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11. Secretariat Personal Register of

Serial number. (1)	Current number. (2)	Date of receipt by clerk. (3)	Title. (4)	From whom (5)	Outside number and date. (6)	Submitted to Officer. (7)

M.R.O. 1—89,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 799 Press ~~Mis.~~

238-241

Dated 23.5. ~~18~~ 1866

6/7

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 23rd May 1866.

Read the following papers :—

No. 238. From the Magistrate of Malabar, to the Chief Secretary to Government, Fort Saint George; dated Calicut, 4th January 1866, No. 2.

I have the honor to request you will be good enough to obtain the opinion of the Advocate General on the following point, the High Court having declined* to express any opinion, unless in a case judicially before them.

* Proceedings High Court, 26th October 1865.

2. In an appeal preferred to the Acting Joint Magistrate against a decision of a Sub-Magistrate in a case of affray by several persons fined, the Joint Magistrate not only modified the original sentence and reduced the fines imposed by the Sub-Magistrate, as regarded the actual appellants, but modified the sentence as affecting persons punished under the same sentence, but who had not appealed.

3. I declined refund of the fine to such of the parties as did not appeal.

4. The Joint Magistrate demurs to this, and I think it advisable to have an authoritative decision on the matter.

5. I beg to enclose copy of a letter addressed by me some time ago on the point to the Session Judge, Calicut, which was referred to the High Court, but as abovesaid elicited no ruling.

Proceedings of the High Court of Judicature at Madras, 26th October 1865.

Read letter dated the 18th instant, from the Session Judge of Calicut, submitting, at the request of the Magistrate of Malabar, certain points for the opinion of the Honorable the Judges.

2. The High Court have invariably declined answering questions on cases not judicially before them.

(True Extract).

(Signed) T. WILKINS,
Deputy Registrar, Appellate Side.

(True Copy).

(Signed) H. D. COOK,
Session Judge,

To the Magistrate of Malabar, with reference to his letter dated the 26th August 1865.

(True Copy).

(Signed) G. A. BALLARD,
Magistrate.

From the Magistrate of Malabar, to the Session Judge of Calicut ; dated Calicut, 26th August 1865, No. 2533.

I have the honor to request you will favor me with your opinion on the following :—

A and B are sentenced, in one and the same case, and on the same grounds, to fine by a Sub-Magistrate.

A appeals in due course to the Magistrate, and that officer, on reviewing the proceedings, reverses the sentence of the lower Court, and orders A's fine to be refunded.

B does not appeal, although his sentence is based on exactly the same grounds as those on which A's was passed.

Does the reversal of the sentence in A's case quash the sentence quoad B, who has not appeared ?

Referred to the Government Solicitor, for the opinion of the Advocate General.

FORT SAINT GEORGE,
13*th February* 1866.

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

No. 56.

MEMORANDUM.

The Under Secretary to Government, Public, &c., Departments, is directed to request that the Magistrate of Malabar, will be so good as to send up the record of the case referred to in his letter of the 4th ultimo, No. 2, together with translations of such of the papers as may be in the Vernacular of the District.

FORT SAINT GEORGE,
20th February 1866.

(Signed) C. G. WALKER,
Under Secretary.

To the Magistrate of Malabar.

No. 239. From the Magistrate of Malabar, to the Chief Secretary to Government, Fort Saint George; dated Calicut, 26th April 1866, No. 52.

Dated 20th February 1866, No. 56.

I have the honor, with reference to the Memorandum noted, from the Under Secretary to Government, to forward herewith the records of the Case No. 16, on the Calendar of the Sub-Magistrate of Taliparamba, with translations of such of them as were in the Vernacular.

Forwarded to the Government Solicitor, with reference to the Docket, 13th February 1866, on letter from the Magistrate of Malabar, dated 4th January preceding, No. 2.

FORT SAINT GEORGE,
7th May 1866.

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

No. 240. From the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 10th May 1866, No. 266.

Dated 13th February 1866, and made on letter from Magistrate of Malabar to Government, dated 4th January 1866, No. 2.

I have the honor to acknowledge the Order of Government noted in the margin (with its enclosures), requesting the Advocate General's opinion as to the validity or otherwise of the decision of the Acting Joint Magistrate of Malabar, on an appeal against the sentence passed by the Sub-Magistrate of Taliparamba, in Calendar No. 16 of 1865, so far as the decision of the Acting Joint Magistrate affected those prisoners who had been convicted by the Sub-Magistrate and did not appeal against such conviction and sentence.

