

MADRAS RECORD OFFICE.

Government of Madras.

Indrail DEPARTMENT.

G.O. No.	1888	Press ~~Mis.~~
Dated 28-11-1918		

Not to be folded or roughly handled

18

*Proceedings of the Madras Government, Judicial Department,
29th November 1866.*

Read the following papers :—

No. 315. From the Magistrate of the Godavery District, to the Chief Secretary to Government, Fort Saint George; dated Cocanada, 3rd October 1866, No. 267.

I have the honor to request that you will lay the accompanying case before the Advocate General, for his opinion, "whether or not the Police Officers who negligently allowed the prisoner Woobiah to escape from their custody are, under the High Court ruling referred to by the Acting Head Assistant Magistrate, liable to punishment."

2. The case is briefly as follows :—One Gollapally Woobiah struck his father with a bill-hook. This act was witnessed by Woobiah's mother, who seems to have informed the Police of the fact. They, being authorized to arrest offenders in such cases without warrant, arrested Woobiah, and from Captain Robertson's letter to me, it seems that the Head Constable, then and there, informed the prisoner for what offence he was arrested. It seems to me that he was then charged with "an offence."

3. Have the goodness to return the enclosures when no longer required.

From Captain W. ROBERTSON, Superintendent of Police, Godavery District, to the Magistrate, Godavery District; dated Rajahmundry, 8th September 1866, No. 316.

I have the honor to forward a Charge Sheet returned by the Acting Head Assistant Magistrate.

2. The charge was laid against certain Police Officers who permitted a prisoner, arrested on a charge of murder, to escape, while being escorted to Annaveram station. A copy of the Head Assistant Magistrate's letter is attached.

3. The ruling he refers to is published at page 88 of the "Police Weekly Circular" for 1865; but I believe that ruling to have reference to cases in which the Police *detain*, under Section 108 of the Criminal Procedure Code.

4. The Inspector General has directed me to have the case brought forward again, if possible, with a view to its being brought before the High Court. Should you be unable to take up the case, I shall be glad if you will direct me as to the proper course to pursue.

2.

The case is briefly as follows

one

MADRAS POLICE

A Division of the Coarcted District

Charges taken at, or information laid by, Police of Rajahmundry Police Station, on the 10th day of August 1866.

Station House, Number	Date and hour of the charge or intelligence brought to Station, from the Station	Defendant or person charged or suspected, Name, Address, and Occupation	Charge or information Name of offence and circumstances connected with it, in concise detail	Persons charging or informing Name, Address, and Occupation	Witnesses Name and address: Present or not Present	What points called for proof	Prisoner taken into custody by whom and at what hour, or nature of process, requested	Property found on person or elsewhere, when and by whom, and list of articles forwarded	Confined from what hour to what hour	At the Station House	Date and hour of being placed by the Police before the Magistrate
1	2	3	4	5	6	7	8	9	10	11	12
		1. Mahammad Hussain, Deputy Constable, No. 1053, 2. Koka Tentiah, Deputy Constable, No. 777, 3. Kodaiah, Constable, No. 256, 4. Mahammad Akbar, Constable, No. 1252, Rajahmundry	Indian Penal Code, Section 223, Negligent Escape, by having permitted one Gollapally Woodiah, charged with murder, to escape from their custody, while being escorted from the village of Taduvoy to Annavaram station	Captain W. Robertson, Superintendent of Police	1. Daary Subiah, of Sankaravaram, 2. Nanda Somanahdiah, of Masunpilly, 3. Gaidem Sunnasy, Village Watcher of Taduvoy, 4. A. Mahahitchum, Constable No. 729, Rajahmundry	Will speak to the escape of Woodiah from the custody of the Defendants	Summons for witnesses				

N. P.—No prisoner to be detained in custody more than 24 hours without being taken before a Magistrate.

Signature of Complainant

(Signed) W. ROBERTSON, Captain,

Superintendent of Police.

Signature of Officer taking the charge.

(Signed) B. MUNAROW,

Head Quarter Inspector

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

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

Calendar Case No. 74.

