

MADRAS RECORD OFFICE.

Government of Madras.

Law DEPARTMENT.

G.O. No.	143	Press
		~~Mis.~~
Dated	1-2-	19-1866

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*Proceedings of the Madras Government, Judicial Department,
1st February 1866.*

Read the following papers :—

- No. 1. From the Acting Session Judge of Salem, to the Chief Secretary to Government, Fort Saint George; dated Salem, 27th October 1865, No. 13.

As directed in the last paragraph of the Order of Government, dated 13th instant, No. 1459, I have the honor to

Enclosures 4.

transmit copies of my remarks in Calendar Nos. 80 and 81 on the file of this Court, a copy of the order* of the High Court on which they were based, and the opinion† of the High Court as to the course adopted by me.

* Proceedings, High Court, dated 30th March 1863.
† Do. do. 24th October 1865.

2. The opinion of the Honorable the Judges is adverse to me, but I cannot but think that their Proceedings, dated 30th March 1863, support me in the course I adopted. My reasons are stated fully in my remarks.

Calendar Case No. $\frac{81}{1865}$.

The prisoner is charged in this case, *first*, under Section 220 of the Indian Penal Code, with having maliciously and illegally kept one Ramakistna Chetty, in confinement from the 2nd to the 19th of April, and *second*, under Section 166, with having, between the same dates, disobeyed a direction of law, with intent to cause injury to Ramakistna Chetty.

The history of the case is as follows :—On the 30th March, the Sub-Magistrate of Salem town issued a warrant for the apprehension of Ramakistna Chetty directed to the prisoner, who took the said individual into custody, on the 2nd April, within the jurisdiction of the Sub-Magistrate of Razipore, and instead of producing him before that officer, as he was bound to do under the provisions of Section 84 of the Criminal Procedure Code, he detained him in custody, and wrote the Report K, on the 3rd April, asking the Sub-Magistrate of Razipore to remand Ramakistna Chetty to custody for three days, who most improperly, without the prisoner being produced before him, granted the remand. Here undoubtedly the prisoner disobeyed a direction of law which prescribed that he should, when he had executed the warrant, produce the person arrested before the Magistrate in whose jurisdiction the arrest was made, and it is equally clear that Ramakistna Chetty was illegally confined till the 6th April, as the Sub-Magistrate had no authority to grant a remand, even if the person arrested had been produced before him. His duty was, if the offence was not bailable, or if so and bail was not forthcoming, to forward the person arrested to the Magistrate by whom the warrant was issued.

On the 6th April, Ramakistna Chetty was produced for the first time before the Razipore Sub-Magistrate, when he was remanded for four days to the custody, not of the prisoner, but of Kistnasawmy Moodelly, the Head Constable of Razipore station. On the 7th (why it does not appear) he was again produced by Kistnasawmy Moodelly before the Razipore Sub-Magistrate, who, by an order of that date, again remanded him to the custody of Kistnasawmy Moodelly till further orders. It is hardly necessary to remark that this remand for an indefinite period on the part of the Razipore Sub-Magistrate was illegal, even supposing that the inquiry was being conducted before him. Having nothing to do with the case, he had not power to remand the accused to custody for a single day. To this *lettre de cachet* a return (a false one as it appears) was made by Kistnasawmy Moodelly, on the 18th April, stating that Ramakistna Chetty had been produced before the Razipore Sub-Magistrate, whereas he never was so produced. There is not the slightest doubt that the Sub-Magistrate acted illegally, and that Kistnasawmy Moodelly detained Ramakistna Chetty under an illegal warrant to which he made a false return; but the evidence shows that Ramakistna Chetty was not in the custody of the prisoner, but in the custody

of the Head Constable of Razipore station from the 6th to the 18th April, as appears by the returns made by him to the warrants, dated 6th and 7th April, addressed to him. It is urged, on the part of the prosecution, that, from the 9th to the 18th, Ramakistna Chetty was in the custody of

* Dated 9th April.

the prisoner at Namagherripett. To prove this is filed exhibit B, a Yadast* addressed by the prisoner to the station Head Constable at Razipore, and the prisoner's statement before the Magistrate. The purport of the Yadast is that the Head Constable at Razipore should request the Sub-Magistrate to send Ramakistna Chetty from Razipore to the Sub-station of Namagherripett, and to get a further remand for five days. The portion of the prisoner's statement before the Magistrate which relates to this merely shows that Ramakistna Chetty was received at Namagherripett station; but it would not appear that he was in the custody of prisoner. On the contrary,

Vide Magistrate's notes.

prisoner says "the Deputy Constable at Namagherripett took charge of Ramakistna Chetty," and in his Tamil deposition, "I had not the prisoner in custody; that (Namagherripett) is not my station. He was at Namagherripett station, but was not in my charge."

The finding of the Court is that, from the 2nd to the 6th April, Ramakistna Chetty was illegally confined by the prisoner; but that there is not evidence of *mala fides* on his part.

That from the 6th to the 18th April, he was not in prisoner's custody at all.

That he delayed unnecessarily the production of Ramakistna Chetty before the Magistrate in whose jurisdiction the arrest was made, and thereby disobeyed a direction of law, with intent to cause injury to the said Ramakistna Chetty.

It is obviously the duty of the Magistracy to prevent any illegal action on the part of the Police, the subordinates of which body are, generally speaking, an uneducated, and, if not kept in check, an unscrupulous set of men. In this particular case, the Sub-Magistrate of Razipore appears to have lamentably failed in his duty, and the illegal detention in custody of Ramakistna Chetty by the Police from the 3rd to the 19th of April was under the Sub-Magistrate's warrant, and with his sanction.

