M.R.O. 1—30,000—10-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 863 Press Mis.

70-71

Dated 9. 3. 1886

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
9th March 1866.

No. 70. Read the following letter from the Magistrate of Nellore, to the Chief Secretary to Government, Fort Saint George; dated Patapad, 30th January 1866, No. 3.

In acknowledging the receipt, in due course, of the Order of Government in the Judicial Department, of the 7th November 1865, No. 1579, I have the honor to solicit further instructions on the point therein disposed of.

2. The instructions I request are in regard to the payment of subsistence money to witnesses by the Police, and I trouble the Government for further orders on this point, because the Inspector General states that such payments must be frequent, and there are material errors in the circumstances of the case as stated, which have perhaps influenced Government in ordering that the re-payment applied for should have been made by me under the authority of their Proceedings of the 30th September 1864, No. 1440.

3. I do myself the honor to enclose copy of the Superintendent's letter* applying for re-payment, and stating why he had used his discretion in directing the payment to be made in the first instance, and also of my reply†, pointing out why I considered that the occasion did not justify the discretion used, and in what respects the payments themselves were objectionable as shown by the accounts rendered.

* 4th July 1865, No. 392.

† 26th July 1865, No. 246.

4. From the letter of the Inspector General, the Government would infer that the payment of the witnesses by the Police was a matter of convenience. And doubtless it is from the Inspector General not having seen that they could have been as conveniently paid by the Magistrate that he had a difficulty in understanding why I objected to make a re-payment without special sanction. I did not doubt that the money had been paid, or the humanity of the Superintendent, I objected only to the course pursued and certain details of payment.

5. And having now submitted for the consideration of Government the grounds on which I considered special sanction was necessary, I beg to be informed whether in such cases I was right in considering that the Proceedings of Government of the 30th September 1864 required me to use my discretion; that I was in fact responsible for all money paid under those Proceedings; and that it was paid through the channel provided, unless sufficient reasons existed for adopting a different course.

6. In this country, where an oath can be bought for an Anna, all payments to witnesses, however necessary, cannot be made with too much circumspection. The High Court, sometime ago, remarked strongly on the witnesses having been too much with the Police. And in refusing to sanction payments made by the Police, when these payments could as well have been made by the Magistracy, I had the remarks of the High Court in mind.

7. Should I have misapprehended the purport of the Proceedings of Government of 1864, I beg the favor of early orders to prevent further misunderstanding. And if it be not intended that the Magistrate should exercise a control, I would

respectfully suggest that provision for batta might be conveniently placed in the hands of the Police, with reference to the remark of the Inspector General that such payments are frequent.

From the Superintendent of Police, Nellore District, to the Magistrate of Nellore; dated Nellore, 4th July 1865, No. 392.

I have the honor to acknowledge receipt of your letter, No. 188, of the 1st July, with reference to a sum of Rupees 17-3-7, which was advanced by me as batta to witnesses in the Junnaladinna Torch robbery, and which I requested the Committing Subordinate Magistrate to repay to me.

2. I have not the accounts kept by Mr. Freer and Mr. Tyrrell of the batta so distributed, but I think, on referring to them, you will find that the greater part of the money was paid during the Jummabundy of the Nellore Taluq, when the Taluq Magistrate was so much occupied with his revenue work, that he had little time to give to Magisterial work.

3. The witnesses, several of whom were from great distances, and very poor, came to me again and again and stated they could not get batta from the Taluq Magistrate, I concluded because so hard worked, and I directed Mr. Freer to disburse to them what he considered necessary for their subsistence, keeping an account of the same, that it might be recovered from the Magistrate.

4. The account was sent to the Subordinate Magistrate, and he was requested to pay it, but he has not yet done so.

5. As regards authority, I used my own discretion in making the payments when I saw it was absolutely necessary, and requested the Magistrate, on whose immediate behalf the advances were made, to repay the amount advanced.

6. In concluding, I would point out that the Circular in question provides for batta being furnished for witnesses for the number of days likely to be taken in reaching a Court, but not the number of days they are in attendance before the Court of the Subordinate Magistrate, and the Subordinate Magistrate appears to hesitate about this point. This was brought to my notice last week, but escaped me till your letter under reply reached me.

From the Magistrate of Nellore, to the Superintendent of Police, Nellore; dated Nellore, 26th July 1865, No. 246.

I have the honor to acknowledge the receipt of your letter of the 4th, No. 392, informing me that you have not the accounts of the batta disbursed by the Police to the witnesses in the Junnaladinna case, but that the greater part was paid when the Tahsildar was busy with the Jummabundy, as the witnesses in question asserted that they could not get the batta from the Taluq Magistrate, and that you used your own discretion in making these payments, and had an account kept that the sum paid might be recovered from the Magistrate.

2. I made the Jummabundy of the Nellore Taluq, and was, therefore, either within a few miles of Nellore, or in Nellore itself, when some of this batta was paid. I think, therefore, under these circumstances, that it would have been better to have addressed me on the subject, as regards so much of the money spent, instead of making payments on your own authority, for which I am virtually responsible, if met as you propose.

3. The discretion used is, however, of comparatively little moment, compared to the course pursued in making some of the payments shown in the annexed Memorandum.

MEMORANDUM.