Number of Charge or on Magistrate's file.	Magistrate before whom the Charge is brought.	Date and hour of receipt of Charge Sheet and Prisoner by the Magistrate.	Date and hour of issue of Process by Magistrate and its nature.	Date and hour of Defendant appearing before Magistrate.	Remands granted.		Charge how disposed of by Magistrate: what offence proved; date of discharge; and name of Police Officer conducting the case before the Magistrate.	Remarks by the Magistrate on the conduct of the Police and the nature of the case. If not proved, what further operation directed by the Magistrate when transmitted to the Superintendent.	Date when Charge Sheet was received in the Superintendent's office, and remarks by the Superintendent.
13	14	15	16	17	Number of and date.	For what period.	20	21	22
Number 74.	Acting Head Assistant Magistrate.	10th August 1866, at 12 o'clock A. M.		10th August 1866, at 12 o'clock A. M.			The High Court having ruled, in their Proceedings in 1864, as per tabular Statement, Sections 223 and 224, that prisoners detained in the custody of the Police on suspicion are not "charged with" an offence, the Acting Head Assistant Magistrate is unable to grant the summons applied for. The Constable, it seems, is liable to departmental punishment only.		18th August 1866. (Signed) W. R.

RAJAHMUNDY,

18th August 1866.

(Signed) H. WIGRAM,

Acting Head Assistant Magistrate.

2.

The case is briefly as follows

*Proceedings of the Madras Government, Judicial Department,
28th November 1866.*

From Captain W. ROBERTSON, Superintendent of Police, to the Deputy Inspector General of Police, Northern Range, dated Rajahmundry, 20th August 1866, No. 237.

I have the honor to forward a copy of letter from the Acting Head Assistant Magistrate of this District, who there declines to try for "negligent escape," the Police Officers named in the margin, who permitted a prisoner Gollapally Woobiah, arrested on the complaint of eye witnesses for the murder of his father Gollapally Venkennah, to escape from custody between the villages of Tanduvoy and Annavarum station.

2. It appears to me that the ruling of the High Court quoted by the Head Assistant Magistrate does not apply in this case, the wording of the question on which the ruling quoted was made, and which is published at page 88 of the Police Weekly Circular for 1865, appears to point to a case in which the Police detained, for special reasons, a man known or suspected to have committed an offence for which they could not arrest without warrant, under Section 108 of the Criminal Procedure Code. At any rate, the same word "detained" is used by the Officer referring and the Code of Criminal Procedure in this Section. Such detention is, I should think, to be considered in a different light to an arrest made by the Police on information received, and with reasonable grounds, under Section 100.

3. At present it appears that Magistrates take different views of the ruling referred to.

4. I request that the matter may be, if possible, again brought forward, with a view to a distinct order being given on it.

From the Acting Head Assistant Magistrate, Godavery District, to the Superintendent of Police, Godavery District, dated Rajahmundry, 14th August 1866, No. 60.

In returning the enclosed Charge Sheet, I must express my regret that, as I understand the High Court ruling, Constables who have arrested a man on information received, as in the present case, are not liable to punishment, under Section 223 of Indian Penal Code, for negligently allowing such prisoners to escape.

2. At the same time, I have still some doubt as to the exact meaning of the High Court ruling, and how they interpret the words "charged with," and "prisoners detained on suspicion." e.g. — does a Charge Sheet prepared by the Police constitute a charge, and would a Constable who negligently allowed the escape of a prisoner kept in custody on the Magistrate's re-command warrant be liable under Section 223?

3. It seems to me that the common sense reading of Sections 223, 224, is that the words "charged with" are merely equivalent to "accused of," and that this was the intention of the legislature, there can be little doubt.

The remarks by a legal friend in the "Police Weekly Circular" of the 23rd February 1865, and the 26th August 1865, seem to bear out this view. On the other hand, I have found an old definition of the word "charge" in Dilke's trial, A. D. 1763, per pral C. 7.

The word "charge" does not mean the accusation brought against any person taken up, but his commitment by the Magistrate before whom he might be brought up. And if the High Court interpret the words of the Code in this way, the hands of the Police will necessarily be weakened until the wording of the Section is amended.

