

MADRAS RECORD OFFICE.

Government of Madras.

Principal DEPARTMENT.

G.O. No.	487	Press
		~~Mis.~~
Dated	27-3-19	1866

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Not to be folded or roughly handled

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

No. 225. Read the following letter from the Magistrate of Nellore, to the Chief Secretary to Government, Fort Saint George; dated Someshwaram, 25th September 1865, No. 29.

I have the honor to submit, for the consideration of Government, the legality of the warrant being addressed in this Presidency to the Magistrate of the District, when sentence of death is passed under Section 380 of the Code of Criminal Procedure, and the Session Court issues a warrant in pursuance thereof, under Section 383 of the said Code.

2. Section 383 of the Code of Criminal Procedure prescribes that the warrant shall be issued "to the Magistrate or other Officer in charge of the Jail in which the prisoner is confined;" and, in accordance to these clear and distinct provisions of the law, it seems to me that death warrants should formerly have been issued by Judges to themselves as Officers in charge of the Jail, and now must be issued to the Zillah Surgeons, or other Officer placed in such charge by the Order of Government in the Judicial Department, No. 1279, of the 8th September 1865.

3. The Government will observe that the course of procedure to be pursued by the Session Court as regards execution of sentence in other cases is provided for by Section 384 of the Code, and, from the marginal note to this Section, it might be inferred that the view of the law taken in the preceding paragraphs is wrong. The marginal note states that in cases *tried* by the Court of Sessions, the warrant shall be directed to the District Magistrate. But this is apparently an oversight in abstracting the provisions of the Section. The Section itself refers distinctly to the Magistrate of the District, or "such Officer as aforesaid," referring by the latter clause to the Officer in charge of the Jail alluded to in the preceding Section. And that the Code contemplates the Magistrate of the District being the Officer in charge of the Jail, and, in the event of this not being the case, intends that the Officer addressed should be the Officer who may be in charge of the Jail, is, I think, clear from the provisions of the following Section. Under 385, the Officer addressed is to return the warrant when the sentence has been fully executed, with an endorsement to that effect; and were he not the Officer in charge of the Jail, it would be as impossible for him to certify on this point, as it is clear that no provision has been made to meet so palpable a contingency.

4. A further argument in favor of the views brought forward may be adduced from the fact that no provision is made for a return as to the execution of sentence of imprisonment, when passed by any other Court than the Court of Sessions or High Court; the warrant being addressed in other cases direct to the Jailer, instead of to the Officer referred to in Section 385, and the omissions to provide for a certificate to the execution of the sentence in the latter case, and in either case to the receipt of the prisoner in Jail in the first instance, being, in my opinion, defects that I would respectfully submit might be rectified with advantage.

5. And, finally, save on the supposition that the Officer in charge of the Jail was the Officer meant, no good cause can apparently be shown for the phraseology used. If the Magistrate of the District were the Officer intended, why should the ambiguity have been incurred of coupling him with the Officer in charge of the Jail? It is not in accordance with the usual clearness and perspicuity of the Procedure Code.

6. It is true that the provisions quoted are in opposition to Section 99 of the Code, which enacts that the provisions contained in Chapter V shall be applicable to every warrant issued under this Act. But this is apparently an inconsistency that has as yet escaped observation, and might have been easily met by the addition of the words "save when otherwise specially provided." And Chapter V under this Section, I may here observe, further provides the course of procedure when a fine is imposed by the Court of Sessions or High Court. In this matter no distinction is made to the Court by which the sentence is passed. It is competent to the Court which sentences the offender to issue a *warrant*, under Section 61, for the levy of the fine. And this warrant, under Chapter V, is to be addressed to (Section 77), and must be executed by, a Police Officer according to the provision of Chapter V, if a Police Officer be available, though it might be addressed apparently to the Magistrate of another District, under Section 86, should the property liable not be within the jurisdiction of the Magistrate of the District in which the Court is situated; the Court in this instance pursuing the course prescribed for the Magistrate when it is necessary to arrest a person out of his jurisdiction, and in either instance using Police and Magistracy, it will be observed, to perform duties that the Officer in charge of the Jail would have a difficulty in undertaking were he not a Magistrate.