No.	Names of witnesses.	Dates.	Batta. Rs.	A.	P.	Date of deposition before Sub-Magistrate.
10	Chambili Papanna... ...	9th to 10th April... ...	0	4	0	
12	Maddali Adema...	" " ...	0	4	0	
18	Karuputula Papadu... ...	18th to 20th January ...	0	6	0	21st January and 6th March.
"	" ...	27th Feb. to 5th March...	0	11	8	
19	Dara Bodigadu...	18th to 20th January ...	0	6	0	
"	" ...	27th Feb. to 5th March...	0	11	8	
20	Dasari Ramudu... ...	The same payments as the 18th and 19th witnesses.	1	1	8	
21	Chunbili Papi...	6th to 15th January ...	1	4	0	15th January.
"	" ...	16th to 27th February ...	1	8	0	
"	" ...	* 28th Feb. to 6th March..	0	11	8	6th March.
"	" ...	12th and 20th March ...	0	15	0	
"	" ...	9th to 10th April ...	0	4	0	
		Total...	4	10	0	
22	Naburi Lakshi...	5th January ...	0	0	11	
"	" ...	6th to 15th January ..	1	4	0	15th January.
		16th to 27th February ...	1	8	0	
		* 28th Feb. to 6th March.	0	11	8	
		9th to 10th April ...	0	4	0	
		Total...	3	12	7	
24	Dudikula Bapigadu ...	3rd to 5th March ...	0	5	0	6th March.
"	" ...	10th April ...	0	2	0	
26	Yeluru Adankalagadu ...	27th Feb. to 6th March...	0	13	4	7th "
27	Tiruvidi Subbadu ...	" " ...	0	13	4	" "
28	Chenuru Subbadu ...	" " ...	0	13	4	" "
29	Ramala Tirupatigadu ...	" " ...	0	13	4	" "
33	Namburu Chenchi ...	12th to 20th March ...	0	15	0	20th "
34	Ragi Poligadu	9th to 10th April ...	0	4	0	
35	Singareddi Venkata ...	" " ...	0	4	0	
	Prisoners' names.	Total...	17	7	7	
7	Chembili Chenchugadu...	5th January ...	0	2	0	
10	Yedupali Vengana ...	16th and 17th January ...	0	4	0	
		Total...	17	13	7	
	* Rates changed. 9th to 10th April case returned from Court.					

4. On looking through this Memorandum you will observe that the 21st and 22nd witnesses received batta from the 5th and 6th January, respectively, to the 15th, and, so far as I can ascertain from the Sub-Magistrate, during this time they never came near his Court at all. They were apparently during this time in the hands of Police. Again, the same might be affirmed of those who received batta from the Police from the 27th February to the 5th March—18th, 19th, 20th, 27th, 28th, and 29th witnesses, of the women already referred to, the 21st and 22nd witnesses, who received batta at one rate from the 16th to the 27th February, and at a lower rate from the 28th February to the 6th March; and to the grave misconceptions that such a course must give rise to, it is needless for me to refer.

5. Much of the delay in this case in February and March was owing, I am aware, to its not being advisable to send so large a body of prisoners as had been arrested to villages where there was no proper lock-up. But this, it appears to me, in no ways affected the witnesses. The course

to be pursued in their respect is distinctly laid down in Chapter IX of the Procedure Code; and had the provisions of Section 158 been complied with, the difficulties that attended the appearance before the Magistrate of the accused would not have been felt as regards the witnesses, and, coming before the Magistrate in due course, their batta could have been paid in the manner contemplated by the law.

6. It seems probable that the payments made by the Police from the 5th and 6th to the 15th January, already referred to, have had much to do in creating the difficulties under consideration. The witnesses looked to the Police instead of the Taluq Magistrate for their batta. But, be this as it may, I cannot, I regret, consider that you were justified in using your discretion in making the payments in question, or that I should be justified, without special sanction, in admitting that such payments "might be recovered from the Magistrate."

7. The Sub-Magistrate will be instructed accordingly; and, as regards the point referred to in paragraph 6 of your letter under acknowledgment, I have the honor to request that you will be so good as to bring to my notice the next instance that occurs to your knowledge of a Sub Magistrate hesitating or refusing to pay batta for the days witnesses are in attendance at his Court.

No. 71. ORDER THEREON, 9th March 1866, No. 363.

The Magistrate is certainly responsible for all subsistence money paid to witnesses, and, under the circumstances stated in the 2nd paragraph of Mr. Dykes' letter to the Superintendent of Police, dated 26th July 1865, the latter should have acted in communication with the Magistrate.

2. The payment already sanctioned, viz., Rupees 17-13-7, should be disbursed.

(True Extract).

Chief Secretary.

To the Magistrate of Nellore.
" Inspector General of Police.
" Accountant General.

Exd. J. H. Burns.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Magistrate of Nellore (Rec'd 30th Jany 1866 No. 31)

Rd 9th March 1866 No. 363.

The Magistrate is certainly responsible for all subsistence money paid to witnesses; and, under the circumstances stated in the 2d para of Mr Dykes letter to the Superintendent of Police dated 26th July 1865, the latter should have acted in communication with the Magistrate.

The payment already sanctioned Viz Rs 17. 13. 7 should be disbursed.

Copy of letter
Inspector General of
Accountants
dispd 14/3/66

Judicial 1866. Department.

No. 363.

PROCEEDINGS OF GOVERNMENT.

~~Jud. 558.~~

Dated 9th March 1866.

Press No. 2755, G. M.—14-11-65—500.

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