4. If you have any means of obtaining an authoritative ruling on the above point, through the Inspector General of Police, I think it would be very advisable to do so.

MEMORANDUM.

Gollapally Woobiah, of Tanduvoy, struck his father Venkennah with a bill-hook, at 10 A.M., on the 28th June. The act was seen by the prisoner's neighbors, and the prisoner was met shortly afterwards with the bloody knife going towards the jungle. The Police, on inquiry, arrested Woobiah, but

*Proceedings of Madras Government, Judicial Department,
28th November 1866.*

while escorting him to the station, allowed him to escape. They were charged with "negligent escape" before the Head Assistant Magistrate, who declined to try them, under the ruling of the High Court.

RAJAHMUNDY,

20th August 1866.

(Signed) W. ROBERTSON, Captain,

Superintendent of Police.

From Captain W. ROBERTSON, Superintendent of Police, to the Magistrate of the Godavery District; dated Rajahmundry, 24th September 1866, No. 323.

With reference to your letter noted in the margin, dated 11th September 1866, I have the

honor to state, the Head Constable Mahamud

Hussain, who arrested the prisoner Woobiah,

reports that he informed the prisoner of the

offence with which he was taken into custody, but received no answer.

Referred to the Acting Government Solicitor, for the opinion of the Advocate General on the point at issue.

FORT SAINT GEORGE,

30th October 1866.

(Signed) F. BRANDT,

Acting Under Secy. to Govt.

No. 316. From the Acting Government Solicitor, Madras, to the Acting Under Secretary to Government, Fort Saint George; dated Madras, 13th November 1866, No. 648.

I have the honor to acknowledge the Order of Government noted in the margin, with its enclosures, requesting the

Dated 30th October 1866, and made on letter from the Magistrate of the Godavery District, to Government, of 3rd idem, No. 267.

Advocate General's opinion as to whether

Police Officers negligently allowing a

prisoner apprehended on a charge of having committed an offence to escape from their custody, are punishable.

2. Having obtained from the Registry of the Appellate High Court their Proceedings, dated, respectively, the 9th and 22nd of May 1863, and 9th October 1866, I have submitted them, with the order and enclosures above noted, for the consideration of the Acting Advocate General; and

3. I now forward a copy of his Opinion, and return the order and enclosures above referred to.

OPINION.

I am of opinion that whenever any person is placed in the custody of a Police Officer, upon the allegation that he has committed an indictable offence, and for the purpose of being detained until that allegation is disposed of, he is a person "charged with an offence" within the meaning of Section 223 of the Penal Code. This construction of the word "charge" has been applied by the High Court in reference to Section 211, which makes it criminal to charge any person falsely with an offence. The High Court said, "to constitute the offence of preparing a false charge contemplated in Section 211 of the Penal Code, it is not necessary that that charge should be before a Magistrate." It is enough if it appear, as it does in the present case, that the charge was deliberately made before an Officer of Police, with a view to its being brought before a Magistrate. Of course, a mere random conversation or remark would not amount to a charge (1 H. Ct. Rep. 30). In this case, a complaint was made by an eye-witness, for the purpose of having the prisoner arrested, that the accused had committed a murder. I think from that moment he was "charged with an offence," and, therefore, that the Police officers were indictable under Section 223 for negligently suffering him to escape.

Proceedings of the Madras Government Judicial Department

23th November 1866.

2. Two proceedings of the High Court have been brought to my notice, and are I presume those on which the Head Assistant Magistrate acted. On the 9th May 1863, the High Court ruled that Section 221 does not apply to the case of suspicious characters, arrested under Sections 295 and 306 of the Criminal Procedure Code for the purpose of exacting security, because being a suspicious character is not an indictable offence, and, therefore, a person in custody under such suspicion is not charged with any offence.

3. Again, on the 22nd May 1863, the High Court discharged a prisoner who was convicted under Section 224, of escaping from custody under which he was lawfully detained while charged with an offence. The evidence was that a Constable, while on his rounds, saw defendant with a buffaloe. He took him up on suspicion, brought him to the station, and delivered him into charge of a peon. There was no evidence that any offence had been committed, or that any one had accused the defendant of committing one. Accordingly, the High Court cancelled the conviction, saying, "it seems quite clear that the prisoner was not detained under a charge of any offence, and there was no evidence that he was."

