

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	969	Press
		Mis.
Dated	12-7-	19/8/5

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
12th July 1865.*

Read the following papers :—

No. 62. From W. ROBINSON, Esq., Inspector General of Police, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 30th March 1865, No. 670.

General Department.

I have the honor to submit the accompanying Extract of Proceedings of the Session Judge of Chingleput, directing the release of prisoners committed by certain Sub-Magistrates of that District for trial.

Dated 21st and 27th instant.

2. The two cases in which the prisoners have been released had been committed, in the absence of the Tahsildar—Sub-Magistrate, by the Sheristadar Acting as Sub-Magistrate under the order of Government.

3. The Superintendent of Police had very properly re-arrested the prisoners; but the cases cannot now, I fear, be tried before the adjournment.

4. The Magistrate is absent as will be observed.

Proceedings of the Session Court of Chingleput, dated 21st March 1865, No. 52.

Read "Results of inquiry" in the Register of preliminary inquiries in No. 9 (and 29) 1865, on the file of the Taluq Magistrate of Tiruvallur.

Read also the return* made by the District Magistrate to the Proceedings† of this Court stating that "no committal will be received from any Sub-Magistrate whose name does not appear in the list called for," viz., a list of those Sub-Magistrates in the Zillah.—

* 10th March 1865, No. 50

† 27th February 33.

1st. Who are vested, by any law now in force, other than the Criminal Procedure Code, with powers to hold the preliminary inquiry into cases triable by the Court of Sessions.

2nd. Who have been empowered by the Local Government, under Section 38 of the Criminal Procedure Code to hold such an inquiry.

2. The District Magistrate has merely given a list of twelve Sub-Magistrates in this Zillah, "who hold preliminary inquiries, under the powers vested in such officers by Section 356 of the Code of Criminal Procedure," and stated that the Taluq Sheristadars too hold preliminary inquiries in the absence of the Taluq Magistrates.

3. The Acting Session Judge observes that no powers are conferred upon Sub-Magistrates by Section 336. It merely specifies the Courts upon which certain work is to be thrown, and thus relieves officers who already possess the powers in question of a doubt as to the way in which they should be exercised. They are directed to commit to the Session Court all cases of a certain kind; and to use their discretion as to cases of another kind. The Sub-Magistrates alone are named, because they alone have above them several courts which are competent to try the cases in question.

4. If any particular Sub-Magistrate has power to commit, he must have received it under some other provisions than this: he must have been empowered by the Local Government, under Section 38 of the Criminal Procedure Code, or have been vested with it by some other law for the time being in force. It is clear from Sections 276 and 278 that there may be Sub-Magistrates who have not power to commit, but it seems to be thought that; from the enactment of Chapter 24, there can be no such officers in the Presidency of Fort Saint George. But if it had been the object of Chapter 24 to give the power to them all, this power would have been given in so many words, and the heading would have been "Of Sub-Magistrates in the Presidency of Fort Saint George." It is the Courts that are peculiar to this Presidency, and not the powers of Sub-Magistrates.

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5. The District Magistrate having failed to show that any Sub-Magistrate in this Zillah has power to commit to the Session Court, the Court cannot receive commitments from them; and a warrant is issued to the officer in charge of the Jail for the immediate release of the prisoners committed in the case above referred to.

6. To prevent a failure of justice, the Acting Session Judge has warned the Court Inspector of Police that they are about to be released.

(Signed) J. G. THOMPSON,
Acting Session Judge.

Proceedings continued, March 27.

7. These proceedings have been kept back till now, in the hope that the Order* of Government, quoted by the District Magistrate, might be procured from the office of the Joint Magistrate or of the Taluq Magistrate. But no such order is forthcoming, nor any other bearing on the subject; so this must be issued at once, or the case will be too late for the April Session. The District Magistrate being away from his Head quarters, it was thought useless to write to him for a copy of the order, when it was found that there was a difficulty in obtaining it.