7. There also seems reason to doubt the legality of sentences for whipping being forwarded to the Magistracy for execution. Copy of the sentence in cases tried by the Session Court is to be sent, under Section 384, to the Magistrate of the District or other Officer in charge of the Jail, and provision being made for the execution of the sentence as regards fine or imprisonment under Sections 61 and 386. As regards whipping it seems to me that Section 444 of the Procedure Code must be held applicable, and whipping not being specially provided for, the procedure prescribed by the Act as regards warrants generally must be followed as regards warrants issued by the Court of Sessions for the execution of a sentence of whipping. The warrant must be directed to a Police Officer—Sections 77 and 99, Procedure Code; if no Police Officer be immediately available, it may be addressed to any other person—any other person having simply the powers of "any other person" as prescribed by Section 78—and execution in any case being subject to such orders as may be thought advisable in respect to the provisions of Section 10 of Act VI of 1864.

8. And, in conclusion, I would respectfully submit for the consideration of Government, whether it is not advisable that the "general rules" issued under Section 443 of the Procedure Code should be published in the *Port Saint George Gazette*, as prescribed by the said Section, and that the rules framed by the Courts hitherto under this Section, not having as yet been published, should now be gathered together and published.

No. 226.

ORDER THEREON, 27th March 1866, No. 457.

The Magistrate of Nellore questions the legality of warrants for executing sentences of death being addressed to the Magistrate of the District, and points out that, under Section 384 of the Code of Criminal Procedure, the Officer in charge of the Jail in which the prisoner is confined is the party to whom the warrant should be directed.

2. Mr. Dykes is referred to the Proceedings of the High Court, dated 24th November last, from which it will be seen that the warrant is to be addressed to the Officer in charge of the Jail, whether Magistrate or not, and not to the Magistrate, unless he is such Officer. It is true that the Government, in their Order of the 13th October 1862, No. 1682, directed Magistrates of Districts to arrange for executions being superintended by one of their European Assistants, but that order was passed at a time when Session Judges were in charge of Jails, and it was deemed proper to relieve them of the duty of being present at executions. These reasons no longer apply, as each Zillah Jail is now in charge of a separate European Officer.

3. In paragraph 4, Mr. Dykes refers to some omissions in the Criminal Procedure Code, as defects which he thinks might be rectified with advantage. He states that, in the case of sentences passed by any other Court than the Court of Sessions or the High Court, the Code does not provide for the warrants to Jailers being returned after execution, with endorsements that the sentences have been carried out, and that, further, in no case is the Jailer required to certify the admission of prisoners into the Jail.

4. The Governor in Council observes that the matter here referred to is one which does not require legislation. It is a purely executive matter, and it is quite within the competency of the Local Government to require each Officer in charge of a Jail to grant an acknowledgment for the reception into the Jail under his charge of every prisoner sent to it, whether under a sentence passed by a Session Judge or by an Officer of the Magistracy. This can be done by furnishing the Judge or Magistrate who passed the sentence with an extract in each case from the register of admissions. The Inspector General of Jails will instruct each Jail Superintendent to adopt this course in future.

5. Mr. Dykes further doubts the legality of sentences for whipping being forwarded to the Magistracy for execution, and thinks that in cases tried by the Session Judge the warrant should issue to a *Police Officer*, because the mode of executing sentences of whipping not being specially provided for in the Criminal Procedure Code, the procedure prescribed by the Act as regards warrants generally must be followed as respects those affecting sentences for the infliction of corporal punishment also; and this procedure, he is of opinion, is that prescribed in Sections 77 and 99.

6. The Governor in Council observes that Section 384 of the Code of Criminal Procedure prescribes that all warrants for executing the sentences of Session Courts are to be directed to the Officer in charge of the Jail, and he is of opinion that warrants for executing sentences of which whipping forms a part must, when passed by the Session Courts, issue to Jail Superintendents as the Officers in charge of the Jails, the corporal punishment being inflicted, of course, in the presence of an Officer authorized to exercise any of the powers of a Magistrate under Section 10 of the Whipping Act.

