

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

278-290	G.O. No.	1873	Press
			~~Mis~~
	Dated	26/11	1888

42/43

Not to be folded or roughly handled

No. 1873.

FROM

A. J. ARBUTHNOT, Esq.,
Chief Secretary to the Government of Fort Saint George,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
FOREIGN DEPARTMENT.

SIR,

I am directed by the Governor in Council to acknowledge the receipt of the Circular from your Office, dated the 29th May last, No. 560, calling for the opinion of the Madras Government on the practical working of Act VII of 1854, and to submit the following reply.

2. Almost all local Officers of any experience in working the Act agree in condemning the present procedure, as cumbrous, and as unduly interfering with the free delivery of persons charged with crimes committed in foreign territory. Indeed, the procedure laid down is found so inconvenient, that, in practice, the requirements of the Act are not closely adhered to; and it has been customary in several Districts of this Presidency bordering on Native States to allow almost entire reciprocity in the service of criminal processes, that is, in return for the freedom and assistance accorded by a Foreign State to our Police and Magistracy, to allow their Officers similar facilities for the apprehension of offenders, without strict observance of the formalities required by Law. In illustration of the difficulty experienced in working the Act, I am desired to refer to the enclosed Proceedings of this Government, dated 8th May last, No. 701, in which the Governor in Council approved of certain arrangements proposed by the Resident at Hyderabad, with a view of securing the co-operation of the Officers of the Nizam's and the Madras Governments towards facilitating the tracing and apprehension of offenders belonging to either State.

3. Another point to which attention has been very generally called, as a defect in the existing Act, is that thefts and other crimes not specified in Section 21 are allowed to go unpunished. On this point, I have to refer to the Proceedings of the Madras Government, dated the 4th May last, No. 686.

4. Under these circumstances, the Governor in Council is of opinion that the present Act VII of 1854 may be modified with advantage. There is no reason why the protection of the British flag should be extended to the criminals of another country, if that other country will surrender our criminals on the like terms. No question of national honor is here involved. If a foreigner wants the protection of the British flag, it is open to him to take up his abode in British territory and become naturalized. All the formalities which appear necessary are that Warrants issued by the Authorities of a Foreign State for the apprehension of a criminal belonging to that State, but who has escaped into our territories, should be endorsed by any Magistrate having Jurisdiction, and executed by our Agents. The Magistrate so endorsing would, of course, satisfy himself that the Warrant was genuine and issued by a competent Court. Immediately on apprehension, the party apprehended should be carried before the Magistrate, Joint Magistrate, or Head Assistant Magistrate of the District, who should be left to act on his own judgment, and to decide whether or not the

prisoner should be handed over to the authorities issuing the Warrant. The reference to Government which, under the existing Law, is necessary in each case, is only productive of delay, without any compensating advantage. In grave or doubtful cases, it might still be open to the District Magistrate to apply, at his discretion, for the orders of Government. The surrender should be of parties accused of any Acts made punishable by the Indian Penal Code, not merely the "heinous offences" specified in the present Act.

5. British subjects taking refuge in the territories of the Native States should be given up in like manner.

I have the honor to be,

Sir,

Your most obedient Servant,

FORT SAINT GEORGE,
26th November 1866.

Chief Secretary.

No 425-

I am

Madura Magistrate's Office
V August 1866

V. H. Leungie Esq.

Magistrate of Madura

To

The Honorable A. J. Arbutnot

Chief Secretary to Government

Madras

Sir,

Referring to the order of Government in the Judicial Department No 1027 dated the 2^d July 1866, I have the honor to report that during the period of my service as Magistrate of Madura now 6 years, I have not had occasion to put in force the procedure prescribed by Act VII of 1854 -

2. I am aware that British subjects living near the borders commit grave crimes in the Podoscatta & Travancore States almost with impunity. In the case of Podoscatta, I understood from the

Ed. J. H. Burns

the fact that that Government
put up with all such crimes of whatever
magnitude, sooner than be placed in the
humiliating position of having to send
their subjects to prosecute in our Courts
parties guilty of offences committed in that
State. Such a course of proceeding was
also considered as casting a reflection
on the administration of justice in that
State. What adds to the unfairness
of the law as it now stands, is the fact
that if a subject of Pooducotta committed
an offence in this District that Govern-
ment would, on demand, at once deliver
up the accused to stand his trial in
our Courts.

2 - It is not because crime is not
committed by our subjects in Travancore
that prosecutions are not instituted,
because

because it is notorious that armed
gangs of British subjects go into the
Travancore tracts contiguous with
ours in the Cambam Valley & commit serious
depredations in the Travancore Govern-
ment Cardamum Gardens, but they
are never prosecuted; the reason for
which should be sought from the
authorities of that state, and this impu-
nity encourages lawless habits amongst
our people.

4 - Considering the above 2 mentioned
states are supervised by British officers,
I think native British subjects might be
given up for trial in the state, in which
they are charged with having committed
offences, the Government Agent or
Resident being required to see to their
meeting with a fair trial, and I
think the Dewan of either State would
consider it a point of honor to see
that

288

[illegible]

From R. H. Pucke Esq
Magistrate.

To The Honorable A. J. Arbuthnot
Chief Secretary to Government
Fort Saint George
P.O.

With reference to Government Proceedings No 1027, dated 2nd July 1866, I have the honor to inform you, that I can find but one Case on record in which the provisions of Act VII of 1804, have been put in force in this District. viz that in 1855 the Governor in Council, authorized the Magistrate of Tinnevely, to deliver up certain subjects of the Travancore State charged with smuggling.