8. The Acting Session Judge forgot to remark in paragraph 4 that the orders on this subject in the rules of practice must be taken to refer, like Section 336, to officers in possession of the power to commit. They are not to be understood as declaring, in opposition to the Code, that every Sub-Magistrate has the power.

(True Extract).

(Signed) J. G. THOMPSON,
Acting Session Judge.

(True Copy).

(Signed) J. G. THOMPSON,
Acting Session Judge.

To the Superintendent of Mofussil Police, Madras District.

(True Copy).

(Signed) W. ROBINSON,
Inspector General of Police.

Referred to the Advocate General, for his opinion, in connection with the reference made to him on the letter from the Under Secretary to the Government of India, under date the 28th February last.

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

12th April 1865.

No. 63. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 29th April 1865, No. 213.

I have the honor to acknowledge the Order of Government noted in the margin, (with its enclosures), relative to the jurisdiction of Subordinate Magistrates to hold preliminary inquiries in cases triable by Courts of Sessions.

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.

Order made on letter from Inspector General of Mofussil Police to Government, dated 30th March 1865, No. 670.

*Proceedings of the Madras Government, Judicial Department,
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COPY—OPINION.

I agree with the Acting Session Judge of Chingleput in his construction of the Code of Criminal Procedure.

2. The subject is very far from being free from doubt, as pointed out in the letter from the Under Secretary of Government of India to the Acting Secretary to the Government of Bombay, dated 15th March 1862, No. 1395.

3. If Chapter XII of the Code stood alone, there would be no difficulty; but it is impossible to read Sections 173, 176, 273, 276 and 278, without seeing that the Code contemplates Subordinate Magistrates, who are *not* competent to commit cases for trial to the Sessions Courts.

4. Why this should be, I do not very clearly understand. It is easy to see that the Legislature may have thought that all Subordinate Magistrates might not be safely trusted with such powers; and that it was expedient to leave to the Government the selection of such, as, from its knowledge of their qualifications, it might deem fitted for the discharge of this peculiar duty. But the whole of this class of the Magistracy is trusted by Section 22 with higher powers than those of mere preliminary inquiry and commitment, functions purely ministerial.

5. Still the Legislature has drawn the distinction and it must be observed.

6. I think Chapter XXIV does not vest the Subordinate Magistracy with any power, not otherwise created, of making preliminary inquiries and commitment, but points out only to what Courts such Magistrates, *having* such powers, are to commit.

7. Very grave inconveniences may arise from the present state of things. In the case under consideration, the Session Judge has directed the release of the prisoner, although his immediate re-apprehension will obviate any other consequence than that of delay. But there must have been many illegal commitments, as to which the less that is said the better.

8. I am of opinion that the Government must confer, on every Sub-Magistrate who it intends should commit cases, that express power under Section 38. Section 22 it will be observed contains no reference to the *Ministerial* power of Magistrates; it is confined to their judicial jurisdiction.

9. I think that the proper course is for the Government to have a list prepared of all such existing Subordinate Magistrates as it desires to invest with the power of commitment, and to confer on all such, individually, the powers under Section 38.

10. It is not necessary that this should be done by Notification in the Gazette. It is true that it might be so effected by a general order *naming* the several Magistrates to whom the order was to apply. But this would or might have the effect of calling attention to previous commitments, the legality of which might be called in question. It is not necessary that the Public should be made acquainted with the names of the Sub-Magistrates invested with the power to commit, notwithstanding that it is necessary for the protection of the Magistrates that they should be formally invested with the power. It may save a little trouble to give them the power *en masse* by a public order, but I think the more expedient course, reference being had to what has occurred, will be, to draw up an order for each Sub-Magistrate who it is intended shall commit, and despatch it to him individually.

11. In all future appointments it will be necessary to take care that the power to commit is expressly conferred by the order of appointment, whenever it is intended that the particular Magistrate is to commit under the Indian Criminal Code, and such order will as, heretofore, appear in ordinary course in the Gazette.

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

25th April 1865.

(True Copy).

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

No. 64. Proceedings of the High Court of Judicature at Madras, 24th April 1865.

