M.R.O. 1—39,966—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	113	**Press Mis.**
202-204		
Dated	27-1-	**19** 1886

23/24

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 27th January 1866.

No. 203. Read the following letter from the Acting Magistrate of the Kistna District.

(Here enter, 7th December 1865, No. 287).

No. 204. ORDER THEREON, 27th January 1866, No. 113.

The foregoing papers have reference to a construction put by the Session Judge of Guntoor upon the provisions of Section 114 of the Code of Criminal Procedure, under which he has ruled that a search warrant cannot legally be issued, unless upon sworn information laid before a Magistrate.

2. The Governor in Council thinks it very desirable that the correctness, or otherwise, of the construction in question should be determined by the High Court, and he accordingly directs that the Magistrate of the Kistna District will submit copies of the papers which he has laid before Government to the High Court, under the provisions of Section 404 of the Code of Criminal Procedure, with a request that they will determine whether or not the construction put by the Session Judge upon Section 114 of the Code is correct, and will thereupon pass such orders as they deem proper.

(True Extract).

Chief Secretary.

To the Magistrate of the Kistna District.

Exd. J. H. Burns.

No 287.

From

The District Magistrate

Courtallam Nannilipatam

7th December 1865.

To

The Chief Secretary

Acting Magistrate Kistna D.

To

The Honorable the Judicial Secretary

Chief Secretary to Government

Fort Saint George

Sir

I have the honor to lay before the Government the Correspondence noted in the margin with the view of having the question whether a Magistrate can issue a Search Warrant without previous enquiry or information on oath, settled.

I am

Proceedings of Session Court dated 7th July 1865.

Deputy Magistrate's letter dated 28th August 1865

Magistrate's Memorandum dated 28th August 1865

Deputy Magistrate's letter No 40 dated 30th November 1865

2. The proceedings of the Deputy Magistrate in issuing a warrant were objected to by the Session Judge, on the ground that the information he acted on was not upon oath.

3. The Deputy Magistrate then wrote to me asking me to refer the question to the High Court. I refused thinking that the Session Judge had settled the matter.

4. The Deputy Magistrate now again requests the reference of the question, as he reasons that because a Police Officer can proceed to search a house without taking information on oath, a fortiori a Magistrate can issue a search warrant to the Police without information on oath.

I have the honor to be
Sir
Your most obedient servant
J. Grace
Acting Magistrate.

Copied by
Vallar Ponnambalam
Clerk.

Ep J B Cumba
HC

No. 104.

Extract from the Proceedings of the Session Court of Guntur dated 24 July 1865.

Read again appeal Petition No. 3 of 1865 presented by Ranganamamala Tirumalrao, accredited agent for P. Balakistna Rao, Prisoner in Case No. 26 of 1865 in the file of Deputy Magte in charge of Head Assistant's Office.

Read also record in the above case received from the Head Assistant Magistrate Kistna District.

1 This is an appeal by the Prisoner lately Sub Magistrate of Jaggiahpett Division, from the above sentence of the Deputy Magistrate while in charge of the Head Assistant's Office.

2 The Prisoner was charged with receiving a bribe of Rs. 50 on the 22d February 1865 from the Complainan

Inclosed 1865 Department No. 15
From The Ag. Magistrate Kistna District
To The Chief Secretary to Government Fort St. George
Dated 15th December, Received 15th " 1865
No. 2088 No. 229.
Inclosure 1
Laying before the Government the papers regarding a question in a bribery case lately filed upon the Jaggiahpett Sub-Magistrate for orders.

No. 113

The Governor in Council is not prepared to refer the question, put in the Magistrate's letter, to the Advocate General. Officers of the Magistracy must decide all cases that come before them to the best of their judgment.

The Magistrate of the Kistna District

Complainant Kondapa Ali Baichah
in the presence of the 1st 2d and 3d witnesses
who were called at that time in the
Cutcherry of the Prisoner's house at Jaggidoty
The 3d witness brought the money
at the request of the Complainant from
the house of the 1st witness Vellandla
Lakshminarayya, Sheristadar to the
aforesaid Contractor and paid it into
the Prisoner's hands. The Complainant
son of the Village Munsiff of Ganapa
varam, and his partners, 1st witness
brother of the Village Munsiff of
Munagala, and 2d witness are renters
of the Munagala Paraganas, the 3d witness
is the Mahalad of Atchumpanna, the
4th witness as before stated is the Sheristadar
of the aforesaid Contractor, and the 5th
and 6th witnesses are Gumastas of
the Prisoner's late Kacherry.