(True Copy.)

(Signed) H. E. SULLIVAN,
Acting Session Judge.

Calendar Case No. ⁸⁰ 1865

After the prisoners had been put on their trial, and had pleaded not guilty the counsel for the defence objected to the trial proceeding, so far as the 1st prisoner was concerned, on the ground that the charge in this case is founded upon the same transaction, and is in fact an additional head, and a continuation of the charge in No. 1865, under the second head of which the 1st prisoner was convicted and punished yesterday.

At the request of the prosecution who intimated that such an arrangement would facilitate the conduct of the Cases, No. 1865 was taken up before No. 1865. In No. 81, the prisoner Narayana Razu was charged, under Section 220, with having, between the 2nd and 19th April 1865, wrongfully confined one Ramakistna Chetty in the Namagherripett station, and also between the same dates with having disobeyed a direction of law, with intent to cause the said Ramakistna Chetty injury, in having unnecessarily delayed to produce him before the Sub-Magistrate within whose jurisdiction the arrest had been made. He was convicted on the 2nd head of the charge, and sentenced to pay a fine, under the provisions of Section 166.

The present case then came on, Narayana Razu, the prisoner in Case No. 81, and another are charged, under Section 330, with having, between the same date and the same place specified in the charge in No. 81, voluntarily caused hurt to the same Ramakistna Chetty, for the purpose of extorting a confession, and compelling restoration of stolen property. It is clear that these two distinct charges in Nos. 81 and 80 are founded, so far as the 1st prisoner is concerned, on one single continuous transaction.

The first step was the non-production of Ramakistna Chetty before the Magistrate, in whose jurisdiction the arrest was made.

The second, the malicious confinement of Ramakistna Chetty at Namagherripett station.

The third, the hurt inflicted upon the same Ramakistna Chetty during his confinement at Namagherripett; and this all occurred within the same period of time, viz, between the 2nd and 19th of April.

Under these circumstances, there should have been but one charge, containing three heads, preferred against the 1st prisoner, the 2nd prisoner being charged under the third head only.

In the written reply submitted by the officer appointed to conduct the prosecution, it is contended that, as a separate charge has been made in this case, the Court has no power to acquit the 1st prisoner without a formal trial. The answer to this is that he was put on his trial yesterday, and pleaded not guilty, and one witness, the man Ramakistna Chetty, examined before the objection made by the defence was taken into consideration. The man has been formally tried, and the only question for consideration is whether, under the circumstances of the case, a conviction can legally follow. If it cannot, it is useless to proceed with the case or to take further evidence against the 1st prisoner. The prosecution argue that it can, because although he could not have been visited with the separate penalties prescribed by Sections 166 and 330, if the charges under them had been contained in one indictment, he is liable to them if separate indictments are preferred. According to this argument, a man who had broken into a house by night, with intent to steal, and who had then and there stolen property therefrom would be liable to 14 years' imprisonment, under Section 457, and 7 years and fine, under Section 380, if the charge instead of having two heads, was split up into two indictments. I am of opinion that, under the circumstances of the case, a conviction cannot be had, and that the 1st prisoner is entitled to his discharge.

Ramakistna Chetty, the man alleged to have been tortured, having by his statement before the Court completely exonerated the 2nd prisoner, who he states afforded him every assistance, the prosecution, so far as he is concerned, was withdrawn.

(Signed) H. E. SULLIVAN,
Ag. Session Judge.

13th July 1865.

(True Copy.)
(Signed) H. E. SULLIVAN,
Ag. Session Judge.

Proceedings of the High Court of Judicature at Madras, 30th March 1863.

Read Report of Case No. 42 of 1863 on the Calendar of the Session Court of Cuddapah.

1. The prisoner in this case was tried on three heads of charge, alleging that he had committed the offences of (1) Rape, (2) assault upon a woman with intent to outrage her modesty, and (3) house trespass by night, in order to the commission of an offence punishable with imprisonment.

2. The prisoner was acquitted on the first head of charge, but found guilty on the 2nd and 3rd heads, and sentenced by the Session Judge, separately on each of these heads, to two years' imprisonment with a fine of Rupees 25, or, in default, six months' further imprisonment, under Sections 354 and 451 of the Indian Penal Code, no direction being given, however, with reference to Section 46 of the Code of Criminal Procedure, that the one period of imprisonment should commence after the expiration of the other.

3. The Chief Justice and Judges are of opinion that where the charge against the accused is founded upon one single continuous transaction, the first thing to be ascertained is—what is the principal legal offence involved in the conduct of the accused? what would subject him, if convicted, to the greatest amount of punishment? That, being ascertained, should form the first head of the charge, and the object of adding others is not accumulation of punishments, but to provide against the event of the evidence failing to establish the principal charge. In the case under consideration, the principal offence charged was Rape, and if the evidence had proved that offence, it would also, unquestionably, have proved offences under Sections 354 and 450, but the accused would properly be punished for Rape only.

*Proceedings of the Madras Government, Judicial Department,
1st February 1866.*

4. So in the case of house-breaking with intent to commit theft, if the facts are that the accused breaks into a house and actually steals, he commits two offences in the course of the same continuous transaction, house-breaking with intent, &c., and theft; but the former is the graver and principal offence, and if the accused is convicted of that offence, he should be punished for it, but not separately for the theft also, though in awarding exact amount of punishment, the Court might reasonably take into consideration the actual theft, in connection with the other circumstances of the case.

5. In the particular case under consideration, it happens that the two charges upon which the prisoner was convicted are charges of offences punishable alike under the Penal Code, but with reference to the circumstances of this case in which Rape was the principal head of charge, the Court are of opinion that the sentence should be allowed to stand under Section 354, and that the conviction under 451 must be annulled.