7. Mr. Dykes, lastly, suggests whether it is not advisable that the "general rules" issued under Section 443 of the Criminal Procedure Code should be published in the *Port Saint George Gazette*, as prescribed by that Section, and he recommends that the rules framed by the High Court hitherto not having as yet been so published, they should be collected and inserted in the Gazette.

clear and distinct provisions of the law, it seems
to me that death warrants should formerly
have been issued by Judges to themselves
as Officers in charge of the Jail, and now
must be issued to the Jailah Surgeons or other
Officers placed in such charge by the order
of Government in the Judicial Department
S. 1279 of the 8th September 1865.

The Government will observe that
the course of procedure to be pursued by the
Sessions Court as regards execution of sentences
in other cases is provided for by Section 384

of the Code, and from the marginal note a marginal note
can't affect the
construction of the
Section to which it is
appended to this Section it might be inferred, that

the view of the law taken in the preceding
paragraphs is wrong. The marginal note
states that in cases tried by the Court
of Sessions the warrant shall be directed
to the District Magistrate. But this is

We have to look
to the section apparently an oversight in abstracting the
itself and not
to the many provisions of the Section. The Section itself
- had abstracted
entirely
refers distinctly to the Magistrate of the District
or such officer as aforesaid, referring by
the latter clause to the Officer in charge of the
Jail alluded to in the preceding Section. And
that the Code contemplates the Magistrate of
the District being the Officer in charge of the
Jail, and in the event of this not being the
case intends that the Officer addressed should
be the Officer who may be in charge of the Jail
is I think clear from the provisions of the
following Section. Under 385 the Officer addressed
is to return the warrant when the sentence
has been fully executed with an endorsement
to that effect, and were he not the Officer
in charge of the Jail, it would be as impossible
for him to certify on this point, as it is clear

No doubt

so palpable a contingency.

4. A further argument in favour of the views brought forward may be adduced from the fact that no provision is made for a return as to the execution of sentence of imprisonment, when passed by any other Court than the Court of Sessions or High Court, the warrant being addressed in other cases direct to the Jailor, instead of to the Officer referred to in Section 385, & the omission to provide for a certificate to the execution of the sentence in the latter case and in either case to the receipt of the prisoner in Jail in the first instance being in my opinion defects that I would respectfully submit might be rectified with advantage.

5. And finally come on the supposition that the Officer in charge of the Jail was the

be shown for the phraseology used. - If the Magistrate of the District were the Officer intended, why should the ambiguity have been incurred of coupling him with the Officer in charge of the Jail. It is not in accordance with the usual clearness & perspicuity of the Procedure Code.

6. It is true that the provisions quoted are in opposition to Section 99 of the Code which enacts that the provisions contained in Chapter V shall be applicable to every warrant issued under this Act. But this is apparently an inconsistency that has not yet escaped observation, & might have been easily met by the addition of the words *save* when otherwise specially provided. And Chapter V, under this section, I may have observed, further provides the course of procedure when a fine is imposed by the Court of Sessions or High Court. In this matter

not to be taken
the present question
concerning the
above and below

no distinction is made to the Court by which
the sentence is passed. It is competent
to the Court which sentences the offenders
to issue a warrant under Section 61 for the
levy of the fine. ~~And this warrant under~~
Chapter V is to be addressed to, (Section 77), &
must be executed by a Police Officer according
to the provision of Chapter V, if a Police Officer
be available, though it might be addressed
apparently to the Magistrate of another District,
under Section 86, should the property liable,
not be within the jurisdiction of the Magistrate
of the District in which the Court is situated,
the Court in this instance pursuing the course
prescribed for the Magistrate, when it is
necessary to arrest a person out of his
jurisdiction, and in either instance using
Police & Magistracy, it will be observed,
to perform duties that the Officer in charge

6 6
Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter
from the Magistrate of Nellore
(Here enter 25th September/66 A. 29)

Order thereon 27 March/66 H. 157.

The Magistrate of
Nellore questions the legality
of warrants for executing sentences
of death being addressed to the
Magistrate of the District, and
points out that, under Section
384 of the Code of Criminal
Procedure, the Officer in charge
of the Jail in which the Prisoner
is confined is the party to whom
the warrant should be directed.