The

5

3 The Deputy Magistrate's con-
victing of the Prisoner is based on
on the evidence of the 1st 2d and 3d Wit
nesses, who saw the bribe of Rs 500
paid to Prisoner on the 22d February 1865
2d on the entry of the same in the
Accounts of the 4th Witness as a loan
on the Estate to the Complainant, repaid
by him on the 27th February. 3d on the
foregoing by Complainant 4 days
after the Examinations on 11th May 1865
of a letter written to the 1st witness
dated 3d October 1864, in which the
promised to aid that witness's son
and lastly on the discovery by search
Warrant on the 16th May among the
accounts of the 4th witness, of a letter
written by the Prisoner to him (the Witness)
and dated the 10th May 1865, in which

the

the Prisoner begs the 4th Witness,
the day previous to the trial before
the Deputy Magistrate, to Compromise
the matter of this Charge with the
Complainant Kondapalli Buchia;
promises to return the amount of
fine Rs 50 received from the said
K. Buchia; binds himself of friend
ship as long as the 4th witness
continues to have any connection
with the Abkhary Contract under
a penalty in case of failure on his
part, of double the amount paid
by Buchia and finally Covenants and
agrees that his Prisoner's annual
demands from 4th Witness shall be
restricted on his own behalf to Rs 50
and on behalf of his Prisoner's Palankeen
bearers shall never exceed 40 Rupees
of Liquor

The

5

The evidence to the handwriting
of this document and of the earlier letter
to the 1st witness is that of the 5th and 6th
witnesses, Gumastas employed under
the Prisoner as Sub Magistrate of
Jaggiahpett, to which is added the
Deputy Magistrates confident belief
that these were written by the Prisoner
from long acquaintance with his writing

5 The letter to the 1st Witness contains
nothing which bears on the charge -
and might mean any thing in the shape
of assistance to his 1st witness now,
legitimate, or the reverse, and appended
to it by a thread, is a piece of paper
without signature in either a feigned
or totally different hand, urging the 1st
witness to be very diligent in collecting
them

"them" (meaning Parties) for the "wrong."

6. The 4th witness named therein or the bearer of this letter, denies on having delivered it to the 1st witness and admits the writing to be somewhat like the Prisoner's, but evidently intends to say that he is able to say that neither it, nor the writing of the agreement of the 10th May 1865 is Prisoner's, as he has been a Volunteer in Prisoner's office.

7 The agreement of the 10th May said to be in Prisoner's hand writing, would at any time, and more especially on the eve of his trial, stamp him as an arrant fool, whereas the Deputy Magistrate's opinion of him is that he is an accomplished rogue. He and the 4th witness were together at Begoria the day before the

the trial on this charge commenced, and in the face of this solemn compact and specific compromise, entered into by the Prisoner and accepted by the 4th witness, the latter steadily deposed against his friend and accomplice in corruption some few days afterwards. It does not appear why the Prisoner should have given this undertaking in writing and why his personal assurance would not satisfy the 4th witness. There is nothing on the record to show upon what information the Deputy Magistrate issued a search warrant for the 4th witness' accounts in which the agreement of the 10th of May was discovered. The 4th witness was absent from home when his shop was searched on the 16th May.

May: and. He was examined on the 19th
It was clearly therefore not upon
his deposition that the Deputy Magistrate
proceeded, nor from his refusal to
produce his accounts. The issue of
a warrant except upon sworn information
was most irregular and wholly unjustifiable
in a case of this nature, and the Deputy
Magistrate is much to blame for lending
himself to a Proceeding of this kind, to
which he was urged, no doubt by those
who had planned that the papers should
be formed. This is a very old and very common
practice, and no officer of any experience
would allow himself to be misled
upon private information.

