

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1276	Press
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Dated	20 8 - 19 1886	

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
20th August 1866.*

Read the following papers :—

No. 187. From the Inspector General of Jails, to the Chief Secretary to Government, Fort Saint George; dated Ootacamund, 16th July 1866, No. 47.

I have the honor to forward an original letter from the Superintendent of the Jail at Chingleput, on the subject of amending Warrants, and to request that I may be favored with instructions thereon, for the guidance of Officers in charge of Jails, or that, if necessary, the question may be referred to the Law Officers of Government.

2. I believe that a Magistrate may amend his Warrant as to form, but I doubt whether he has the power to modify the sentence, as contained in the original Warrant.

3. I have directed the Superintendent to hold both prisoners, and to retain both sets of Warrants, until a reply is received to this reference. I have also informed him that the corporal punishment awarded in the first instance, and afterwards remitted, ought not to be inflicted.

From Assistant Surgeon W. J. BUSTEED, M. D., Superintendent of the Jail, Chingleput, to the Inspector General of Jails; dated Chingleput, 6th July 1866, No. 81.

I have the honor to request information as to whether, when a Magistrate sends a second Warrant, to substitute for the first (or original Warrant), under which a prisoner has been admitted to Jail, on account of some alleged error in the former, which I am requested to return accordingly, I should receive the said second Warrant, in substitution of the first, or not.

2. It seems very doubtful to me that I can keep the prisoner in Jail under any other Warrant than that which he was admitted under; and that if this Warrant have any thing wrong with it, it is a case for letting the prisoner go, or for an appeal, rather than for the Magistrate mending his hand with a second Warrant.

3. I have two applications of this kind now: in the first of them the Magistrate sends three Warrants of one month each, to have changed for the original single Warrant of three months; in the second application, the new Warrant differs from the old one in sentencing to three months' rigorous imprisonment, "instead of three months' rigorous imprisonment and 25 stripes, to which he was sentenced through an oversight, the prisoner not having been previously convicted,—the sentence has been reversed" [it does not say by whom "reversed," and I gather from the context, that "reversed" means altered by the Magistrate himself] "and he is to suffer only three months' rigorous imprisonment."

4. Can the Magistrate thus "reverse" his own sentences, and expect the Superintendent of the Jail to change his first Warrant for his second?

Referred for the opinion of the Acting Advocate General, through the Acting Government Solicitor.

19th July 1866.

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

No. 188. From the Acting Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 31st July 1866, No. 443.

I have the honor to acknowledge the Order of Government noted in the margin, with its enclosuro, requesting the Acting Advocate General's opinion as to the authority of Magistrates to amend

Dated 19th July 1866, and made on Letter from Inspector General of Jails to Government, of 16th Idem, No. 47.

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Warrants (under which convicts have been committed to prison), after the convicts have been admitted to Jail, and as to the course to be pursued by Keepers of Jail on presentation of amended Warrants, in substitution for the first Warrants.

2. I submitted the matter for the consideration of the Acting Advocate General; and,

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

COPY—OPINION.

It is quite settled that a Magistrate who has committed a prisoner under one Warrant may substitute an amended Warrant in its place. And he may do this, even though the original Warrant is bad in substance, and although the commitment has been appealed against on this ground; and the substitution of a valid warrant at any time before the commitment has been quashed will remedy the defect (*Ex parte Cross*, 26, *L. J., M. C.*, 201). It is clear, therefore, that in the first case mentioned by Dr. Busteed, the substitution of three Warrants of one month each, in place of one Warrant for three months, was unobjectionable.

2. As regards the second case, Dr. Busteed raises the question whether the Magistrate can reverse his own sentences, and expect the Superintendent of the Jail to change his first Warrant for his second. The latter part of the question is the only one which I am at present called on to answer.

3. The Superintendent of a Jail has no authority whatever over a prisoner, except under a Warrant, and for everything he does in obedience to a Warrant he is absolutely protected from Civil Suit, whether the Magistrate had jurisdiction to issue the Warrant or not (*Act XVIII of 1850*); and he is also protected against criminal penalties, if he believes in good faith that the Officer who issues the Warrant has Jurisdiction (*Indian Penal Code, Section 78*). Unless, therefore, the new Warrant bears upon its face a palpable want of jurisdiction—as, for instance, if it directed 500 lashes to be inflicted upon a prisoner—I think he is bound to accept and obey it. In the present instance, I think the new Warrant discloses no palpable want of jurisdiction. Every Judicial Officer has a margin of time allowed him, during which he may remedy any error he discovers in his sentence. A Court of Sessions, for instance, may do so, as long as the Sessions continues (1 *M and S*, 442). There is nothing stated about this Warrant to show that the Magistrate did not find out his error in sufficient time to repair it; nor does it appear that the sentence was not reversed by some higher and competent authority. It may be that the second Warrant is wholly bad; but till it is quashed by a competent Court, I think the Superintendent must act upon it: that is that it deprives him of his power to inflict stripes.

4. I may observe, in conclusion, that it would require a very strong case indeed to justify a Superintendent of a Jail to inflict a severer punishment than the second Warrant sanctioned. *Prima facie*, the second Warrant revokes his authority to act upon the first, and if, by any possibility, that revocation can be supported, his refusal to recognize it would make every thing he did under the old Warrant illegal.

(Signed) J. D. MAYNE,
Acting Advocate General.

28th July 1866.

(True Copy)

(Signed) H. J. BROCKMAN,
Acting Government Solicitor.

*Proceedings of the Madras Government, Judicial Department,
20th August 1866.*

No. 189. ORDER THEREON, 20th August 1866, No. 1276.

The Advocate General's Opinion will be communicated to the Inspector General of Jails, with reference to his letter of the 16th ultimo, No. 47.

(True Extract).

Secretary to Government.

To the Inspector General of Jails.
" Magistrate of

Ed. J. H. Barna

Communicated to the
Inspector General of Jails
with reference to his letter
of the 16th ultimo N^o 47.

To the Insp. G. of Phil. des 23/8
and Insp. des 27/8