2
Mr. Dykes is referred
to the Proceedings of the High
Court dated 25th November
last, from which it will be
seen

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seen that the warrant is to be
addressed to the Officer in
charge of the Jail, whether
Magistrate or not, and not to
the Magistrate, unless he is
such officer. It is true that
the Government in their order
of the 13th October 1862 A. 1682,
directed Magistrates of Districts
to arrange for executions being
superintended by one of their
European Assistants, but that
order was passed at a time
when Session Judges were in
charge of Jails and it was
deemed proper to relieve them
of the duty of being present
at executions. These reasons
no longer apply, as each Zillah
Jail is now in charge of a
separate European Officer.

3 In para 14, Mr. Dykes
refers to some omissions in
the Criminal Procedure Code
as defects which he thinks
might be rectified with advantage.
He states that in the case of
sentences passed by any other
Court

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Court than the Court of Sessions
or the High Court, the Code
does not provide for the war-
rants to Jailers being returned
after execution with endorse-
ments that the sentences have
been carried out, and that further,
in no case is the Jailer required
to certify the admission of
Prisoners into the Jail.

4 The Governor in Council
observes that the matter here
referred to is one which does not
require legislation. It is a purely
executive matter and it is quite
within the competency of the
local Government to require
each Officer in charge of a Jail
to grant an acknowledgment
for the reception into the Jail
under his charge of every prisoner
sent to it, whether under a
sentence passed by a Sessions
Judge or by an Officer of
the Magistracy. This can be
done by furnishing the Judge
or Magistrate who passed the
sentence with an extract in
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each case from the register of admissions. The Inspector General of Jails will instruct each Jail Superintendent to adopt this course in future.

5 Mr. Dykes further doubts the legality of sentences for whipping being forwarded to the Magistracy for execution, and thinks that in cases tried by the Sessions Judge the warrant should issue to a Police Officer, because the mode of executing sentences of whipping not being specially provided for in the C.P. Code, the procedure prescribed by the Act as regards warrants generally must be followed as respects those affecting sentences for the infliction of corporal punishment also; and this procedure, he is of opinion, is that prescribed in sections 77 and 99.

6 The Governor in Council observes that section 384 of the Code of Criminal Procedure prescribes that all warrants for

for executing the sentences of Sessions Courts are to be directed to the officers in charge of the Jail and he is of opinion that warrants for executing sentences of which whipping forms a part must when passed by the Sessions Courts issue to Jail Superintendents as the officers in charge of the Jails, the corporal punishment being inflicted of course in the presence of an officer authorized to exercise any of the powers of a Magistrate under section 4 of the Whipping Act.

7 Mr. Dykes lastly suggests whether it is not advisable that the "General rules" issued under section 443 of the Criminal Procedure Code should be published in the Port St. George's Gazette as prescribed by that section, and he recommends that the Rules framed by the High Court hitherto not having as yet been so published, they should be collected and inserted in the Gazette.

To the Magistrate of all Districts
 " Res: Judge of ——— do
 " Inspector Genl. of Jails
 " To the Judges of the High Courts
 " Inspector Genl. of Police.

Luoda at 1860. Department.

No. 457

PROCEEDINGS OF GOVERNMENT.

Dated 27th March 1861.

Press No. 2755, G. M.—1411.65—500.

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

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I have the honor to submit, for the consideration of Government, the legality of the warrant being addressed in this Presidency to the Magistrate of the District, when sentence of death is passed under Section 380 of the Code of Criminal Procedure, and the Session Court issues a warrant in pursuance thereof, under Section 383 of the said Code.

2. Section 383 of the Code of Criminal Procedure prescribes that the warrant shall be issued "to the Magistrate or other Officer in charge of the Jail in which the prisoner is confined;" and, in accordance to these clear and distinct provisions of the law, it seems to me that death warrants should formerly have been issued by Judges to themselves as Officers in charge of the Jail, and now must be issued to the Zillah Surgeons, or other Officer placed in such charge by the Order of Government in the Judicial Department, No. 1279, of the 8th September 1865.