2. I have submitted the matter with the copy record received with the Order of Government, dated the 7th instant (and for want of which the reference has remained so long unanswered), for the consideration of the Acting Advocate General; and

3. I now send you a copy of the Opinion which that Officer has written, and likewise return the orders and papers above noted.

COPY—OPINION.

From the records submitted to me in this case, it appears that 14 persons were charged before a Sub-Magistrate for riot, and that he fined them all. Of the 14, 11 appealed to the Joint Magistrate; three preferred no appeal. In his decision, he not only reduced the fines imposed upon those who appealed, but also upon two of those who did not appeal.

Proceedings of the Madras Government, Judicial Department,
23rd May 1866.

2. I am of opinion that, in doing so, he exceeded his jurisdiction. The Magistrate has no powers of revision, such as are given to the Sudder (now High) Court by the Criminal Procedure Code. He can only take cognisance of a case when it is brought before him by an appeal under Section 412. Upon such appeal, he may, under Section 419, alter and reverse the finding and sentence or order of such Court. But where there are several prisoners, the finding, sentence, and order upon each is separate, and the sentence upon one is not brought before him by the appeal of another.

3. I am also of opinion that the Collector of Malabar was right in refusing to refund the fine. This is not a case of a wrong decision, but of a decision wholly beyond the jurisdiction of the Officer passing it. It is a mere nullity, and the Collector owes it no obedience.

(Signed) J. D. MAYNE,
Acting Advocate General.

9th May 1866.

No. 241. ORDER THEREON, 23rd May 1866, No. 799.

Ordered that a copy of the Acting Advocate General's Opinion be furnished to the Magistrate of Malabar, with reference to his letter of the 4th January last, No. 2, and also to all Magistrates for information.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of Malabar, with the records of the case returned.

„ Magistrate of

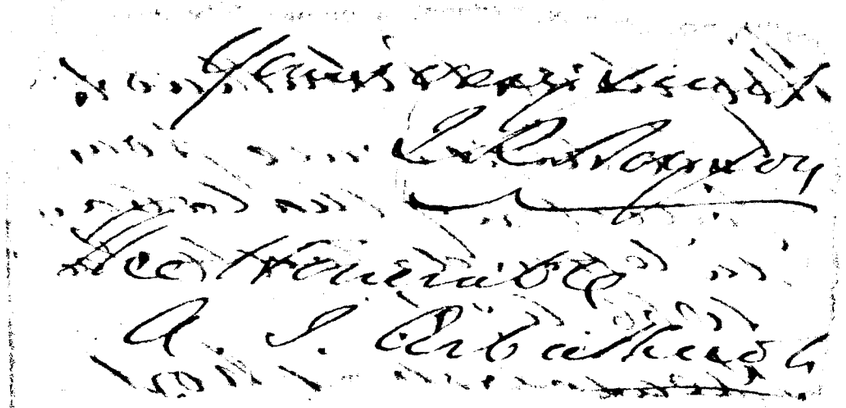
Exd. J. H. Burns.

Feb 16. 1866.

My dear Arbuthnot.

Re Rajeswar Pow
Collector of Malabar.
As taken dated 4th Jan.
1866. No 2.

Please look at Norton's
remarks and call for
the whole Record of the
Case. It is not obscure
and in case it is advisable on
Such grounds as these
A. B. Jackson and Nathan
having all or indeed
any of the facts of the
particular Case before
us. I should humbly
call an Official call[ed]
Subject. Please return



5A 10

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following papers.

From Magistrate of Malabar / Dated 4th January 1868 No 2 952 / 25th April

From the Govt. Solicitor / — — 10th May — — 266 /

Order— 23rd May 1868 No 799.

Ordered that a copy of the Govt. Solicitor's opinion be furnished to the Magistrate of Malabar with reference to his letter of the 4th January last. No 2, and also to all Magistrates for information

To Magistrate of Malabar
Magistrate of
with the Records of the case returned.

Solicitor 26/5/68

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Judicial 1866. Department.

P-10-4

No. 199.

PROCEEDINGS OF GOVERNMENT.

Dated 23rd May 1866.

238 to 241.