

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	458	Press Mis.
Dated	27. 3. 19	1866

Not to be folded or roughly handled*12/9/30*

2

Proceedings of the Madras Government, Judicial Department,
27th March 1866.

Read again the Proceedings of Government in the Public Works Department, dated 6th December 1865, No. 3700.

Read also the following letter from the Inspector General of Madras Police, to the Chief Secretary to Government, Fort Saint George; dated Madras, 3rd March 1866, No. 364.

In reply to G. O., No. 16, dated 5th January 1866, I have the honor to remark, with reference to paragraphs 5 and 6 of the Rules for the investigation of Railway accidents, that the preliminary investigation by Police Officers (without previous order by a Magistrate) under Chapter IX of the Code of Criminal Procedure is confined to the class of cases shewn in the Schedule thereto appended. The procedure laid down by the Code was evidently before the drafters of the Rules; but I have the same doubt whether it applies to such preliminary inquiry as this.

2. I think it will be necessary to have an express order by the Magistrate, under Section 133, to enable the Superintendent of Police to investigate such a case, otherwise I doubt whether he could summon individuals, or bind over parties to appear, as authorized by the Code.

3. The Superintendent of Police, or his Assistant, visits the scene of accidents in all possible cases, and acts in aid of the Magistracy.

ORDER THEREON, 27th March 1866, No. 450.

Ordered that the foregoing letter from the Inspector General of Police be communicated to the Public Works Department, with reference to the Proceedings in that Department, dated the 6th December last, No. 3700.

2. The following remarks suggest themselves on the proposed Rules for the investigation of Railway accidents:—

RULE 2.—The Reports of special, or serious, accidents, should, the Governor in Council thinks, be made to the Public Works Department of the Secretariat, from which they would, if necessary, be passed on to the Judicial Department.

RULE 4.—This Rule requires the Consulting Engineer to watch a case committed to a Court of Session pending final trial. It would be impossible for him to do so, as a rule, in every case. Moreover, it is the province of the Government Prosecutor to watch the case, and of the Police to obtain all available evidence.

RULES 5 & 6.—For the words “the Magistrate,” the words “the Magistrate of the District” should be substituted: the Chief Executive Officer of the District being obviously the authority referred to in the Rules. “Magistrate” would embrace all persons exercising all or any of the powers of a Magistrate according to Section 15 of the Criminal Procedure Code.

RULE 9.—As regards this Presidency, the words “Secretary to Government in the Public Works Department” should be substituted for the word “Commissioner.”

RULE 10.—“Any Officer” should be substituted for “all Officers” in this Rule and also in Rule 6.

3. Referring to the remarks of the Inspector General of Police on paragraphs 5 and 6 of the Rules, in his letter above recorded, the Governor in Council observes that in all cases likely to become the subject of investigation in

Proceedings of the Madras Government, Judicial Department,
27th March 1866.

connection with Railway accidents, Police Officers have the power, under the Code of Criminal Procedure, to make arrests without Warrants, and consequently to hold preliminary inquiries without the express order of the Magistrate.

(True Extract).

Chief Secretary.

To the Public Works Department.
Inspector General of Police.

Exd. R. H. Lee.

N^o 498/66
for
J. S. Prof. Saker.

As to the Rules of the Sub-Ord.
have sent down here for consideration.
I occur to me -

1. - That reports of special accidents
accidents should be made, not to the
Jud. Dept. of the Secy. Office, but to the
Railway Department, from which if necessary,
they would be passed on to the Jud.
Dept.
2. - It would be utterly impossible under
the wide rule under the Consulting Eng^r's
contract, that as a rule he should watch
every case ^{final} ~~pending~~ ^{trial} before a Session
Court - This rule may do for Bengal.
how would it apply here of two trials
even in progress at the same time,
say one at Calcutta ^{at the same time} and another where
the line is so far open ^{at the same time} at ~~Calcutta~~ ^{at the same time} or
even now, at Juddah? Besides which,
can you the watching of such a case
by an Engineer Officer? It is enough that
the Govt. Secy. does his duty that the
Saker Dept. do theirs. I would agree
to the rule.
3. - Here the Saker Secy. Sup^r is to report
to the Magistrate - What follows shows that
the Magistrate of the Dist^{ct} is intended. So
far as Madras is concerned, it should be so
supplied. no other than the Magistrate
of the Dist^{ct} in the Madras Presid^{cy} has
an assistant.
The powers of the Magistrate of the Dist^{ct}
may in Bengal be different from what they
are here - see Act of 1861 - any how ~~used~~
the word "deputy" is ^{used} ~~unfamiliar~~. Such
a Magistrate might "direct" a Secy. of
Saker to act in such a case as is here
contemplated - He would do so under

Section 133 C.C.P. but by that Section,
and that Section alone subverts such
an order, any Magistrate can avail
himself of the aid of the Police.
Now, then, is authority found for
restricting this power by a "Rule" to the
"Magistrate"? - This would be
a limitation causes absurdities
to be committed.