6. The Session Judge seems to have thought that the prisoner's intention was to commit Rape. If so, the third head of the charge should have been framed upon Section 450, rather than upon Section 451 of the Indian Penal Code.

(True Extract).

(Signed) T. WILKINS,
Acting Deputy Registrar.

(True Copy).

(Signed) H. E. SULLIVAN,
Acting Session Judge.

Proceedings of the High Court of Judicature at Madras, 24th October 1865.

Read letter dated the 16th ultimo, from the Acting Session Judge of Salem, submitting, at the request of the Magistrate, for the consideration and orders of the High Court, his remarks on the Calendar of Cases Nos. 80 and 81 of 1865, wherein the Session Judge was of opinion that the offences charged should have been included in a single indictment against the prisoner.

2. The High Court are quite unable to adopt the Session Judge's view. The offences were quite distinct, and might, without any difficulty or inconvenience, have been tried separately.

(True Extract).

(Signed) P. P. HUTCHINS,
Registrar.

(True Copy).

(Signed) H. E. SULLIVAN,
Acting Session Judge.

The Government coincide in opinion in this matter with the Judges of the High Court. They await a further report from the Magistrate upon the conduct of the Sub-Magistrate.

(Signed) C. G. WALKER,
Under Secretary to Government.

No. 2. From the Acting Session Judge of Salem, to the Chief Secretary to Government, Fort Saint George; dated Salem, 10th November 1865, No. 14. In compliance with the Orders of Government noted marginally, the District

Dated 13th October 1865, No. 1459.

Magistrate has submitted the explanation of the Razipore Sub-Magistrate, which I have now the honor to transmit for the information of Government. Appended to the Sub-Magistrate's letter are certain papers connected with the case, and the remarks of the District Magistrate and myself.

2. My remarks in Calendar Cases Nos. 80 and 81 were forwarded with my letter to your address, dated 27th ultimo, No. 13.

*Proceedings of the Madras Government, Judicial Department,
1st February 1866.*

TO THE HONORABLE D. ARBUTHNOTT,

Magistrate of Salem.

The Urzee of M. VENKATA SUBYER, Sub-Magistrate of Razipore.

SIR,

In reply to your order, dated 18th October, No. 1, conveying to me the Order of Government, and calling upon me to explain my procedure in having granted a remand warrant for Ramakistna Chetty in the late case of house-breaking and theft, preferred against him and three others of Namagherripett, I beg to submit the following explanation.

2. On the 3rd April 1865, Narayana Razu, the Salem Town Head Constable, wrote a report in which he requested a remand warrant for three days, for detaining Ramakistna Chetty and two others in the Namagherripett Sub-station, as a portion of the stolen property was discovered and the rest had to be found. Upon this report, I sent a warrant addressed to the Station Officer to keep the prisoner accordingly for three days in his station, and to render every assistance to the Town Head Constable in the discovery of the stolen property.

3. On the 6th April, Ramakistna Chetty and three others were produced before me by the Town Head Constable and the Inspector of the Division. These officers represented to me that stolen property was found in the possession of the other three, that although Ramakistna Chetty himself confessed to his having had a hand in the alleged robbery in consort with his other comrades, he had not as yet produced the property in his possession, though he had given every assurance of doing so. They, therefore, requested that Ramakistna Chetty's confession might be recorded at once, that it might be used as evidence against him at his trial. I accordingly reduced his confession (A) to writing, where he fully confessed himself to be one of the perpetrators of the robbery in the house of Salem Subbammal, giving a detail of the property that came to his share, and promising to give it up from his brother, who, he said, was in possession of it.

4. The Town Head Constable requested that a remand warrant might be granted for conducting the other three prisoners to Salem, as they had not only confessed but produced the stolen property that came to their share, and as their detention any longer at Razipore was not necessary. He, at the same time, represented to me, in open Court, that, as Ramakistna Chetty made so thorough a confession and so willing a promise to give up the property that came to his share, it was very desirable that that should be attended to, and therefore requested that he (Ramakistna Chetty) might be detained in my lock-up till his (the town head Constable's) return from Salem.

5. The request of the Town Head Constable appearing to me but reasonable and likely to further the ends of Justice, and fearing that my refusal to comply with the request may impede the criminal Administration of the Salem town, and end in a failure of justice, I believed I was bound to act by the requisition of the Head Constable, to whom the responsibility of detecting so grave and important a case was entrusted.

6. On the plausible grounds set forth by the Head Constable and in the absence of any thing to suspect his malicious intentions. I addressed a remand warrant (B) to the Officer in charge of my lock-up, to keep Ramakistna Chetty in my lock-up until "further orders." From a perusal of this warrant itself it will be apparent that it meant "till the return of the Head Constable from Salem."

7. Two objections might be started to this warrant, B, granted to the Officer in charge of my lock-up:—1st, as to my competency in having granted the warrant in a case that did not legally fall within the local limits of my division; and 2ndly, as to my not having specified in that warrant the number of days for which the prisoner was to be kept in the lock-up in virtue of the warrant.

8. With regard to the first objection, I beg to say that it is nowhere laid down, in the present Criminal law, that when an offender is arrested out of the jurisdiction of a Magistrate by whom a warrant of arrest was issued, or in whose circle the offence for which the arrest was made was committed, the nearest Magistrate should not give remand warrant. The law being silent on the

point, myself as well as the Subordinate Magistracy in this District refused to grant remand

* Copy of this letter is forwarded.
D. A.

warrant for such prisoner under any circumstances. Upon a representation* of this by the Superintendent of Police, the District Magistrate issued a Circular Order (C) dated 4th September 1862, No. 41, wherein the Subordinate Magistracy are enjoined to grant remand warrant for prisoners who have to be finally taken before another Sub-Magistrate, for trial or otherwise. Under the authority of this order, and for the reasons assigned in paragraph 5 of my Urzee, I granted a remand warrant for the detention of Ramakistna Chetty in my lock-up.