8 The entry of the loan of Rs 50
to Kondapalli Buchia in the account
may have been, and for any thing to the
contrary, shown therein, was in the ordinary

Course

Course of business, or as an accommo-
dation; there is nothing in the entry
itself to show that it was for a
payment to be made to the Prisoner,
the loan of it for a bribe, and its payment
to the Prisoner, rests upon the evidence of
the 1st 2d and 3d witnesses, who state
by the Prisoner while he accepted the amount
of from his avowed enemies. That
the Complainant, the 1st & 4th witnesses
have heretofore been in positive hostility
to the Prisoner and he to them, is clearly
shown by the eight documents filed
in appeal and the purport of which
is hereto appended:

Copy of an order dated 4th October
1862 issued by the late Sub Collector
Mr Horsley stating among other
circumstances that Jaggia Reddi

is

is noted for anonymous Petitions and false complaints.

2 Copy of an Arzi dated 4th March 1865 addressed to the Head Assistant Magistrate by the Defendant stating to be Sub Magistrate, bringing to notice that he had been informed that the complainant and the 1st & 4th witnesses combined together and sent some Arzies containing false statements against him.

3 Copy of an Order issued by the Head Assistant Magistrate dated the 22nd February 1865 & No 7 dismissing the father of the Complainant and the brothers of the 1st and 4th Witnesses and certain persons from the situation of Village Headmen at the recommendation of the Sub Magistrate / Prisoner /

4 Copy of an order issued by the Head Assistant Magistrate dated 13th February 1865 ordering to prohibit the renters, Complainants &c from interfering with the Providence of the lands situated in certain Villages of Kunagala Commandary.

5 Copy of an Arzi dated 11th June 1863 addressed by the late Sub Magte to the Head Assistant Magistrate reporting that the 4th witness to be one of the bad characters of Jaggiahpa

6. Copy of the decision in case No 72 of 1863 wherein the Sub Magte fined the 4th witness in a sum of Rs 25.

7 Copy of the Register of the Preliminary enquiries, sent to the Joint Magistrate commencing the 1st witness and some others for trial before that Officer.

Copy.

In the present case

In the case against Sub Magte / Prisoner /

8 Copy of the Register of Preliminary enquiries sent to the Joint Magistrate Committing the 4 witness and 1 other for trial before that officer

9 The Deputy Magistrate has not assigned any reason for recording the evidence of only one witness of the two named by the Prisoner to the absence of the 1st and 2d witnesses from Jaggirkupett on the day on which they are said to have seen the bribe paid. He should have recorded his reasons for such an omission, the more that he admits that the witness examined, deposed, to the fact pleaded by the Prisoner.

10 The conclusion at which the Court has arrived is that the evidence of the payment of the bribe to the Prisoner

Prisoner, is wholly incredible, and in the last degree improbable in the manner stated; and that the imitation of the Prisoner's handwriting, is a insufficiently clever imitation to have imposed on the Deputy Magistrate, and the 5 & 6 witnesses who had, however no better warrant for swearing it to be his, than the 4th witness, who merely deposed to a close resemblance, and nothing more

11 Under all the circumstances of the case, as recorded in the Deputy Magistrate's Summary, upon a careful review of the Record, and the palpable absurdities relied on as affecting the Prisoner, and from what has been advanced in appeal in his favor, and unsupported by public Vouchers, the Session Judge resolves to reverse the sentence

of

of the Deputy Magistrate, and to affirm that so far as this prosecution is concerned, the Prisoner bears the Court with an unblemished character.

Ordered that Extract from these Proceedings be sent to the Magistrate of Kistna District for his information together with the Record of the said case.

/ True Extract /
/ Signed / W. Hodgson
Session Judge.

Note

The immediate release of the Prisoner was directed by Telegraph to the officer in charge of the Jail at Masulipatam where the Prisoner has been confined pending the appeal.

To
from.

No 20.

Kistna District Deputy Magistrate's Court Gunture
23d August 1865

From
The Deputy Magistrate
Kistna District

To
The Magistrate
Kistna District

Sir

I have the honor to return the Proceedings of the Gunture Session Court dated 24th ultimo No 10th, held upon my decision in case of the 26 of 1865 on the file of the Head Assistant Magte Deviciram, wherein Pongan'amanna Lakiram Bálakistná Rá Sub Magistrate of Jaggiahpett was Defendant.

2 With all deference to the opinion of the Session Judge on the appeal I beg to submit the following explanation regarding the remarks made

by

by him in para 7 of the Proceedings.