3. The Government will observe that the course of procedure to be pursued by the Session Court as regards execution of sentence in other cases is provided for by Section 384 of the Code, and, from the marginal note to this Section, it might be inferred that the view of the law taken in the preceding paragraphs is wrong. The marginal note states that in cases *tried* by the Court of Sessions, the warrant shall be directed to the District Magistrate. But this is apparently an oversight in abstracting the provisions of the Section. The Section itself refers distinctly to the Magistrate of the District, or "such Officer as aforesaid," referring by the latter clause to the Officer in charge of the Jail alluded to in the preceding Section. And that the Code contemplates the Magistrate of the District being the Officer in charge of the Jail, and, in the event of this not being the case, intends that the Officer addressed should be the Officer who may be in charge of the Jail, is, I think, clear from the provisions of the following Section. Under 385, the Officer addressed is to return the warrant when the sentence has been fully executed, with an endorsement to that effect; and were he not the Officer in charge of the Jail, it would be as impossible for him to certify on this point, as it is clear that no provision has been made to meet so palpable a contingency.

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8. And, in conclusion, I would respectfully submit for the consideration of Government, whether it is not advisable that the "general rules" issued under Section 443 of the Procedure Code should be published in the *Fort Saint George Gazette*, as prescribed by the said Section, and that the rules framed by the Courts hitherto under this Section, not having as yet been published, should now be gathered together and published.

No. 226.

ORDER THEREON, 27th March 1866, No. 457.

The Magistrate of Nellore questions the legality of warrants for executing sentences of death being addressed to the Magistrate of the District, and points out that, under Section 384 of the Code of Criminal Procedure, the Officer in charge of the Jail in which the prisoner is confined is the party to whom the warrant should be directed.

2. Mr. Dykes is referred to the Proceedings of the High Court, dated 24th November last, from which it will be seen that the warrant is to be addressed to the Officer in charge of the Jail, whether Magistrate or not, and not to the Magistrate, unless he is such Officer. It is true that the Government, in their Order of the 13th October 1862, No. 1682, directed Magistrates of Districts to arrange for executions being superintended by one of their European Assistants, but that order was passed at a time when Session Judges were in charge of Jails, and it was deemed proper to relieve them of the duty of being present at executions. These reasons no longer apply, as each Zillah Jail is now in charge of a separate European Officer.

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7. Mr. Dykes, lastly, suggests whether it is not advisable that the "general rules" issued under Section 443 of the Criminal Procedure Code should be published in the *Fort Saint George Gazette*, as prescribed by that Section, and he recommends that the rules framed by the High Court hitherto not having as yet been so published, they should be collected and inserted in the Gazette.

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

8. The 443rd Section requires that the rules framed under it shall be published in the *Official Gazette*. It is observed that the rules issued in April 1862, were accordingly published in the *Fort Saint George Gazette*; but as this practice does not appear to have been continued, the Governor in Council resolves to request the Honorable the Judges of the High Court to forward, for publication, all such rules and forms as may have been issued by them under Section 443, and not yet published in the *Fort Saint George Gazette*.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

No. 226 A. To the Honorable the Chief Justice of the High Court of Judicature, Madras, dated Fort Saint George, 27th March 1866, No. 458.

With reference to the last paragraph of the Proceedings of Government, dated the 27th instant, I am directed by the Governor in Council to request that you will be so good as to cause all general rules framed by the High Court under the provisions of Section 443 of the Code of Criminal Procedure, and not already published in the *Fort Saint George Gazette*, to be collected and forwarded to the Government Press, for publication, as required by the above Section, and that the same course may be observed hereafter.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. J. H. Burns.

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with Mr. 20457.

Judicial Department

No. 458.

To
The Honorable Sir Colley Harman Scotland, Esq.,
Chief Justice of the High Court of Judicature
Madras.

Sir,

With reference to the last para of the Proceedings of Government dated the instant, I am directed by the Governor in Council to request that you will be so good as to cause all general rules framed by the High Court under the provisions of Section 443 of the Code of Criminal Procedure and not already published in the *Fort St. George Gazette*, to be collected and forwarded to the Government Press for publication as required by the above section, and that the same course may be observed hereafter.

Fort St. George
27 March 1866

8/11