9. With regard to the second objection, in my not having specified in the warrant the number of days for which Ramakistna Chetty was to be kept in my lock-up, I beg to say that the warrant in question was one of commitment to custody under Section 222 of the Code of Criminal Procedure. In the forms circulated by the High Court with their Proceedings, dated 15th October 1862, the warrant of commitment does not specify the number of days for which the prisoner should be kept in custody, but runs to the following effect—"until he shall be thence delivered by due course of law." As Ramakistna Chetty's case was not pending trial before my Court, and as I only detained him till the return of the Head Constable from Salem, I introduced the clause "until further orders" in the body of the warrant (B).

10. In the warrant in question, I could not have specified the number of days. The only Section of the Criminal Procedure Code which requires a specification of the number of days a prisoner ought to be remanded is Section 224, and the object of such a warrant is clearly laid down therein:—"If from the absence of a witness, &c., &c., it shall be necessary or advisable to defer the examination, &c., &c., of witnesses, it shall be lawful for the Magistrate, &c., &c., to remand the accused person for such time, &c., &c., not exceeding 15 days." But Ramakistna Chetty, in the case under consideration, was not remanded for any of such purposes, and therefore I could not have specified in the warrant the number of days for which he was remanded.

11. In justification of my conduct in detaining Ramakistna Chetty at Razipore, without forwarding him on to Salem before the Magistrate who ordered the arrest, I beg to add, in addition to those I have already given, that it would have been of no avail taking him to Salem, in the absence of the discovery of any stolen property in his possession, and that it would have been a vain trouble marching him to Salem and then back to Razipore, and further to Namagherripett and other remoter places (a distance of upwards of 40 miles) for the purpose of searching for the stolen property.

12. Though I had sufficiently good grounds for detaining Ramakistna Chetty, still as he was not arrested upon my orders, I thought it incumbent upon me to report the matter to the Salem Town Sub-Magistrate, whose prisoner Ramakistna Chetty was, with the view of acting under his instruction on the subject. I accordingly addressed him on the 7th April 1865, informing him that the Town Head Constable wanted Ramakistna Chetty to be detained here (Razipore) promising to come back immediately to make the necessary search for the property that Ramakistna Chetty agreed to give. I received no reply to this letter to the Town Sub-Magistrate, from which I concluded that that Officer had no objection to my detaining the prisoner for the reasons assigned.

13. On the subject of remand warrants of the kind in question, I beg to say that it has been the practice in this District for the Subordinate Magistracy to grant remand warrants without limiting the days, and if called upon I shall produce some of them given by other officers; but I think this is not necessary as the Circular Order of the District Magistrate, dated 28th July 1865, No. 32, published at page 521 of the District Gazette, shows that the practice has been prevailing to some extent.

14. In exemplification of my innocence in this matter, and the intrigue and subtle conduct of the Head Constable of the Salem Town and his Colleagues, I am compelled to add further what happened to Ramakistna Chetty, whom I had remanded to be kept in my lock-up "until further orders."

15. On the 18th April 1865, Ramakistna Chetty was clandestinely removed out of my lock-up without my knowledge or orders, in direct violation of Police Order, No. 260, and this was not brought to my notice until the officer in charge of my lock-up made a return (D) on warrant B, to the effect "that the prisoner (Ramakistna Chetty) was produced before me" before he was finally remanded to Salem. I objected to this false return (D), and called upon him for an explanation. To this the station officer sent a reply (E), to which I objected again as untrue, and the station officer at last confessed in writing (F) the trickery, by stating that he did not produce Ramakistna Chetty before the Sub-Magistrate; that at the time Ramakistna Chetty was removed to Salem he was absent from the Cusba; and that he thought he must have been produced before the Sub-Magistrate.

16. On a perusal of the document E, it will be seen that Ramakistna Chetty was removed out of my lock-up on the 9th April to Namagherripett, where he was kept till the 18th idem without my knowledge or consent.

17. The Head Constable of the Salem Town, at whose request I detained Ramakistna Chetty at Razipore, and who promised to return to Razipore for him, did not so return. He went direct to Namagherripett on the 9th April, without taking Razipore on his way, and without seeing me, writes a Yadast to the station officer of Razipore to send Ramakistna Chetty with a remand warrant. The Razipore station officer on the receipt of this Yadast sent Ramakistna Chetty to Namagherripett, the scene of torture, without any warrant from me, and without my knowledge, although I was in the Cusba station at the time.

18. I reported all these circumstances to the Sub-Magistrate of the Salem Town, who I thought was the proper officer to take notice of the irregular conduct of the Town Head Constable.

19. The Inspector General, in his letter to Government, not only censures my proceedings as having been illegal, but asserts that "but for my conduct, the opportunity of committing the alleged offence could not have occurred." The whole matter has been brought before your Honor judicially, during the investigation of the charges brought against the Head Constable, and I appeal to your Honor as to the justness of the Inspector General's remarks. I cannot omit remarking here that if the Police had acted according to my warrant in keeping Ramakistna Chetty in my lock-up, without removing him therefrom clandestinely, no torture could have occurred. It cannot, however, be denied that the torture would not have occurred if Ramakistna Chetty had been removed to Salem as soon as he was arrested, but the question is, were there sufficient grounds for my having detained him? An act which I conceived to be lawful and proper had been through the machinations of an ill-disposed person made subservient to his own base purposes, but this sequel I could not foresee.