Remarks of the Session Court

Para 7 x x x x

There is nothing the Court observes on the Record to show upon what information the Deputy Magistrate issued a search Warrant for the 11th Witness' account in which the agreement of the 10th May, was discovered.

The 4th Witness was absent from home when his shop was searched on the 16th May 1865 & he was examined on the 19th & it was clearly therefore not upon his deposition that the Deputy Magte proceeded, nor from his refusal to produce his

3 It is true that I issued a search warrant upon private information and not upon sworn information, & that I procured the documents for which I had issued the Warrant. It is my humble opinion that a Magistrate is fully competent under section 11th of the C.P.C. to issue a search Warrant for the production of any thing which he may consider essential to the conduct of an enquiry into his accounts. The issue of a Warrant except upon sworn information was irregular & verbally unjustifiable in a case of this nature, and the Deputy Magistrate is not to be blame for landing himself to a proceeding of this kind to which he was urged, no doubt by those who had planned that the papers should be found. This is a very old & very common practice, & no officer of any experience would allow himself to be misled upon private information into an offence known or suspected to have been committed & that no sworn testimony is required for it. It is well known to you that under Section 68 of the C.P.C. a Magistrate may take cognizance of any offence which may come to his knowledge. I trust you will consider that I am justified in issuing a Warrant for the document which may prove that a public Servant agreed to receive a gratification which is an offence punishable under Section 161 of the Indian Penal Code.

The

x The 4th Witness was present when his shop was searched.

It does not appear why the Documents to
the Prisoner should be produced in appeal
Shall grieve this undertaking by the Sub Magistrate
in proving and why Shall having shown that
personal assurance could there is hostility
not satisfy the 4th witness between him and the 4th Witness
it is natural to suppose
that he gave a promise
in his own hand writing
to shew that it be entirely
trusted to him without
reserve as personal
assurances will not
be believed considering
his former behaviour
towards them.

He and the 4th Witness were
together at Beyrah the
day before the trial on the
charge commenced, and
in the face of this solemn
compact and specific
compromise.

5 I will be clear
from the evidence of the
complainant in case
No 26 that although the
Sub Magistrate fined
and received 300 Rupees,
and

18

compromise entered and 50 Rupees a 2d time,
into by the Prisoner and still he did not conform
accepted by the 4th witness to his promise, at the
the latter steadily deposed instance of his opposite
against his friend and party Zemindar / She
accomplice in corruption will shew that the
some few days afterwards complainant and his 4
witnesses availed themselves
of the first opportunity
of revenging the ingratefull
manner shewn towards them
by the Sub Magistrates
after receiving their money

Parag. 6 I beg to state that Summonses
were sent to the 2 witnesses named
by the Sub Magistrate to prove one in
point, only one attended, the other not
having attended either by sickness or
absence.

7 I beg to state that my decisions
in

in cases Nos 26 and 33 of 1865 wherein the
Sub Magistrate was Defendant, hinge
upon the letter dated 10th May 1865
alleged to have been executed by
the Sub Magistrate whether if that
letter be deemed a genuine one, the
evidence of the 1st 2d & 3d witnesses
of the complainants who deposed
to have seen the Sub Magistrate
receive a bribe, must be true and
the Defence and the evidence of the
Defendants Witness must be false
If that letter be a false one, the
Complaint and the evidence brought
in its support must be deemed
fabricated.

8 The letter consisted of 3 full
Pages. The person ph W in whose

presence

presence it was written by the
Sub Magistrate deposed to it.
The 5th and 6th witnesses who are public
servants and who have been Gumastas
under him and who have been daily seeing
his signature and writing deposed it
to be his writing. From my own
acquaintance of the Sub Magistrates
writing I found it to have been
written and signed by him. After
Mr Wilson came from Madras
he saw the letter and read a
part of it and said that it was
written in the hand writing of
the Sub Magistrate.

9 I trust that it will be

perceived

perceived that I considered
the letter to have been fully proved
on the best possible evidence.

10 As I am sensible that the
orders of the Appellate Court are
final under Section 428 of the C.P.C.
I beg to be understood that I am not
stating any thing regarding the
opinion of the Session Court upon
the appeal, but I humbly
request that in the event of your
Concurring in the construction of 114
of C.P.C. referred to in para 3,
you will be pleased to make a
reference on the subject, to avoid
similar remarks in future cases.

