

MADRAS RECORD OFFICE.

Government of Madras.

Indust. DEPARTMENT.

G.O. No.	1574	Press
		~~Mis.~~
Dated	4-11-1915	

Not to be folded or roughly handled

1574

No. 27. Read the following letter from the Magistrate of Nellore, to the Chief Secretary to Government, Fort Saint George; dated Nellore, 16th October 1865, No. 25.

I have the honor to acknowledge the receipt of the Proceedings of the 10th, prescribing the book to be kept in Subaltern Jails.

2. The Government observe that it is not necessary that a warrant should be issued for the confinement of prisoners in Subaltern Jails, that there is no provision to this effect in those Sections of the Code of Criminal Procedure which relate to the closing of trials before Subordinate Magistrates.

3. Section 280, however, after defining the course to be pursued by the High Court and Court of Sessions, enacts that in "every case of imprisonment under the sentence of any other Court, the Court passing the sentence shall issue its warrant to the Jailer."

4. And, in the face of this positive enactment, before issuing the requisite instructions, I do myself the honor to submit, for the consideration of Government, whether Sub-Magistrates can legally be absolved from the obligation of issuing a warrant, because being the Court passing the sentence they also happen to be the Jailers.

5. I would further take this opportunity of suggesting that the address used for the form of order circulated with the Proceedings of Government of the 14th ultimo, Judicial Department, No. 1319, is open to doubt. The Code of Criminal Procedure recognizes two officers in connection with Jails, viz., the officer in charge of the Jail, to whom the higher Courts issue their orders, and the Jailer to whom are addressed the warrants, &c., of the lower Courts. The keeper of the Jail, the term used in the form of order referred to, is nowhere defined in the Code, and therefore wants clearness, though possessing the advantage, if not repeated in actual use, of making the form applicable to all Courts, because strictly applicable to none.

No. 28. ORDER THEREON, 4th November 1865, No. 1574.

The Governor in Council observes that the Jails to which the Government Order (16th October 1865, No. 1446) refers are mere "lock-ups," in which, owing to the wide area of our Districts and the distance of the Jail of the Zillah, as also for ministerial and financial convenience, very short sentenced prisoners are confined. These "lock-ups" are guarded by Police Poonis doing duty at the local Revenue Cutcherry, which is also the Subordinate Magisterial Court; but such guards are mere custodians of the Jail door who are frequently changed. It is, therefore, impracticable to nominate the superior Poon or Constable to be "Jailer," with that designation, of these small unimportant places of restraint. Therefore, the Sub-Magistrate who happens to be on the spot, or is nearest at hand, has had assigned to him the general duties of supervising the Jail, its inmates, and its custodians; but advertent to the ordinary nature of the duties of a Sub-Magistrate, as officer of Revenue, it is obvious that a functionary of that class cannot be constituted or designated a Jailer in the terms of the Code of Criminal Procedure, if even, on other grounds, the arrangement would not be anomalous and objection-

Proceedings of the Madras Government, Judicial Department,
4th November 1865.

able. Under these circumstances, therefore, a slight, but very unimportant, departure from forms calling for strict observance when convicted prisoners are confined in a place of restraint under the formal charge and superintendence of a Jailor, is unavoidable.

2. As every sentence passed by a Sub-Magistrate will, of necessity, be one of the papers forming the record of a prisoner's trial, as its purport and other particulars are further transferred to the book which the Government have directed to be opened, and which, for all practical purposes, is equivalent to a "Warrant," of which a "form," for observance in such cases, is not found in the Code of Criminal Procedure, and as there would be a marked anomaly in a Sub or other Magistrate addressing to himself, as Jailor, a communication which, under the circumstances of this Presidency above adverted to, was not, it is clear, contemplated by the Procedure Code, the Government are unable to appreciate the value of the objection which the Magistrate of Nellore has submitted for consideration.

3. In regard also to that officer's further objection to the wording of a portion of the Government Order, 14th September last, No. 1319, it is sufficiently obvious that the term objected to by Mr. Dykes must, for the reasons stated in those remarks, be regarded as an appropriate and intelligible term, having general application, such as the word "Jailor" would not carry, for in many instances the latter term would be a misnomer.

(True Extract).

Chief Secretary.

To the Magistrate of Nellore.

Est. J. H. Burns

The Magistrate: Mr. Dykes,
is hypothetical & faulty.

The facts to which the
Govt. order (1300 of 65) refers, are more than sufficient, in short, owing to the wide area of one district, and the distance of the Jail of the Zillah, as also for ministerial and penitentiary convenience, many short-sentence prisoners are confined. These lack of are guarded by Police from being shut at the least remote distance. It is also after subordinate Magistrate's Court, but such guards are more or less of the Jail door the are frequently changed. The Jail is therefore impracticable to shut the superior from a favorable view the Jailor. With that being nature, of these small unimportant places of restraint. Hence the Jailor is the only one who is on the spot or is named at hand, and has a physical

to him the general duties of superintending the Jail, as a matter of course, but strictly to the ordinary nature of the duties of a Jailor. The duties of a Jailor are of a nature, it is obvious that a functioning of that class cannot be considered a designated a Jailor in the terms of the Code (see Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100). The arrangement of the Jail is such that the Jailor is the only one who is on the spot or is named at hand, and has a physical

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PROCEEDINGS of the MADRAS GOVERNMENT

Read the following letter
from the Magistrate of Villor
dated 10th October 1854.

Order Number 4th November 1854. A.D. 1854

The Prisoner in Court
states that the facts recorded in the
first Order (n^o October 1854) are
true, and were taken from him
concerning the points of a report
of the fact of the robbery, and also from
magistrate and financial commis-
sioner, who were present for
some time at the trial, and
who are qualified by their posi-
tion, and by the fact of the robbery,
which is also the inter-
mediate Magistrate's Court, but
such reports are more trustworthy
of the fact than who are frequently
changed. It is therefore impracticable

Handwritten initials and signatures: W.D. and J.P.

Extensive handwritten notes on the left page, including a large signature 'W.D.' at the top and various cursive entries.

must for the reasons stated in these
remarks be regarded as appropri-
ate and intelligible terms, having
general application, such as the
word "fault" would not carry,
or in many instances the latter
would be a misnomer.

L.R.

[Faint handwritten notes, possibly bleed-through from the reverse side]

To the Magistrate of Nelson

189-15

(3)

14/1/14
14/9/15
5/9/15
10/10/15

17.55

W. J. H. J.
Evidence 1905. Department.

No. 1074

PROCEEDINGS OF GOVERNMENT

Dated 14/10/15

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