20. All that I request, in submitting this explanation to Government through your Honor, is to judge if my acts were not *bona fide*. My conduct as a public servant, and moral character in my private as well as official capacity, is too well known to your Honor, that I should endeavour to establish it by fresh proofs.

21. In conclusion, asserting my innocence, and justifying my conduct, I beg most earnestly that your honor will be pleased to forward this my explanation for the favorable consideration of Government, with such of your own observations as the case may deserve.

(Signed) VENCATA SUBIAH,
Sub-Magistrate of Razipore.

A.

Translation of a Tamil deposition given on the 6th April 1865, before the Sub-Magistrate of Razipore, by prisoner Ramakistna Chetty, a Merchant, and son of Vennappa Chetty, of Woduvangurchi Jadarpalayam, of Komiti caste, aged 40 years.

About 15 days ago, one Venkatarama Chetty, of Namagherripett came to my house, waited a day, and told me that we would go and steal at a certain place at Salem. I went after him to Salem. We were eating our rice in the house of one Subbamma of our caste at Salem, who sells rice. We were waiting for a period of 8 days for opportunity. I and the people of the house and Venkatarama Chetty in question were sleeping on the pial in the street. We arose at mid-

night, entered into the house by scaling over the house, opened the English padlock of the room by a piece of iron instrument (called yellutani), entered inside of the room, opened the lock of the large wooden box by the aid of the said instrument, took therefrom a small box measuring three quarters of a cubit in length and a span in breadth, and came out with the box by opening the door towards the east, and proceeded to Attanoor by early morning. On reaching the village there we had opened the box in question by the said iron instrument, and found the following property, viz.:—

A flat circular golden jewel worn by females on the head called Rakidi...	1
Do. do. called "Jadabilla"	...
Do. do. called "Talampu"	...
Two pairs of golden jewels, six in number called "Jadakuchu"	...
A pair of flat golden bangles	...
A pair of earrings	...
1 Do. of circular rings, worn on the ear by native females, called "Ola-murugu"	...
1 Do. of solid silver bangles	...
In Cash	...
Silver Ingot	...
	Rupces 3½
	1

We then threw away the box there. Out of the above jewels the following were given to me, viz., Jadabilla 1, Talampu 1, one pair of golden jewels called Kuchu, 1 Rupee in cash, one bangle, one earring used by females, one silver bangle, ½ of the golden Ingot stated above; and the rest were taken by Venkatarama Chetty, who went away to Namagherripett. I went away to my country 2 or 3 days afterwards. I went to Kadiranalloor, taking the jewels that came to my share, and gave them to a goldsmith in order to melt them. On melting the same, he weighed and said that it was 7½ pagodas weight. I have given to my brother, Tirumalasami Chetty, of the said village, a silver Ingot weighing 18 Rupees, and a piece of gold; when I gave them to him (brother) I told him that the jewels now melted were stolen property. My brother is absent from the village this day. I do not know where he has kept the said jewels. On search of the house no trace could be found. I do not know the name of the goldsmith who melted the jewels, but I can identify him. I gave him a quarter of a Rupee as hire. I did not inform him that the property was stolen. While conducting the search of the house of Venkatarama Chetty, the following were found, viz., one necklace, a small circular and flat jewel worn on the head called "Jadabilla," and a piece of gold. I have thrown the box in a bush at some distance of Attanoor. I will produce them to-morrow. Venkatarama Chetty's father, Rungiah Chetty, came to Salem three days before the commission of the offence, and also accompanied us when we were returning after stealing. No share was given him. As Rungiah Chetty is the father of Venkatarama Chetty, I do not know whether or not the latter gave him any share. When I gave the property to my brother, none knew it. The jewels were melted in my brother's house; my brother was not present at that time. When the jewels were being melted, my brother's son, Kandau, aged 10 years, was present. The iron instrument, called "Yellutani", which was used for opening the padlock, belongs to Venkatarama Chetty. The lock of the room was opened by Venkatarama Chetty. I opened that of the box. I did not enter into the house by scaling over the house. Venkatarama Chetty, after effecting his entrance into the house, opened the door of the gate towards the east. I went inside. Rungiah Chetty was outside in the street. On return, we took him along with us. None was lying down in the inside of the house. The prosecutor was sleeping in the verandah facing the west of cook-room. I heard this read over to me, and it is correct.

(Signed) RAMAKISTNA CHETTY.

This was taken down in my presence on the 6th of April 1865, and contains accurately the whole of the Statement made by the accused, and read over to him and acknowledged by the prisoner to be correct.

(Signed) VENKATA SUBBIAH,
Sub-Magistrate.

(True Translation).
(Signed) D. ARBUTHNOTT,
Magistrate.

B.

Translation of the Remand Warrant issued by the Sub-Magistrate of Razipore.

To KISTNASAWMY, Moodelly, Police Head Constable, Razipore.

Of the two prisoners, one Venkatarama Chetty was sent down to the Salem Town Sub-Magistrate. The Head Constable having stated that the prisoner Ramakistna Chetty had to trace some other jewels, and requested to issue a remand warrant to retain him at Razipore till he returns from Salem, you are hereby directed to keep the said Ramakistna Chetty in your custody until further orders.

Dated the 7th Day of April 1865.

(Signed) VENKATA SUBBIAH,
Sub-Magistrate.

(True Translation).

(Signed) D. ARBUTHNOTT,
Magistrate.

C.

Translation of a Tamil Circular Order, No. 41, issued by the Magistrate of Salem.

