M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1617 Press Mis.

156-159

Dated 13 10 1886

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Not to be folded or roughly handled

MS

No. 15. Read the following letter from the Inspector General of Police, to the Secretary to Government, Fort Saint George; dated Madras, 26th September 1866, No. 1613.

General Department.

I have the honor to submit the accompanying Extract from Proceedings of the Session Court at Guntoor, in the hopes that the Government will be pleased to have the High Court moved to review the Proceedings.

2. The facts are these:—

An Inspector of Police was prosecuted before the Native Deputy Magistrate of Masulipatam District on two charges:

1*st*.—For "furnishing false information to his Superior Officer"—in other words, for false report.

2*ndly*.—For "attempting to obtain for himself a gratification other than legal remuneration"—in other words, for attempting to extort a bribe.

3. He was convicted by the Native Deputy Magistrate in both charges.

4. Both sentences were reversed on appeal, under the limitation clause (Section 53) of the Police Act. The Session Judge, however, also alludes to an important point, the trial of Superior Officers of Police by Native Magistracy.

5. The decision of the Court is one of acquittal, and, therefore, there is no appeal. But I am advised that if application be made to the Court, to revise their Proceedings, under Sections 403 and 404 of the Code of Criminal Procedure, an opinion might be obtained on two now moot, but most important, points—whether Superior Officers of Police are amenable to the jurisdiction of Native Magistrates, and whether Section 53 applies to prosecutions under the Penal Code.

6. Such a favorable opportunity for obtaining an authoritative exposition of the Law rarely occurs.

Extract from the Proceedings of the Session Court of Guntoor, dated 3rd August 1866. No. 91.

Read again Criminal Appeal Petition, No. 9 of 1866, presented by A. Brahmajirao, Defendant in Cases Nos. 48 and 49 of 1866, on the file of the Deputy Magistrate in charge of the Palnad Taluqs, Kistna District.

Read also Records of the said Cases received from the said Officer.

1. These are two appeals from the decision of the Deputy Magistrate of the Palnad Taluqs in Calendar Nos. 48 and 49 of his file.

In 48, the charge against the Prisoner Brahmajirao, an Inspector of Police, is for "furnishing false information" to his Superior Officer, the Assistant Superintendent of Police, and the offence consisted in stating that he paid the salaries of the Police of Martur at Martur, whereas he called them in, and actually paid them at Rajahpett. For this, he was fined, under Section 177 of the Penal Code, Rupees 51, the odd Rupee being evidently for the purpose of allowing him an appeal.

2. In Case 49, he was charged, as a public servant, with attempting to obtain for himself a gratification other than legal remuneration, and sentenced to pay a fine of Rupees 51, under Section 161 of the Penal Code.

3. These charges were preferred, and prosecuted to conviction, by the Assistant Superintendent of Police, five months after the date of the particular offences which the Petitioner is found by these convictions to have committed.

4. On this circumstance, the Petitioner raises, in appeal, the question of the Deputy Magistrate's jurisdiction, as, under the provisions of Section 53 of Act XXIV of 1859 (Mofussil Police Act) there is a special limitation of *three months* as the period within which either an "action or prosecu-

tion" must be brought for any act done under the provisions of that Act, or under the general Police powers thereby given ; and this being so, the Petitioner holds that the limitation and protection afforded to him by Section 53 are equally to be extended to his case when the prosecution is under the Penal Code, supposing the charge to be such as the Officer trying it admittedly has jurisdiction over both under the Police Act and under the Penal Code, and the particular act or acts, as in the Petitioner's case, to have been done in his official capacity. The Deputy Magistrate, on the other hand, contends that "action" and "prosecution" are used to mean one and the same course of civil proceeding against the Officer of Police ; in this (53) and the following Section (54), the word "Decree" (always confined to civil actions) being employed in both, in speaking of the decision passed in such "actions" or "prosecutions." From the tenor of the whole Section, it is abundantly clear that the object in view was to prevent Officers of Police from being needlessly harassed by civil actions or criminal prosecutions after the lapse of three months, and to provide against their being subjected to both, at one and the same time, for the same offence.

5. The Session Judge is of opinion, therefore, that the petitioner's objection to the jurisdiction of the Deputy Magistrate must prevail.

6. Act (Madras) III of 1865 merely extended to the Magistracy, generally, jurisdiction under all such special and local Laws as previously excluded the jurisdiction of certain subordinate classes of the Magistracy, not being Europeans. Act XXIV of 1859 (Police Act) is a special Law which excluded the Native Magistracy altogether, where the Police Officer to be tried was above the rank of Private, and punishment of his offence was sought by summary conviction under that Act. Where the offence was one punishable, either by summary conviction under the Police Act, or by prosecution under the ordinary Criminal Law, Section 51 of Act XXIV of 1859 expressly reserved the option of proceeding against the offender by the latter Law. The Officiating Advocate General has given a case in point :—He says, "for instance, suppose a man had been assaulted "by a Deputy Constable; if the party assaulted is satisfied with the punishment which can be inflicted under Section 44 (Act XXIV of 1859) as for unwarrantable personal violence, he may proceed "by summary process before a European functionary. If, however, he desires to have the act "punished under Section 330 of the Indian Penal Code, as an attempt to extort a confession by "causing hurt, he may lay his complaint before *any* Magistrate who has power to commit to the "Session Court (that is *any* Sub-Magistrate), and the final trial must take place before that tribunal."