I have &c.,

/signed/ V. Venkatachellam

Deputy Magistrate.

15

No. 177. Official Memorandum

In reply to letter No. 20 dated 28th
August 1865.

Section 114 of Criminal Procedure Code
gives a Magistrate power to grant
a search warrant if he considers
any thing essentially necessary
for the conduct of the enquiry should
be produced.

This supposes the enquiry to
have been set on foot.

By

1 By Section 66 an enquiry is commenced by an examination of the Complainant on oath.

The Deputy Magistrate is therefore wrong in his conclusion that a Search warrant can be issued without a previous examination on oath.

Kistna District
Magistrates Court
at Masulipatam
28th August 1865

/Signed/ T. Chase
Acting Magistrate

Copied by
Vallur Purushottam
Clerk

No 40. Komaravellepad
30th November 1865.

From
V. Venkatachellam
Deputy Magistrate.

To
T. A. N. Chase Esqre
Acting Magistrate of
Kistna District

Sir,

1. I have the honor to acknowledge the receipt of your Memo. of the 28th August last informing me that "Section "116 Criminal Procedure Code gives a "Magistrate Power to grant a search warrant if he considers anything essentially "necessary for the conduct of the enquiry "should be produced & that this supposes "the enquiry to have been set on foot & that "by Section 66 an enquiry is commenced "by an Examination of the complainant "on oath & that I am wrong in my conclusion that a search warrant can be issued without a previous examination "on oath."

2 With all diference to your opinion, I beg to submit that if it be decided that a Magistrate cannot issue a search warrant without sworn information even in

in cases taken up by him under Section 68 of the Criminal Procedure Code, it will be denying to him an authority which a Police Officer possesses.

3. Section 142 Criminal Procedure Code enacts that "whenever an Officer incharge "of a Police Station shall consider that "the production of any thing is essential "to the conduct of an enquiry into any "offence which he is authorized to in-"vestigate, it shall be lawful for him to "search or cause a search to be made "for the same in any house or place "within the limits of such Station."

4. Section 116 Criminal Procedure Code, enacts that "when a Magistrate "shall consider that the production of "any thing is essential to the conduct "of an enquiry into an offence known "or suspected to have been committed "he may grant his warrant to search for "such thing."

5. As the wording of both these Sections is similar, it is my humble opinion that a previous Examination on oath is not necessary to authorize a Magistrate to grant a search warrant. For it was the intention of the Legislature that such process should not issue

+ An Order in writing specifying the property for which search is to be made. Section 142 of Criminal Procedure Code.

+ by delivering to a subordinate officer of a Police an Order in writing specifying the property for which search is to be made & the house to be searched. Sec. 142. C. P. C.

This is the same Sub Magistrate who is referred to in Session Court's Calendar in No 28 of 1865 tried by the Session Court at Gantlie.

"There is a Rule which has universally obtained on account of its importance to the public for the detection of crimes that those persons who are the channel by means of which that detection is made should not be unnecessarily disclosed."
Eyre C. J.
24 Howells S. T. 808.

+ issue without an Examination on oath. The Police Officers (who have no authority to administer an oath) would not have been empowered to issue search warrants.

6. Clause 1 Section XI Regulation XI of 1816 which still remains unrepealed empowers a "Village Moonsiff to search a house on credible information of stolen property, being concealed."

7. I reported in Para 3 of my letter of 23rd Ultimo that I have taken cognizance of the Offence committed by the Sub-Magistrate of Jaggayyapett under Section 68 Criminal Procedure Code without any complaint.

8. It may be said that a Magistrate is bound to examine on oath the person who informed him of the offence. It is my humble opinion that it is not necessary to do so, as Section 68 does not require a Magistrate to examine the person through whom the offence may come to his knowledge, in the same manner as Section 66 required a Magistrate to examine the Complainant (on oath under Section 63) & that it is competent to a Magistrate under Section 68 to issue

a

a Summon or Warrant or a Search Warrant without an Examination on oath.

9. As this question is of great importance for Magistrates of all grades; I respectfully beg that you will be pleased to submit it for the orders of the High Court with reference to the orders of Government dated 6th August 1862. No 1,337 & lay before them the Copies of the Correspondence noted in the Margin.