To ALL SUB-MAGISTRATES.

The Police Superintendent, in his letter of this date, No. 341, to the Magistrate, states that he is of opinion that whenever prisoners have been arrested and brought by the Police to the nearest Magistrate, such Magistrate should be ordered to grant remand warrants, independently of the place where the offence is committed, for such period as would be sufficient for conveying them to the Magistrate in whose jurisdiction the offence is committed, if the allotted 24 hours be nearly out, and if the office of the Sub-Magistrate be far from the Police Station. The suggestion of the Superintendent of Police appears to be correct, and the Sub-Magistrates are hereby directed to grant remand warrants when applied for by the Police, whenever necessary.

(Signed) D. ARBUTHNOTT,
Magistrate.

CAMP SALEM,
4th September 1862.

(True Translation.)

(Signed) D. ARBUTHNOTT,
Magistrate.

From the Superintendent of Police, Salem, to the Magistrate of Salem; dated Salem, 4th September 1862, No. 341.

I have the honor to inform you that the Inspector of Razipore Division reports, in his Diary of the 23rd August, that the Sub-Magistrate of Razipore refused to grant a remand warrant for certain parties who were produced before him, as concerned in a case of house-breaking by night, committed in the village of Panamarathoopatti, belonging to Salem Division, on the ground that the offence was committed beyond his jurisdiction.

2. Police officers are by law required to bring all person arrested without a warrant before a Magistrate within 24 hours. Occasionally this can only be done by taking the persons arrested to the nearest Magistrate, who, as in the present case, may not have immediate jurisdiction. I myself see no objection to such Magistrate granting the Police a warrant of remand, to enable them to convey the prisoners before the Magistrate having jurisdiction, and so have them in custody on adequate authority, although the 24 hours prescribed by law have passed.

3. If you agree with me in my view of the case, I shall feel obliged by your issuing a Circular to all Sub-Magistrates, directing them, when persons arrested in cases not immediately arising within their jurisdiction are brought before them by the Police, to grant a remand warrant, for such period as will be sufficient for the Police to convey those arrested before the Magistrate having jurisdiction.

(True Copy.)

(Signed) D. ARBUTHNOTT,
Magistrate.

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1st February 1866.*

D.

Translation of the Return on Warrant B made by the Head Constable of Razipore Station.
The prisoner mentioned in this warrant was produced before the Sub-Magistrate, and the warrant is returned herewith.
18th April 1865

(Signed) KISTNASAWMY Moodelly,
Head Constable.
(True Translation.)

(Signed) D. ARBUTHNOTT,
Magistrate.

E.

Translation of the reply made by the Head Constable of the Razipore Station.
The Salem Town Head Constable having requested, in his Yadast, dated 19th instant, to send the prisoner mentioned in this warrant to Namagherri-
pett, in order to trace some property, the prisoner was sent down accordingly, with the remand warrant. The Salem Police Constable had again brought the prisoner to the Station, on the evening of the 18th instant. On the morning of the 19th, the Constable took the prisoner, with the original warrant, to Salem, stating that the Head Constable ordered him to take the Prisoner to the Sub-Magistrate, to get a remand warrant from the Salem Sub-Magistrate, as he (Sub-Magistrate) issued the original warrant of arrest. As it was stated that the whole circumstances of taking the Prisoner from Namagherri-
pett was informed to the Sub-Magistrate of Razipore, the remand warrant was returned, stating in it that the prisoner was produced before the Sub-Magistrate of Razipore.
It appears that the prisoner is now produced before the Sub-Magistrate of the Salem Town. The yadast received from the Salem Head Constable is herewith forwarded.

28th April 1865.

(Signed) KISTNASAWMY Moodelly,
Head Constable.
(True Translation.)

(Signed) D. ARBUTHNOTT,
Magistrate.

F.

Translation of Memorandum sent by the Head Constable of the Razipore Station.
I did not produce the prisoner mentioned in the warrant with the warrant, but when I returned from "Checkbandi" (i. e. visit to the villages), I have thought, upon the information given by the Salem Town Constable, who escorted the prisoner from Namagherri-
pett to Salem, that he must have produced the prisoner before the Sub-Magistrate, therefore the above statement was written as stated.

(Signed) KISTNASAWMY Moodelly,
Head Constable.
(True Translation.)

(Signed) D. ARBUTHNOTT,
Magistrate.

Remarks by the District Magistrate.

Venkata Subiah, Sub-Magistrate of Razipore, appears to have committed two errors: first, in granting a remand warrant, on the 4th April, for three days, without seeing the prisoners; and secondly, in granting, on the 7th of April, a remand warrant for the detention of Ramakistna Chetty, without mentioning the number of days for which the prisoner was remanded. On the 9th April, the prisoner was stolen out of the Sub-Magistrate's lock-up at Razipore by the Police, and carried off to Namagherri-
pett sub-station, where the torture was committed. The prisoner was kept there till the night of the 18th, when he was taken back to Razipore station, and from thence next morning (19th), at day break, he was removed to Salem. It will thus be seen that the Police had no warrant whatever to remove the prisoner from Razipore lock-up, nor had they any warrant to keep him in custody from the 9th till the 19th, and it was during this period that the torture took place.

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2. The Acting Session Judge must, therefore, have been under a mistaken impression when he says in remarks on Calendar No. $\frac{81}{1865}$ that "the illegal custody of Ramakistna Chetty from 3rd April to 19th April was under the Sub-Magistrate's warrant, and with his sanction."

