

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1580

Presg
Mls.

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Dated 7.11.1865 19

Not to be folded or roughly handled

Read the following papers:—

No. 49. From the Magistrate of Nellore, to the Chief Secretary to Government, Fort Saint George; dated Vrisara, 3rd October 1865, No. 34.

I have the honor to acknowledge the receipt of the Government Proceedings in the Judicial Department of the 26th ultimo, and would beg the favor of the Government obtaining, at an early date, the opinion of the Advocate General on Section 133 of the Code of Criminal Procedure.

2. In respect to subsequent Sections of Chapter IX of the said Code, the Advocate General, in his Opinion of the 26th August, which accompanied the Proceedings under acknowledgment, observes that where these Sections "speak of reports" to a "Magistrate," the Magistrate having jurisdiction must be the one intended. The point on which I beg to be favored with the Advocate General's opinion is, whether "a Magistrate" in Section 133 similarly means *the Magistrate having jurisdiction*.

3. In Section 135, "any Magistrate" is the term used in opposition to "the Magistrate having jurisdiction;" and thus viewed, the question put is apparently answered by the Code itself. But on the other hand, it may, I think, be urged, that the use of the term "any," in opposition to "the," Magistrate is simply a compliance with the idiom of the English language, and the term "a Magistrate," as used in Section 133, in opposition to "no Police Officer," would equally, thus used, have the same and compact of "any Magistrate."

4. A further argument in favor of "a" Magistrate meaning "any" Magistrate is to be drawn from the fact that, though the Advocate General uses the term "a Magistrate," the term used in the Sections he quotes, is invariably "the Magistrate;" and the Magistrate is always the term used in the Chapter in question, when jurisdiction is intended. All of which makes me think that "a" Magistrate means "any" Magistrate, though I hesitate to instruct my Sub-Magistrates to this effect, when "a Magistrate" has been given authoritatively, though perhaps not intentionally, in different a meaning.

5. The grounds on which I request the favor of an early opinion are, simply, that the whole working of the Police and Magistracy, as regards cases for which arrest cannot be made without a warrant, is affected by this question.

6. Under Section 133, it is "competent to a Magistrate upon the report of a Police Officer, or otherwise, to direct inquiry to be made by a Police Officer into any offence punishable under the Indian Penal Code, or under any special or local law." If the Advocate General has used advisedly the term "a Magistrate," in paragraph 2 of his opinion of the 26th August, Section 133 does not mean what it says, but something else; and "a" Magistrate must be taken to mean the Magistrate having jurisdiction. A further difficulty being here involved in that, at present, it is not authoritatively known whether Sub-Magistrates having jurisdiction, on complaint preferred have like jurisdiction when no complaint has been made, but the case comes before them on the report of a Police Officer. If, however, the Advocate General used the term "a Magistrate," without special reference to the Code of Criminal Procedure, and I am correct in supposing that "the Magistrate" is the term always used when jurisdiction is concerned as regards trial or conviction, then, "a" Magistrate may be taken to mean a Magistrate and nothing more. And the Legislature, whilst they refused to give the Police

*Proceedings of the Madras Government, Judicial Department,
7th November 1865.*

direct action in a large class of cases, nevertheless thought it safe to give the Magistracy the power to set them in motion. And, in like manner, whilst refusing to allow the Sub-Magistracy to move *proprio motu* in certain cases, nevertheless gave them the means, when they saw an offence committed, to do some thing more than sit still and look on till a complaint was made.

7. The power of report is nowhere specially provided for, so far as I am aware, in respect to the offences now under consideration, but it is recognised by Section 133, and under Sections 9 and 21 of Act XXIV of 1859; and Section 134 of the Code of Criminal Procedure is apparently one of the means by which the Police are bound to prevent crime and bring offenders to justice. And should the Advocate General be of opinion that "a Magistrate" in Section 133 means any Magistrate, then a Sub-Magistrate would be the Magistrate having jurisdiction to pass orders in such cases, and the action of the Police would be single and direct. Where the Police are not authorized to arrest without warrant, and consequently to make inquiry, they would simply report to the Sub-Magistrate at hand, and under whose immediate orders they are placed, and, however the question of jurisdiction as to trial or commitment might be affected by the result of the inquiry, Sub-Magistrates would have power to set the inquiry going; there would be no time lost by a reference to other Magistrates, and there would be no necessity for direct communication with the Magistracy with full powers, or the Magistrate of the District, for which the law specially provides, when considered necessary.

Referred to the Government Solicitor, for the Advocate General's opinion.
Fort Saint George,
12th October 1865.

(Signed) W. HUDLESTON,
Acting Secretary to Government.

No. 50. From the Government Solicitor, Madras, to the Secretary to Government, Fort Saint George; dated Madras, 25th October 1865, No. 627.

I have the honor to acknowledge the Order of Government noted in the margin, relative to the construction of the word "Magistrate" occurring in Section 133 of the Code of Criminal Procedure.

Refer 12th October 1865, and make in letter from Magistrate of Police to Government, of 2nd inst. No. 48.

2. I submitted it, together with the former correspondence on the subject, for the consideration of the Advocate General; and,

3. I now forward a copy of his further Opinion, and return the order above noted.

COPY—OPINION.

In my former opinion of the 26th August last, I considered the meaning of Section 133 and the following Sections of Chapter IX. The question then was—to whom the Police should make their reports.

2. I think that under Section 133 any Magistrate may order the inquiry directed by that Section. The object is to procure a certain degree of control and supervision over the Police, who are not to be permitted to initiate inquiries into offences (other than those described in Column 2 of the Schedule), without being in the first instance authorized by a Magistrate, the definition of which includes all persons exercising any of the powers of a Magistrate.

That October 1865.

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

(True Copy)

(Signed) A. E. BOYDOR,
Government Solicitor.

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7th November 1865.*

No. 51. ORDER THEREOF, 7th November 1865, No. 1580.

The foregoing opinion of the Advocate General is communicated to the Inspector General of Police, and to all Magistrates of Districts, in continuation of the Order of Government of the 29th September last, No. 1349.

(True Extract).

Chief Secretary.

To the Inspector General of Police,
" Magistrate of

Ead. J. H. Burn.

Read Bill from the Senate of Illinois - 5. Referred to - 24
 - from the House of Representatives - 25 - 627.

Order thereon, 7 November 1865 No. 1580.

The foregoing opinion of
 the Advocate General is communicated
 to the Inspector General of Police and
 to all Magistrates of Districts in
 confirmation of the Order of the 29th September last No. 1349 -

Chas. W. 2235225
 30/9/65

The Inspector General of Police
 Magistrate of the District
 2235225