

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	421	Press ~~Mis.~~
Dated	21-3-1918	

175-561

Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,
21st March 1866.

No. 175. Read the following letter from the Magistrate of Nellore, to the Chief Secretary to Government, Fort Saint George; dated Viruru, Atmakuru Taluq, 7th March 1866, No. 9.

In continuation of my letter, No. 3, dated 30th January last, as regards batta

- * 1. Letter, No. 62, dated 30th January 1866, from Superintendent of Police, to Magistrate.
2. Letter, No. 9, dated 21st February 1866, from Acting Joint Magistrate, to Magistrate.

to witnesses and the Police, I have the honor to submit, for the consideration of Government, correspondence* between

the Superintendent of Police and Joint Magistrate, on the same subject.

2. Last January, the Superintendent of Police informed† me that the Sub-Magistrate of Ongole had refused to give

† No. 62, dated 30th January 1866.

batta to certain witnesses in a torch robbery which had been committed in that

Taluq, on the night of the 18th January, although *special* application was made to the Sub-Magistrate by the Head Constable of Ongole and the Police Inspector of the Taluq. He added that some of the witnesses were very poor, and that the Inspector got food for them, and further wrote that great difficulty was being experienced in getting information in the very grave case referred to, from persons who he believed could give information, and he attributed this holding back on the part of the people, in a considerable measure, to the existing practice of the Sub-Magistrate to decline to give batta to witnesses generally, and to his special refusal in the present case.

3. I, thereon, asked the Acting Joint Magistrate, under whom the Sub-Magistrate of Ongole is placed, to call on the Sub-Magistrate to explain, in detail, the grounds of his refusal, and inform me of the result, with his own opinion of his Subordinate's conduct; and, in his reply of the 21st ultimo, the Acting Joint Magistrate states that on the Police Inspector applying for batta, he, the Sub-Magistrate, told the Inspector that the witnesses themselves should make the application, as it appeared to him they were not in such indigent circumstances as to bring them within the scope of the Government Order of 30th September 1864, above quoted. Mr. St. Clair, while upholding the conduct of the Sub-Magistrate, further writes, that, "in the case referred to, no less than 37 witnesses have been brought forward by the Police, and, even in cases of less importance, it is clear that, if the Sub-Magistrate were to grant batta indiscriminately to all witnesses on behalf of whom it is applied for by the Police, the rule might be greatly abused;" and adds, "I do not see why, on any occasion, application should be made by the Police, as their connection with the witnesses should cease on the latter executing recognizances to appear before the Sub-Magistrate. As soon as the witnesses so appear, they are under the orders of the Sub-Magistrate, and should look to him alone for subsistence."

4. The question is one of importance. In its present unsettled state, it leads to discussions that had better be avoided, and I beg the favor of early orders.

From the Superintendent of Police, Nellore, to the Magistrate of Nellore; dated Camp Nundipaud, 30th January 1866, No. 62.

In your letter, No. 246, dated 26th July 1865, paragraph 7, you requested me to bring to your notice any instance that occurred of a Subordinate Magistrate refusing to give batta to witnesses during the preliminary inquiry before him into any case triable by the Court of Session, and I have the honor, accordingly, to inform you that the Taluq Magistrate of Ongole refused, although special application was made by the Head Constable of Ongole in writing, and Inspector Mr. Snugg, in person, to grant batta to the witnesses, in the case of torch robbery which occurred in Nundipaud on the night of the 18th January.

*Proceedings of the Madras Government, Judicial Department,
21st March 1866.*

2. The witnesses were present at his Court in Yendloor, so far as I can learn, on the 23rd, 24th, 25th, 26th, and 27th January. Some of these witnesses were very poor, and the Inspector got food for them in the village of Yendloor.

3. Great difficulty is being experienced in getting information as to this very grave case, and that, too, from persons who, it is believed, can give information, and this I attribute, in considerable part, to the hitherto existing practice of Sub-Magistrates declining to give batta to witnesses during preliminary inquiries, and to the special refusal to do so in the present case.

4. I consider it my duty to bring to your special notice that the Taluk Magistrate of Ongole has not as yet visited the scene of this grave crime. On this point I shall address the Joint Magistrate.

From the Acting Joint Magistrate of Nellore, to the Magistrate of Nellore; dated Mooppalla, 21st February 1866, No. 9.

* No. 62, dated 30th January 1866.

I have the honor to return the original letter* from the Superintendent of Police, which was forwarded with your letter, No. 5, dated 8th instant.

2. The Sub-Magistrate of Ongole has reported that no application for batta was made to him in writing by the Head Constable, and that when the Inspector applied verbally, he informed him that the witnesses themselves should make the application, as it appeared to him that they were not in such indigent circumstances as to bring their case within the rules laid down in Proceedings of Government, 30th September 1864, published with your Circular of the 7th November of the same year.

3. The Sub-Magistrate also states that he was under the impression that the rule for granting batta applied only to witnesses when actually travelling to Court. The Proceedings of Government, however, have no doubt that all indigent witnesses attending a Criminal Court are entitled to batta for their subsistence. But the Sub-Magistrate is, I think, right in requiring that the witnesses themselves should apply for batta if they require it, and in exercising his discretion as to whom it should be granted to. In the case referred to, no less than 37 witnesses have been brought forward by the Police, and, even in cases of less importance, it is clear that, if the Sub-Magistrate were to grant batta indiscriminately to all witnesses on behalf of whom it is applied for by the Police, the rule might be greatly abused. I do not see why, on any occasion, the application should be made by the Police, as their connection with the witnesses should cease on the latter executing recognizances to appear before the Sub-Magistrate. As soon as the witnesses so appear, they are under the orders of the Sub-Magistrate, and should look to him alone for subsistence.

No. 176. ORDER THEREON, 21st March 1866, No. 421.

The Government have already declared that the Magistrate is responsible for all subsistence money paid to witnesses, and it is for him, therefore, to use his discretion in making the payments. As

stated by the Joint Magistrate, the Police should have nothing to do with the witnesses after they are bound over to appear before the Magistracy.

(True Extract).

Chief Secretary.

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

Exd. J. H. Burns.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

*Read the following
letter from the Magis-
trate of Nellore.*

*(Recd. letter 7th March 1866
No 9)*

Order thereon 21st March 1866 No 421.

*Proff'd March 1866
No 363.*

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Letter to W. H. H. H.

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Judicial 1866. Department.

No. 127

PROCEEDINGS OF GOVERNMENT,

Dated 21 March 1866.

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