3. Had Ramakistna Chetty remained in the Razipore lock-up, in accordance with the tenor of the Sub-Magistrate's warrant of the 7th April, no torture could have taken place, as the lock-up is under the same roof as the Sub-Magistrate's office, and it was only after his illegal removal from that lock-up by the Police that the torture was committed. I have pointed out to the Sub-Magistrate the mistakes he committed, and I do not think that more serious notice is required.

(Signed) D. ARBUTHNOTT,
Magistrate.

Remarks by the Acting Session Judge.

I am of opinion that the Sub-Magistrate of Razipore acted illegally.

1st.—In granting a remand warrant at all.

2nd.—In having granted it without having the accused produced before him.

3rd.—In granting it for an indefinite period.

2. The warrant of arrest was issued by the Salem Town Sub-Magistrate, and was executed within the jurisdiction of the Razipore Sub-Magistrate, and the accused was produced before the latter. The procedure which he should have observed is clearly laid down in Section 84 of the Code of Criminal Procedure. The accused (the offence with which he was charged not being bailable) should have been forwarded to the Magistrate by whom the warrant was issued. The Sub-Magistrate of Razipore pleads the District Magistrate's Circular Order (C) in justification of his not having followed the Procedure laid down in the Code. This certainly directs Sub-Magistrates "to grant remand warrants when applied for by the Police, whenever necessary," irrespective of jurisdiction. This order was issued in consequence of a letter* addressed by the late Superintendent of Police to the

*Dated 4th September 1862, No. 311.

District Magistrate, which I observe has reference to arrests made by the Police *without warrant*, whereas the accused in this case was arrested *under a warrant*. The Procedure to be observed when a person is arrested without warrant is laid down in Section 109. The Magistrate before whom the party should be taken in such cases is "the Magistrate having jurisdiction in the case," and this is to be done not "within 24 hours," as stated in paragraph 2 of the letter from the late Superintendent of Police, but "without unnecessary delay," so that the necessity of taking the accused before the "nearest Magistrate" alluded to in Lieutenant Hill's letter need never arise. I presume that the late Superintendent of Police, when penning the paragraph referred to, had before him Section 23, Act XXIV of 1859 (the Police Act), but at the date of his letter, September 1862, that Section had been repealed by Act XVII of 1862, which received the assent of the Governor General on the 1st May of the same year. The District Magistrate, will, I think, admit, on consideration, that his Circular Order, on which the Razipore Sub-Magistrate relies, is not in accordance with the law then and now existing. Although in my opinion the Sub-Magistrate of Razipore acted illegally in granting the remand warrant at all, I think the Circular Order referred to should hold him blameless.

3. It is admitted by the District Magistrate that his Subordinate erred in the first place in granting a remand, without the accused being produced before him, and in the second, in granting it for an indefinite period, so that no remarks on these points are called for.

4. The District Magistrate observes that the Police had not any warrant whatever to detain the accused in custody from the 9th to the 19th, but by the terms of the Warrant B, he was remanded to custody "till further orders." No orders having been subsequently given, I think that the warrant justified his detention, and though, doubtless, the Head Constable in charge of the Razipore station was to blame for removing the accused to the Sub-station of Namagherri-
pett without the sanction of the Sub-Magistrate, this could not have been laid to the charge of the prisoner Narayana Razu, in Calendar cases Nos. 80 and 81, as he had applied to have him sent

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there under a warrant from the Sub-Magistrate, which experience had taught him was to be had for the asking. I again repeat that all that occurred is more or less attributable to the Sub-Magistrate having acted without jurisdiction. That he did this throughout the case is evident from Document A, which shows that he examined Ramakistna Chetty, and recorded his confession in a case over which the Salem Town Sub-Magistrate alone had jurisdiction, and in which warrants had been issued by that officer. I fully believe, however, that the Razipore Sub-Magistrate acted throughout under the *bona fide* impression that the course he adopted would further the ends of justice, and I concur with the District Magistrate in thinking that his errors of procedure require no further notice than they have already received.

SALEM, SESSION COURT,
10th November 1865.

(Signed) H. E. SULLIVAN,
Acting Session Judge.

No. 3. ORDER THEREON, 1st February 1866, No. 143.

On careful consideration of the papers submitted with the letters above recorded, the Governor in Council has come to the following conclusions:—

1st.—That the Sub-Magistrate of Razipore acted very irregularly, and betrayed great ignorance of his duty, in issuing a remand warrant for the custody of the prisoners in the case referred to. Under the circumstances, it was clearly his duty, on the prisoners being brought before him, to send them all on, at once, to the Sub-Magistrate of Salem.

2nd.—That the Sub-Magistrate of Razipore is much to blame for not having been more watchful as to what became of the prisoner Ramakistna Chetty, subsequent to his commitment to the custody of the Police Head Constable at Razipore.

3rd.—That the Sub-Magistrate of Razipore had no authority to receive Ramakistna Chetty's confession, which ought to have been recorded before the Magistrate who had issued the warrant for his arrest.

4th.—That the Circular Order issued by the District Magistrate, under date the 4th September 1862, No. 41, is very vague and loose in its wording, and in fact illegal, inasmuch as it leaves it to the discretion of the Sub-Magistrates to grant remand warrants, whenever they are applied for by the Police, and irrespectively of the period required for conveying the persons arrested to the office of the Magistrate in whose jurisdiction the offence charged was committed.

2. The Governor in Council directs that this Circular be re-called; and he desires that a copy of the Circular of the 28th of July 1865, which is appealed to by the Sub-Magistrate, as authorizing the grant of remand warrants without limitation of time, be laid before Government. The Magistrate will warn the Sub-Magistrate of Razipore that any similar instance, in future, of ignorance and irregularity in the discharge of his duties will lead to his being removed from his appointment.

(True Extract.)