Proceedings of the Session Court. 26th July 1865.
My letter dated 25th August 1865.
Your Memo. dated 29th August 1865.
This Letter.

I have the honor to be
Sir,
Your most Obedt Servant
(Signed) V. Venkatachellam
Deputy Magistrate.

(True Copies)
J. Cruse
Acting Magistrate.

Ex.
J D Lambe
H C.

No 2688 of 1865.

From Offg Magistrate Kristna Nadivada

To Chief Secretary to Government Fort St George

Dated 7th Dec 1865

Rec'd 8th Dec 1865

Sir, I have the honor to forward herewith a petition addressed to the Governor in Council by the Inhabitants of Kaikaluru praying that the Sessions Court may be held at that place instead of at Masulipatam.

2. The Petitioners state that the Sessions Court sitting at Masulipatam is inconvenient to the inhabitants of Kaikaluru, as they have to travel a distance of 40 miles to attend the Court, and that the Court is frequently detained there for a long time, causing much loss to the suitors.

3. I am of opinion that the Petitioners have made out a strong case for the change they desire, and I beg to recommend that the Sessions Court be held at Kaikaluru for the Trial of Criminal cases, for a period of three months in the year, viz. during the months of December, January and February.

I have &c

Offg Magistrate

Judicial 1865 Dept

Enclosure 1

In a letter from the Offg Magistrate Kristna Dt

To The Chief Secretary to Government Fort St George

Dated 7th Dec 1865 No 387

Rec'd 27 Jany 1866 in No 203.

Copies of the Correspondence regarding a question in a Bribery case lately filed upon the Jaggiahpet Sub Magte

Jud 1865 D

No 2688

Wesson Rule; that law of the Province may have been placed in abeyance by the decision of any one of our local Judges.

That dictum whether correct or incorrect, is a most important one & it seems to me that the Code did not intend that 20 separate Judges should have each an opinion for expounding the criminal law of Canada, without a corresponding opinion being sometimes delivered by a competent Court of Appeal when found to be wrong.

It is a point which has been repeatedly urged that the rulings of the High Courts on various points may be brought before them & after the lapse of a few years be considered in order to the Code being modified, improved & corrected.

But the Govt, though writing soon after the issue of the Criminal Code Amendment Act to the High Courts, evidently contemplated, not the construction of our separate Codes, but the construction of the Code by the High Courts & the Supreme Court.

Respt Counsel.

It may be urged that at some time or other the point will come before the P.C. judicially & that then it will be determined whether a decision such as the S.J. of Canada has delivered himself of is correct or otherwise.

But the point will arise in only two ways: one in a reserved trial wherein it incidentally and will be commented on in the rare remarks of this Court; Judges may make or such occasions and do not be determined; secondly in an appeal. In the present case, however, there is no appeal as the order of the Supreme Court is on an appeal & is therefore final (section 9 C of Proc).

The matter seems to be of such clear importance that I would suggest that the Attorney of Manitoba be instructed to lay it before the High Court, under section 404, with a view to their determining the point of law & the decision in writing.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the Acting Magistrate of the Kistna District.

dated 7 Decr 1865 No. 287.

Order thereon 27 January 1866 No. 113.

The foregoing papers have reference to a construction put by the Sessions Judge of Guntoor upon the provisions of Section 114 of the Code of Criminal Procedure, under which he has ruled that a Search Warrant cannot legally be issued, unless upon sworn information laid before a Magistrate.

2. The Governor in Council thinks it very desirable that the correctness or otherwise of the construction in question should

should be determined by the High Court, and he accordingly directs that the Magistrate of the Kistnah District will submit copies of the papers which he has laid before Govt. to the High Court, under the provisions of Section 404 of the Code of Criminal Procedure, with a request that they will determine whether or not the construction put by the Sessions Judge upon Section 114 of the Code is correct, and will thereupon pass such orders as they may deem proper.

By Order

The Magte. of the Kistnah District

Despatch 1/2

Judicial 1866. Department.

No. 12.

PROCEEDINGS OF GOVERNMENT.

Dated 27 January 1866.

Press No. 2755, G. M.—14-11-65—500.

203. 207.