4 - For summoning "all officers of
the R. & D. Co." I would say "any officer".

The provision made for binding
"all parties to appear" is surplusage
redundant unnecessary & the definition
of the word "subpoena" in the C.C.P.
which comprises every case preliminary
to trial. If the C.C.P. however says
not, then the power "to bind to appear"
no more "Rule" will be effectual
in that respect.

6 - For "the Magistrate" it should be
"the Magistrate of the District" if the
previous obvious intention be pre-
served.

I don't see why any reference should
be made to the power of "the Magistrate of
the District" or "a Magistrate" in appointing
any other place for hearing a case.

Our Magistrates may come their
Courts when they please as to them
may seem best under the terms of
the case to be tried.

as to the transfer of the case "with
the sanction of the High Court" to another
jurisdiction. The law now in force
gives this power. S 35 C.C.P. but if
it did not, then "Rule" would be legally the operation
without a new act or an amendment of the statute.

See Sec.
C.C.P.

The words "Such other Magistrate" are
more unpleasing -

7

7 - The Magistrate is here declared
competent to do what he has under
the C.C.P. full power now to do!!!
If the (counsel) says he wanted as
a w/o, a citation w/o. if he for his
attendance & he must attend.

8

8 - In this Proceeding we have no
"concurrent" but referred to. The
Court to be would be the recipient
of the info. and try it before the Court.

9

9 - Here again the attendance of
"all officers" the "should be of
"any officer" & then the.

10 -

10 - Why repeat in a rule what is
enjoined by a law?

11 - No railway officer should be
deputed by a Railway Officer to
appear before a Magistrate unless under
a requisition to attend from the latter
authorities or otherwise.

12 - I don't see what business the
Railway people can have in the
Courtroom - the Rule in fact
makes them not to be there -
travelling on the R. Dept. to do that -
it would be an illegal arrest. They may
not complain, but with arresting
making one to the Police they
can have no case.

In the Court
XXVII of the
Proceedings
Act 1854
1854

22.3.66

W.D.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read again the Res.
of Govt in the P.W.D of 6th
Decr 1865 No. 3700.

Read also the following
letter from the Inspector Genl
of Police.
(Here enter 3 March 1866 No. 367)

Order thereon 27 March 1866 No. 450

Ordered that the
foregoing letter from the
Inspector General of Police
be communicated to the
Public Works Department,
with reference to the
Proceedings in that Dept.
dated the 6th December
last No 3700.

2 The following remarks
suggest themselves on the
proposed Rules for the
investigation of Railway
Accidents.

Rule

The reports of Special Rule 2
or serious accidents should
the Governor in Council
thinks be made to the
Public Works Department
of the Secretariat, from
which they would, if
necessary be passed on
to the Judicial Department.

This Rule requires Rule 4
the Consulting Engineer
to watch a case committed
to the ^{in light of} Police, pending final
trial. It would be im-
possible for him to do so
as a rule in every case.
Moreover it is the province
of the Government Prosecutor
to watch the case, and
of the Police to obtain all
available evidence.

For the words "the
Magistrate" the words
"the Magistrate of the
District" should be
substituted. The Chief
Executive Officer of the
District being obviously
the

Who is the Govt Prosecutor
in the proposed? The Govt
Prosecutor in many cases
is the local Sub. J. P. or
conducts the prosecution
a bit for all cases
involving a special power
of the District Magistrate
who has no power
to conduct the prosecution

the authority referred to
in the Rules. "Magistrate"
would embrace all
persons exercising all
or any of the powers
of a Magistrate accord-
ing to Section 15 of the
Criminal Procedure Code

Rule 9

As regards this
Presidency ^{the word} "the Secretary
to Government in the
Public Works Department"
should be substituted
for the word "Commissioner".

Rule 10

"Any officer" should
be substituted for "all
officer" in this Rule and
also in Rule 6.

3 Referring to the
remarks of the Inspector
General of Police on
paras 5 to 6 of the
Rules, in his letter
above

above recorded, the Governor
in Council observes
that in all cases likely
to become the subject
of investigation in con-
nection with Railway
accidents, Police officers
have the power under the
Code of Criminal Pro-
cedure, to make arrests
without warrants and
consequently to hold
preliminary enquiries
without the express
order of the Magistrate.

W
LH

46-500-

To the P.W. Dept^y }
Secy of Police } Des^d 3 April

*Removal of
Judicial
No. 450*

Judicial 1866. Department.

No. 450.

PROCEEDINGS OF GOVERNMENT.

833/07

Dated 27th March 1866.

Press No. 2755, G. M.—1411-65—500.

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