidency.

The following is a summary of their replies.

Mr. A. T. Crawford the acting Session Judge of the Conkan, states that in the Conkan Zillah Sessions are held monthly for the trial of Criminal cases and that the Criminal Procedure code requires that periodical Sessions be held / vide Section 330/-

Mr. Crawford states that to the Judge and also as regards public interests he thinks periodical Sessions are far more convenient, that the Judge is better able to maintain method

method and regularity in his civil and miscellaneous business, now that he is not interrupted from time to time by stray Criminal cases and that the average delay in disposing of Criminal cases has not increased materially in his opinion. 27

Mr. Crawford observes.

"To the prisoners and especially to the witnesses however

"the system of periodical Sessions must occasionally

"be productive of much hardship, especially during the

"monsoon and in rugged parts of the Country. Take for instance

"a case committed just after a Criminal Session by a Magistrate

"at the Hoofar Station during the monsoon, the witnesses

"have to come up to the Hoofar Station in the first instance to

"give evidence before the Magistrate. The case committed, they

"have the alternative of returning home