7. Act III of 1865 cannot be held to abrogate any of the provisions of the Police Act, and as Section 5 of the Indian Penal Code does not "repeal, vary, suspend, or affect any of the provisions * * * of any special or local Law," it seems to follow, as a necessary consequence, that whether a Police Officer, of any grade, is prosecuted under the Police Act, or under any provision of the Penal Code, for any act done in his official capacity, he is still entitled to the benefit of the limitation and protection conceded to him by Section 53 of Act XXIV of 1859, alike when the remedy sought is by a civil action to redress a wrong done under color of his office, and when the act committed by such Police Officer is an offence punishable either under the Police Act, or the Indian Penal Code.

8. The Session Judge is, therefore, of opinion that the Deputy Magistrate had not jurisdiction in either of these cases, by reason of the term, prescribed by Section 53, within which such charges should have been preferred, having elapsed before they were laid.

9. These convictions are accordingly annulled, and the fines collected from the Petitioner will be refunded to him.

10. He stated, during the hearing of these appeals, that he had been suspended or dismissed, with a promise of restoration to office if he were acquitted on appeal. Without offering any opinion on the merits of these convictions, supposing the jurisdiction of the Deputy Magistrate not to have been barred, the Session Judge would remark that it may be desirable that the records should be placed before the Inspector General of Police, to enable him to form his own opinion on this subject, and if application be made to this Court, with that view, they will be officially forwarded to that Officer, or handed over to the Superintendent of Police, for submission to him.

Proceedings of the Madras Government, Judicial Department,
13th October 1866.

11. Based on his experience of the injurious operation of Section 51 of the Act XXIV of 1859, and of Act III of 1865, in allowing an option to complainants to prosecute Police Officers above the rank of Private, for acts done exclusively in their official capacity, otherwise than under the protection of Section 50 of the Police Act, that is, trial by a European Functionary, the Session Judge would take this opportunity of recording his conviction that, if such persons of rank and family position as may be at present in the Police Force are to be retained, and persons of equal standing and social condition are hereafter to be enlisted, it is indispensably necessary that the Police Act should be excluded from the operation of Act III of 1865, as provided under the powers vested in the Governor in Council, under Clause 2 of the latter, and that Section 51 of the former (Police Act) should be so modified as to meet the requirements of the case.

12. It may be broadly stated, as a fact, without any reflection upon the Native Magistracy (worthy, conscientious, and upright as very many of them are, to the Session Judge's knowledge), that their countrymen have not that confidence in any Native tribunal which they place in every European Court of Justice. However wrong and ill-founded this impression on the part of Natives, it is nevertheless patent to every one who has much intercourse with them, that there is this feeling of distrust, and the only substantial relief in the case of Officers of Police of the superior grades, who are peculiarly exposed to malicious prosecutions for their smallest official acts (when all sorts of influences are brought to bear on them), is to render them amenable solely to the European Magistracy, whether their criminal prosecution is to be under the Mofussil Police Act, or the ordinary Criminal Law. With this protection, and the limitation already provided by Section of 53 of the Police Act, the frivolous and false charges now often preferred to annoy and intimidate them, would be reduced in number, and an existing bar to the future enlistment of really superior men removed.

Ordered that Extract from these Proceedings be sent to the Magistrate of the District, and to the Assistant Superintendent of Police, for their information.

(True Extract.)

(Signed) W. HODGSON,
Session Judge.

To the Assistant Superintendent of Police, Kistna District, Guntoor.

Forwarded to Inspector General, through Deputy Inspector General.

(Signed) W. H. HOSKINS,
Superintendent.

8th September 1866.

No. 157. ORDER THEREON, 13th October 1866, No. 1617.

The Inspector General is authorized to take measures to have the question raised by him brought under the consideration of the High Court.

(True Extract).

Chief Secretary.

To the Inspector General of Police.

Exd. J. H. Burns.

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My dear Robinson

This case might enable you to get an opinion of the High Court upon the two points, whether Inspectors are amenable to Native Magistrates and whether S. 53 applies to prosecutions under the Penal Code. As the Sentence is one of acquittal there is no appeal, but under SS. 403 & 404 you might apply to the Court to revise the proceedings. In

Calcutta they frequently quash acquittals under these sections. The application ought to be made when the Court reopens.

Yours

Wm D Magne

I hope to send you the draft Police Bill to-day

1/4

My dear Sir

I am very anxious to get a ruling out of the High Court in these points.

Would you refer to Dr Magne & see what can be done

Yours

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13 October 1866 No. 1617 -

The Inspector General is authorized to take measures to have the question raised by him brought under the consideration of the High Court.

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To the Inspr Genl of Police } desp 8/10