Read letter dated the 31st ultimo, from the Magistrate of the Madras District, requesting instructions as to the power of Subordinate Magistrates to commit to the Court of Session.

With this letter the Magistrate of Madras submits an extract from the Proceedings of the Session Court of Chingleput, from which it appears that the Acting Session Judge has declined to receive committals from the Subordinate Magistrate of the District, on the ground that they have not been specially authorized to commit under Section 38 of the Code of Criminal Procedure. "Section 356," the Acting Session Judge observes, "confers no powers upon Subordinate Magistrates. It merely specifies the Courts upon which certain work is to be thrown and thus relieves officers, who already possess the powers in question, of a doubt as to the way in which they should be exercised."

2. The High Court are unable to concur in the conclusion at which the Acting Session Judge has arrived. It is clear indeed from Sections 38, 276, and 278, that Subordinate Magistrates in general have not, by virtue of their appointment, the power of holding preliminary inquiries, and committing persons to take their trial before the Court of Session. The only persons who possess this power by the general provisions of the Code are Magistrates of the District, and officers exercising the like powers. But Section 38 shows that persons may also be authorized to commit "by any law for the time being in force," and the question then arises whether Chapter XXIV is such a law, and if so, whether it conveys the power. On the first point there can be no question, and it would be equally clear, if the Chapter stood alone as a distinct law, that its language, "Subordinate Magistrates in this Presidency the power of committal. The words quoted are followed by no qualification such as is contained in Sections 273, 276 and 278. If Section 356 had been general in its application, there would have been good ground for saying that it regulated only the course to be pursued by Subordinate Magistrates who were otherwise empowered to commit. But it is clearly a special law limited to this Presidency, and the mere fact of its being embodied in the Code cannot remove its exceptional character, or alter the effect of its language which is not in any way inconsistent with the operation of Sections 38, 276 and 278.

3. The High Court are, therefore, of opinion that all Subordinate Magistrates in the Madras Presidency possess the powers in question, by virtue of their appointment. It was so ruled on two occasions* by the late Sudder Court, and this construction has been acted on throughout the Presidency ever since the Code came into operation. In these circumstances, the Acting Session Judge should not have adopted the extreme step of directing the release of the prisoners committed for trial, without first communicating with the High Court.

(True Extract).

(Signed) P. P. HUTCHINS,
Registrar, Appellate Side.

* Proceedings 23rd December 1861, and 28th March 1862.

No. 65. ORDER THEREON, 12th July 1865, No. 969.

The foregoing papers relate to the question whether Subordinate Magistrates are competent to hold preliminary inquiries, and to commit persons to take their trial before the Court of Session, without having been specially authorized to commit under Section 38 of the Code of Criminal Procedure.

2. The Advocate General is of opinion that Subordinate Magistrates cannot legally exercise this power, unless it shall have been expressly conferred upon them by Government, under the provisions of Section 38.

3. The High Court, however, in their Proceedings of the 24th April last, have ruled, that Chapter XXIV of the Code gives the power in question to all Subordinate Magistrates in this Presidency. Under these circumstances, the Government do not deem it necessary to adopt the course suggested in paragraph 9 of Mr. Norton's opinion.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Inspector General of Police,
" Government Solicitor.
" Magistrate of

Exd. J. H. Buras.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter:-

from the Insp^r General of Police } Here enters 30th March /65 No 670
Government Solicitor }
Madras } 29th April - 213.
Proceedings of the High Court } 24th April -

Order thereon 12th July 1865 N: 969.

Wm
Wm

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Presidency. Under these
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ment do not deem it

necessary

necessary to adopt the
course suggested in
para: 9 of Mr. Justice
opinion.

To the Supr. Genl. of Police - }
- Government Solicitor } Resp 13/7
- All Magistrates - }

Medical 1865. Department.

No. 969.

PROCEEDINGS OF GOVERNMENT.

Oct. 23/69

Dated 12th July 1865

Passing Orders regarding
the power of duty
to hold preliminary
inquiries in certain cases

02005.