4. A later ruling of the High Court was contained in their Proceedings, 9th October 1866. There they quashed a conviction for an escape, under Section 224, the prisoner not being in custody charged with any offence, but having been detained as a person of bad character. He had been arrested on mere suspicion, arising from his having some burglar's tool in his possession.

6. None of these decisions are inconsistent with my opinion.

(Signed) J. D. MAYNE

Acting Advocate General.

12th November 1866.

(A true Copy.)

(Signed) H. J. BROCKMAN

Acting Government Solicitor.

No. 217. ORDER THEREON, 23th November 1866, No. 1888.

Ordered that the foregoing Opinion of the Advocate General be communicated to the Magistrate of Godavery, and to the Magistrate of other Districts.

2. The Government must remark that the case on which a legal opinion was asked for by the Magistrate of Godavery is far from fully stated in his letter above recorded. He simply says that Gollapally Woobiah "struck his father with a bill-book," and leaves it to be gathered from the accompanying papers that the father died from the effects of the blow, and that Woobiah stood charged with murder when he escaped from custody.

(True Extract)

A. J. ARBUTHNOT,

Chief Secretary.

To the Magistrate of the Godavery District
or
Inspector General of Police.

Ed J. H. Burns

40

No. 267

Godavery District
Magistrates Office

Cocanada 3rd October
1866.

From

James Fraser Esq.

Magistrate
Godavery District

To

The Honorable A. J. Arbuthnot

Chief Secretary to Government

Fort Saint George

Sir

I have the honor to request that you will lay the accompanying case before the Advocate General for his opinion - "whether or not the Police Officers who negligently allowed the Prisoner Woobiah to escape from their custody are, under the High Court ruling referred to by the Head Assistant Magistrate, liable to punishment."

2. The case is briefly as follows.

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Magistrate -

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14 June 1865 - 4239 to 91.
21 Dec 1865 - 4239 to 91.
No: 32 Dec 29 624 25 4 25.

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Referred to the Acting
Government Secretary for the purpose
of the Advocate General on the
ground of the same.

For all purposes
30 October 1863
Government Secretary

To
The off. Government Secretary

Dec 31st 1864, with and returned 1st Nov. 1866

A. M. Goodwin

Atty. Genl.

13/10/1864

CHARGES taken at or Information laid by Police of *Madras*

Station House Number of Charge	Date and hour of the charge or of the crime being brought to Station, and distance of scene from the Station	Defendant or Person charged or Suspected. Name, Address, and Occupation.	Charge or Information. Name of offence and circumstances connected with it, in concise detail.	Persons charging or informing Name, Address, and Occupation
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Signature of Complainant

W. M. S. S. S.
Superintendent

N. B. No prisoner to be detained in custody more than 24 hours without being taken before a Magistrate.

MADRAS POLICE.

Division of the *Madras* - District
POLICE STATION on the *10th* day of *August* 1886

Witnesses		Prisoner Taken into custody by whom and at what hour, or nature of Process requested.	Property Found on Person or elsewhere when and by whom; and list of Articles forwarded.	At the Station House.		Date and hour being placed in the Police before the Magistrate
Name and address; Present or not Present.	What points called to prove.			Confined from what hour to what hour.	At what hour admitted to Bail.	
No.	1	2	3	4	5	6

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of Sankaravaram
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3. Gaidem
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Signature of Officer taking the Charge.

W. M. S. S. S.
Superintendent

Columns 13-21 on the other side will be filled up by the Magistrate.

the High Court. Should you be unable to take up the case, I shall be glad if you will direct me as to the proper course to pursue.

