

MADRAS RECORD OFFICE.

Government of Madras.

General DEPARTMENT.

1865

G.O. No.	(1617)	Press ~~Mis.~~
Dated	13. 11. 10	19 1866

Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,
23rd November 1866.

No. 262. Read the following letter from the Government Pleader, Madras, to the Secretary to Government, Fort Saint George; dated Madras, 13th November 1866, No. 128.

I have the honor to acknowledge the receipt of the Proceedings of the Government, under the date and number noted in the margin.

7th November 1866, No. 1756, Judicial Department.

2. Before, however, taking any steps in the matter, I deem it my duty to draw to the attention of the Right Honorable the Governor in Council that both the cases referred to by the Session Judge have been finally disposed of, there being no appeal from the decision of the Session Judge, inasmuch as the prisoner in both cases was acquitted, and that, therefore, there is no proceedings or case now pending with which the High Court could deal.

3. Questions have sometimes been raised before Courts on suppositious cases, but the Courts invariably have refused to entertain applications of that nature, or to give any opinion in cases where there is not a *lis pendens*, or a real and *bona fide* proceeding in existence. It frequently occurs that questions arise on which it may be desirable to obtain an authoritative decision; but, however desirable it may be to have such a decision, the English Courts invariably refuse to give it, unless there is some Judicial Proceeding pending at the time.

4. I am of opinion that, in framing the 404th Section of the Criminal Procedure Code, the Legislature did not contemplate or intend that, when a case has been finally put an end to, so that no further action could be taken under it, the Sudder Court should call for the record in such defunct case, and pass an Order upon it. The words of the Section are certainly very wide, but, in my opinion, the Legislature must be supposed to have acted on well known principles by which Courts are guided.

5. The Inspector General of Police says, there are two points on which a decision is desired, viz., 1st, whether Superior Officers of Police are amenable to the jurisdiction of Native Magistrates; and, 2ndly, whether Section 53 applies to prosecutions under the Penal Code.

6. So far as the papers before me disclose the case and proceedings, I am unable to gather that the first of these questions has been raised either before the Deputy Magistrate or the Session Judge. From a careful perusal of the papers, I incline to think that that question never was raised. The question raised appears to have been generally whether the jurisdiction of any Magistrate, European or Native, was not gone, because the period of three months, within which, under the provisions of Section 53 of the Mofussil Police Act, all suits and prosecutions must be brought, had expired before the prosecution in question had been commenced; and consequently no decision, by either the Magistrate or the Session Court, has ever been passed on the point in the cases now under consideration. Under such circumstances, I do not suppose the High Court would allow that question to be raised and argued before them, even if they decided to act under the 404th Section of the Criminal Procedure Code.

Proceedings of the Madras Government, Judicial Department,

23rd November 1866.

7. If the High Court can be induced to call for the record under Section 404, I think the 2nd question may be argued with every probability of the Court arriving at a different conclusion from that enunciated by the Session Judge.

8. If, after further consideration, His Lordship in Council should still wish the High Court to be moved, I ought to be furnished with a full plain copy of the records in both of the cases, Nos. 48 and 49, on the file of the Deputy Magistrate in charge of the Palnad Taluqs, Kistna District, as also of the Proceedings before the Session Court, and the Orders, to enable me to prepare the petition which must be presented to the High Court. Moreover, I am informed that certified copies of the Orders passed by the Deputy Magistrate and Session Judge must be filed with my petition.

No. 263. ORDER THEREON, 23rd November 1866, No. 1865.

Communicated to the Inspector General of Police, with reference to his letter of the 26th ultimo, No. 1780.

(True Extract)

Chief Secretary.

To the Inspector General of Police

Ed. J. H. Burns

Proceedings of the Madras Government, Judicial Department,

13th October 1866.

No. 156. 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 Guntur, 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:

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

2ndly.—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 Guntur, 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-

*Proceedings of the Madras Government, Judicial Department,
31st October 1866.*

16

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 the Petitioner holds that the limitation and protection afforded to him by Section 53 are only 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 European. 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) for unwarrantable personal violence, he may proceed by summary process before a European Magistrate. 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 derogate 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 conferred on 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 mark 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.

17

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

18

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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*Proceedings of the Madras Government Judicial Department,
7th November 1866.*

No. 63. Read the following letter from the Inspector General of Police, to the Secretary to Government, Fort Saint George; dated Madras, 26th October 1866, No. 1780.

General Department.

With reference to G. O., dated 13th October, No. 1617, I have the honor to request that the Law Officer of the Government may be requested to move the High Court to review the Proceedings of the Session Court of Guntoor, dated 3rd August 1866, No. 91.

No. 64. ORDER THEREON, 7th November 1866, No. 1756.

Ordered, accordingly, that the Government Pleader be requested to move the High Court, under Section 404 of the Criminal Procedure Code, to review the Proceedings of the Session Court of Guntoor, dated 3rd August last, No. 91.
(True Extract).

Secretary to Government.

To the Government Pleader, with Proceedings, No. 1617,
,, Inspector General of Police,

Exd. J. H. Burns.

123

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23rd Nov 1866 42-1865

Pro. 7th Nov 1866 42-63-64

Communicated to the Secy of Police with reference to his letter of the 26th ult 1788

L. D.

The Secy of Police 29th

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From Government Secy
To Secretary Govt

Dated 13 November 1866
Recd 15

No 2479
Offering observations
on Order of Government
7 November 1865 re 1756
Judicial Department
regarding obtaining the
opinion of the High Court
on the question as to whether
superior Police Officers
are triable by the native
Magistrate & whether Sec
53 of the Police Act applies
to prosecutions under the
Penal Code

Feb 2015/69