2. A British subject was lately apprehended on a Sub Magistrate's warrants within the Travancore frontier, this led to correspondence, and the Travancore Government have recently expressed through the Resident, their willingness to

to allow the extradition of criminals,
if the same concession be made on
the part of the British authorities.
3 The course proposed by the
Travancore Government is, that
the British authorities on the Tra-
vancore Government, should address
warrants to their respective officers,
the endorsement of the local Sub
Magistrate or Tahsildar being required
to give effect to the same when serv-
ed beyond the British or Sericar territor-
ies respectively.

4 This arrangement however cannot
be made while existing Acts are in force. Act I of 1849.
but as the working of these Acts is Act VII of 1854
cumbersome and involves correspondence and
delay, some margin of authority might
I think be allowed to local officers
in Districts bordering on Native States,
to make arrangement such as that
proposed by the Travancore Govern-
ment to hold good so long as the
British Government feel assured
that

that the concession is not abused.

I have the honor to be
Sir
Your most Obedt Servt.

R. K. P. S. S.
Magistrate

N^o 35.

(67) 5 27
Magistrate's Office,
Mangalore, 23rd August 1866.

From
W. M. Cadell Esq^r
Magistrate of South Canara

To
The Honorable A. J. Arbuthnot Esq^r
Chief Secretary to Government.
Judicial Department,
Fort St. George.

Sir,

With reference to the order of Govern-
ment of the 2nd July last, N^o 1027, Ind. Dept.,
calling upon me to state my opinion as
to whether the formalities required by
Act VII. of 1854 have been found unnecessary
to interfere with the free delivery of persons
charged with the commission of crimes
in Foreign Territory, and whether any modi-
fication in the Law is requisite, I have
the honor to state that so far as my
experience goes both in Tanjore and this
District, I do not consider that in
practice the Law in question has been
found to operate injuriously, and I
find that in this District it has been
customary to deliver up all parties
charged with crimes in the Mysore
Territory on requisitions received from
the European Officers employed in the
administration of that Territory.

2.

I do not consider therefore that
any

1866 Provincial Depts

1866 Provincial Depts

N^o 2

From

The Magistrate of

South Canara

To the Honorable

Chief Secretary

Government

Fort St. George

Patel to 30 Aug 1866

Recd 30 Aug 1866

1866 Provincial Depts

From

The Magistrate of

South Canara

To the Honorable

Chief Secretary

any modification in the present Law is
urgently called for

I have the honor to be

Sir,

Your most Obedt. Servant

D. W. J. [Signature]

Magistrate.

Malabar Magistrate Court
Calicut 4th September 1866.

N^o 121.

From
G. A. Ballard Esquire
Magistrate of Malabar
To
J. D. Sim Esquire
Secretary to Government.

Sir,
Adverting to G. O. dated 2nd July
last I have the honor to observe that crime
is not, as a rule more rife in parts of this
district bordering on Foreign states than it is
in those bordering on other districts of the Pre-
sidency or indeed throughout the district
itself.

2. I must confess however that I conceive
this is attributable in a great degree to a somewhat
relaxance of the letter of the Law. It has
been customary, I repeat especially with regard
to our long march with the native State of Cochin
to allow almost entire reciprocity in the service
of Criminal processes; and in return for the
freedom & assistance accorded to our Police in
Cochin to allow their Police similar facilities
to the apprehension of offenders that may have
escaped across the border. I think that if
the formalities required by Act VIII of 1854 were
scrupulously attended to in all cases the effect

Recd. 22 July 1866

Received 1866 Oct 11

From N^o 28

The Magistrate
of Malabar

The Chief Secretary
to Government
Calcutta

Post Office
Calcutta

Enclosure
N^o 1885

1866

1866

1866

1866

1866

1866

1866

on the quiet & security of the border districts would be bad and that both our own people & those of the native states would suffer.

3. I think that warrants issued by competent Courts, though under a foreign State should be allowed to be executed when the warrant holder is on the track of a criminal or offender on British ground. In fact the spirit of Section 84 of the Criminal Procedure Code should apply. I would allow direct execution of the Foreign Court's warrant; but immediately on apprehension the party apprehended should be carried before the full power Magistrate of the division in which the arrest is made.

4. I would suggest that it might safely be left to the Magistrate with full powers in charge of any division of a district marching with a foreign state, to use his discretion in all such heinous crimes as to whether a criminal apprehended on a charge of having committed an offence in such foreign state should be handed over to the authorities issuing a warrant, or retained for enquiry or trial by British Courts; or discharged.

5. In the case of heinous crimes reference to Government with the Magistrate's opinion as to whether the criminal should be proceeded against in the British Courts or handed over

19 23
over to the Foreign Court might still be required. Heinous crimes might be taken as those entered in the Schedule Criminal Procedure Code as triable only by the Court of Session.

I have the honor to be,

Sir,
Your most Obedt. Servant,

Rasnall
Magistrate.

territories within British limits as the country forming the boundary between the two Governments consists of mountains & jungles. The escape of offenders from Mysore & Cochin is of more frequent occurrence and delay in their apprehension is at times experienced from the course of procedure laid down in Act 1 of 1849 and Act 7 of 1854.

I think that when a person who has committed an offence in a Native State takes refuge in British Territory the Magistrate in the Native State should be empowered to issue & send his warrant to the Magistrate of the Taluk in which the offender is