

MADRAS RECORD OFFICE.

Government of Madras.

Industrial DEPARTMENT.

G.O. No. 1670	Press ~~Mis.~~
186-187	
Dated 22-11-1918	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
22nd November 1865.*

No. 186. Read the following letter from the Magistrate of Tanjore, to the Chief Secretary to Government, Fort Saint George; dated Vallam, 13th November 1865, No. 240.

With reference to the Proceedings of Government, Judicial Department, dated 10th October 1865, and the Order, No. 1446, I have the honor to forward, herewith, for the perusal of Government, extract of a letter from the Acting Joint Magistrate of this District, and to state, most respectfully, that I agree with him in thinking that, in accordance with Section 386 of the Code of Criminal Procedure, a Warrant must be issued to the Jailer in every case of imprisonment under the sentence of any other Court than the Sudder Court or Court of Session, by the Court passing the sentence.

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Extract from a letter from the Acting Joint Magistrate of Tanjore, to the Magistrate of Tanjore; dated Negapatam, 25th October 1865, No. 112.

In paragraph 2 of the Order of Government, dated 10th instant, No. 1446, it is stated that there is no provision in those Sections of the Code of Criminal Procedure which relate to the closing of trials before Sub-Magistrates which render it necessary that Warrants should be issued for the confinement of prisoners in Subsidiary Jails. I would beg, however, respectfully to point out that, in the latter part of Section 386 of the Code, it is distinctly laid down that "in every case of imprisonment under the sentence of *any other* Court (*i. e.*, other than the Sudder Court or Court of Session)" the Court passing the sentence *shall* issue its warrant to the Jailer, &c. This would distinctly seem to include cases where prisoners are sentenced by Sub-Magistrates to imprisonment in Subsidiary Jails.

* * * * *

(True Extract).

(Signed) G. L. MORRIS,
Magistrate.

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No. 187. ORDER THEREON, 22nd November 1865, No. 1670.

The Governor in Council sees no reason to question the correctness of the opinion expressed in the Proceedings of the 10th October last, No. 1446, to the effect that it is not necessary that Warrants should be issued for the confinement of prisoners in Subsidiary Jails. The Government have had occasion on the 4th instant to make certain observations on a reference, similar to the above, made by the Magistrate of Nellore, and they now direct that the Proceedings of that date, No. 1574, be communicated to the Magistrate of Tanjore, and to the other Officers to whom the Orders of 10th October were issued.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of
" Inspector General of Police.

No. 37. Read the following letter from the Magistrate of Nellore; to the Chief Secretary to Government, Fort Saint George, dated Nellore, 16th October 1865, No. 38.

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

2. The Government observe that it is not necessary that a warrant should be issued for the confinement of prisoners in Subsidiary 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 386, 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. 38. ORDER THEREON, 4th November 1865, No. 1574.

The Governor in Council observes that the Jails to which the Government Order (10th 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 Peons 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 Peon 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 adverting to the ordinary nature of the duties of a Sub-Magistrate, *ex officio* an 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 Jailer, 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 Jailer, 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 these remarks, be regarded as an appropriate and intelligible term, having general application, such as the word "Jailer" would not carry, for in many instances the latter term would be a misnomer.

(True Extract).

A. J. ARBUTHNOT,

To the Magistrate of Nellore

Exd. J. Tulloch.

Q. No. 57260
16 11 65

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter
from the Magistrate of Tanjore

[Here enter 13th Nov. 1865. No. 243]

Order thereon. No. 1670 of 22 Nov. 1865.

The Governor in Council
sees no reason to question the
correctness of the opinion ex-
pressed in the Proceedings of
the 10th October last No. 1445, to
the effect that it is not neces-
sary that warrants should
be issued for the confinement
of prisoners in subsidiary
dails. The Government have
had occasion on the 4th inst.
to make certain observations
on a reference, similar to the
above, made by the Magistrate
of Nellore, and they now direct
that the Proceedings of that
date No. 1574 be communicated
to the Magistrate of Tanjore
and

MA
JPS
WOW

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and to the other Officers to whom
the orders of 10th October were
issued—

The Magistrate of—
" Supr: Genl: of Police" ^{dep} 28/11

Provt No 12
Judicial 1865. Department.

No. 1670

PROCEEDINGS OF GOVERNMENT.

Dated 29th November 1865.