I have the honor to be
 Sir
 Your most obedient servant

W. M. S. S. S.
 Superintendent of Police

Date and hour of issue of charge sheet by Magistrate and name of Magistrate.	Date and hour of Defendant appearing before Magistrate.	REMANDS GRANTED.		Charge how disposed of by Magistrate; what offence proved; date of sentence committal or discharge; name of Police Officer conducting the case before Magistrate.	Remarks by the Magistrate on the conduct of the Police and the nature of the case. If not proved what further operation directed by the Magistrate. Charge sheet when transmitted to the Superintendent.	Date when charge sheet was received in the Superintendent's Office and remarks by the Superintendent.
		No. of and date.	For what period.			
16	17	18	19	20	21	22

10th August 1866 at 12 1/2 PM

The High Court have ruled in their Proceedings in 1864 as per their Statement Section 223 & 224 that persons detained in the custody of the Police or suspicion are not "charged with" an offence. The Act of H. J. An. Mag. is in to grant the same applies for. The court it seems, is liable departmental proceedings only.

Rajahmundry
11th August 1866

Rajahmundry
August 15th/66

Signature
H. J. An. Magistrate

Calcutta Case No. 74.

17/8/66
Lund

18/8/66
ml

No 316

Office of the Superintendent of Police
Rajahmundry 8th September

From Captain W. Robertson
Superintendent of Police

To James Fraser Esquire
Magistrate Godavari

Sir I have the honor to forward a charge sheet returned by the Asst Magistrate

2 The Charge was laid against Police officers who permitted a person on a charge of murder to escape whilst escorted to Annamaram Station. A copy of the Asst Magistrate's letter is attached.

What is that?
Police Magistrate

3 The ruling he refers to, is given at page 88 of the P. & C. for 1865 but I believe that ruling to have reference to cases in the police station under Section 108 of the Code.

4 The Inspector General has asked me to have the case brought forward again possible with a view to its being brought to the High Court. Should you be unable to up the case, I shall be glad if you will direct as to the proper course to pursue.

I have the honor to be,
Sir
Your Most Obedient Servant

W. Robertson Captain
Superintendent of Police Godavari

12
Judicial Department.

EDINGS of the MADRAS GOVERNMENT

Read the following
papers

Chafte of the
Godavery Distt

/ Dated 3. October '66 N° 267)

Govt Solicitor

/ — 13. Nov — 678)

Order - 28 Nov 1886 N° 1888.

Ordered that the fore-
going opinions of the ad-
-vocate General be
-communicated to the Magis-
-trates of Godavery & to
the Magistrates of other
Districts.

2 The Govt. must remark
that the case on which
a legal opinion was asked
for by the Magistrate of
Godavery is far from
fully stated in his letter
above recorded. He
simply says that Gollapally
Wooliah "struck his father
with a bill. book" & leaves
it

to be gathered from the accompanying papers that the father died from the effects of the blow & that Wobiah stood charged with murder, when he escaped from

9-2074

Dated 23 November 1866

PROCEEDINGS OF GOVERNMENT.

No. 1083.

Madras 1866. Department.

Command

J.P.

140-2074

to the Governor of Madras
as the District
Superintendent of Police

depts 3/12

No. 6

Civil Court of Naudial
Kurnool 6th October 1866.

From

Louis, Forbes, Esquire,
Acting Civil Judge of
Naudial,

To

The Honorable A. J. Arbuthnot
Chief Secretary to Government.
Fort Saint George, Madras.

Sir,

The District Munsiff of Kurnool
has submitted a reference as to whether
individuals upon whom a compassionate
allowance has been bestowed under
Government Order no 191. dated 26th
February 1864 can be employed as

"batta" peons.

2. As I am in doubt whether
it was intended that the last clause
in the Resolution should be taken as
referring to reemployment on a

permanent establishment only, or as
including work such as serving
processes of Courts, which is remun-
erated not by fixed pay but
batta, I beg you will be so
kind as submit the matter for
the orders of Government.

I have the honor to be,

Sir,

Your most obedient servant

N. Goshes

Acting Civil Judge

Recd. P.M.
18/10/1919

Recd 16 Feb 1864

1886

No. 6 of
From Public Dept
The Sd. Civil Judge of
Nindial
To The Chief Secretary to Govt
Madras.

Dated 6th
Recd 15th of October 1888
No 2291

Enclosure

Requesting orders
of Government as to
whether persons be-
to whom
towed with compensation
allowance can be
employed as "batta"
peons.

311.312

W. S. S.