To the Magistrate of Salem.
" Session Judge of Salem.
" Inspector General of Police.

Ed. J. H. Burns.

Chief Secretary.

N. 2328.

From
The Acting Session Judge
of Salem.

Dated 27th October 1865.

For Orders.

The High Court have given
their opinion on this point of
the case viz the Judge is
expected to try the Prisoner on
a charge of torturing. I do
not see that the fact has any
to say of it.

The report on the conduct
of the Sub-Magistrate has
still to be furnished &c.

The High Court have made a note of the facts of the case and have ordered that the Sub-Magistrate should be removed from his appointment.

No. 2328-2435.

From
The Magistrate of Salem.

Dated 27 October & 10 November 1885.

For Orders

The explanation of the Rajah on I Maye
is not satisfactory and shows that
he is very inefficiently informed
of his duty -

He had no authority to issue a ^{warrant}
to arrest at all - His duty was on the
prisoners having been brought before
him to take them all on at once to
the Sub-Pray of Salem -

His demand warrant was not
in the form prescribed by NCP Code -
He had no authority to take from the

...the Clerk a con-
-tion or statement of any kind -

The witness C does not apply to such
cases as the present - but only when 24
hours is not sufficient to enable the
party arrested being brought before
a Magistrate when jurisdiction the
offence was committed - The wording
is however very loose - "When an
arresting officer may have mistaken
the Magistrate."

The witness should be recalled -
It is improper to put him in a position -

The most extraordinary part of
the case is that the Prisoner R. C. Chubb
was taken from H. E. upon look up
and kept 9 days at Hampton
- put in there as the 5th defendant.

...the only way to get a look at the man
He was at the Court the whole time &
& took up is part of his own testimony.
Either this is untrue, or the 5th Mag. made
his very little attention to prisoners
committed to his look up under his
warrant.

The C.O. of H. D. May 20 July 1865.
which is approved to by R. J. Mag.
authorizing R. J. Magistrate to
grant a warrant of removal with-
out limitation of time had better
be called for -

As for this Sub Mag. perhaps
could through ignorance and from
no bad intent. He does not seem
fit for the office of Sub Mag. - he might
be removed to some lower post etc.

On the whole, it will, I think, suffice if, in regard to this matter, we discuss it with a view on the Sub Magistrate of Nagpore for not being very watchful as to what became of the Prisoner Ramesh Krishna after his subsequent to his commitment to the custody of the Police Head constable at Nagpore.

It is not clear that R. Krishnaiah was confined in a substratum cell and if, as stated, he was put into the Police lock up after the issue of the Remand warrant B, it was quite possible for the constable there, with due regard to view, to remove the Prisoner with the knowledge of the Sub Magistrate where instructions were to keep him locked up "until further order".

The Sub Magistrate certainly was receiving R. Krishnaiah's confession & he ought to have ^{been} made before that Magistrate who had issued the warrant for his arrest. But the Crime Code makes no specific provision for the reception of a confession under the circumstances of R. Krishnaiah's case. It would seem the Nagpore Sub Magistrate took down in furtherance of the issue of the order.

The Criminal order of the Sub Magistrate of Salem, is a bad one & should be cancelled. Had the D. M. closed it by referring the Sub Magistrate to conform to the course suggested by the Capt. Police Constable, of the C. O. contains a correct recital, it would have been a proper order in every respect; but its closing para. is loose & unwarranted. It permits the Magistrate to proceed as he thinks fit. G. Secy-65 W.D.

Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read Letters from the Acting Sessions

Judge of Salem.

Copy letter 165 No 13, and
18/10 Nov 1865 No 111)

Order thereon. 1st February 1866 No 143.

On careful consideration of the papers submitted with the letters above recorded, the Government in Council has come to the following conclusions.

1st That the Sub Magistrate of Nagpore acted very irregularly and betrayed great ignorance of his duty in issuing a remand warrant for the custody of the Prisoner in the case referred to. Under the circumstances it was clearly his duty,
on

on the prisoners being brought before him, to send them all on at once to the Sub Magistrate of Salem. —

2^d That the Sub Magistrate of Razi pore is much to blame for not having been more watchful as to what became of the prisoner Rama Krishna Chetty subsequent to his commitment to the custody of the Phee Head Constable at Razi pore.

3^d That the Sub Magistrate of Razi pore had no authority to receive P. Krishna Chetty's confession, which ought to have been recorded before the Magistrate who had issued the Warrant for his arrest.

That

11th That the Circular Order issued by the District Magistrate under date the ^{4th Sept.} ~~7th April~~ 1882. 1881 ~~1881~~ is very vague and loose in its wording, and in fact illegal, inasmuch as it leaves it to the discretion of the Sub Magistrates to grant remand warrants, whenever they are applied for by the Police and irrespectively of the period required for conveying the persons arrested to the office of the Magistrate, in whose jurisdiction the offence charged was committed.

2. The Governor in Council directs that this

this Circular be recalled,
and he desires that
a copy of the Circular
of the 20th of July 1865
which is appealed to
by the Sub Magistrate
as authorizing the
grant of remand War-
rants without limitation
of time, be laid before
Govt. The Magistrate
will warn the Sub
Magistrate of Razipore
that any similar
instance in future
of ignorance and
irregularity in the
discharge of his duties
will lead to his being
removed from his
appointment.

[Signature]

Magistrate of Salem }
Session Judge of Salem }
Magistrate of Salem }
Magistrate of Salem }
Magistrate of Salem }

Industrial 1866 Department.

No. 143.

PROCEEDINGS OF GOVERNMENT.

Dated 1st of January 1866.

Press No. 2755, G. M.—1411-05—500.