

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	935	Press ~~Mis.~~
Dated	14.6.	19-1866

131-132

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Not to be folded or roughly handled

14th June 1866.

No. 131. Read the following letter from the Officiating Magistrate of Tanjore, to the Acting Chief Secretary to Government, Fort Saint George; dated Vallam, 7th June 1866, No. 125.

I have the honor to forward, for the favorable consideration of Government, the accompanying letter from Mr. Hutchins, Joint Magistrate of this District, representing the advisability of a Commission being issued, under Section 23, Act XIII of 1865, authorizing one of the Judges of the High Court to hold a sitting in this Zillah, for the trial of two cases committed to the above tribunal.

2. There certainly appear palpable reasons for my supporting Mr. Hutchins' recommendation. The first case has already been reported to Government, in my letter, dated 9th May 1866, No. 190, and the Captain of the *Jaffna* has been committed by Mr. Burnell, under Sections

323, 506, 280, and 437 of the Penal Code. There are 10 witnesses concerned in this case, of whom six are sailors.

The second case has been committed by Mr. Hutchins, under Section 303 of the Penal Code, and is an exact counterpart of the illustration to that Section; the Captain of the vessel being charged, with having, under grave and sudden provocation, fired a pistol at one of his crew. There are 12 English sailors to testify to this charge; and the difficulty arises as to what is to be done with them and the other seafaring witnesses in the preceding case until the next Sessions to be held at Madras in August next. Bail they cannot give, and personal recognisances are mere waste paper, so that, when August arrives, there will, in all probability, be a failure of justice by the non-appearance of these witnesses, who will in the meantime, doubtless, have successfully sought their usual avocations on board ship, and be probably thousands of miles away from the scene of the Sessions.

3. Then comes the question of the accused Captains themselves. In the first case, the Commander is in Jail; in the second he is on bail, but still losing employment and wages; thus the speedy settlement of the charges against these Europeans seems certainly called for.

4. The Judge might hold the sitting in the Court at Tanjore, as the parties could easily be brought there by rail, and in Negapatam there is no fitting building, unless the Judge thought proper to occupy the Small Cause Court. The journey is easily accomplished, and the cases might be disposed of in two or three days, so that, looking at all the attendant circumstances, I quite concur with Mr. Hutchins in recommending this as a fitting occasion for the provisions of Section 23 of the above quoted enactment being exercised by Government.

From A. R. HUTCHINS, Esq., Acting Joint Magistrate of Tanjore, to the Officiating Magistrate of Tanjore; dated Negapatam, 5th June 1866, No. 59.

I have the honor to lay before you the following circumstances, and to call your attention to the provisions of Act No. XIII of 1865, "The High Court Criminal Procedure Amendment Act". Referring to Section 23 and following, I beg to represent that there are, at present, two cases, the one at Tranquebar and the other at Negapatam, in both of which a European Commander has been committed to the High Court, for trial of offences involving acts of violence to his crew. It appears to me that, considering the distance of the ensuing Sessions, viz., in August, and considering the fact that the majority of witnesses are European sailors, and that the witnesses in the

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Tranquebar case have been since discharged, there never was a case in which the presence of a Judge of the High Court, deputed on Commission under this Act, was so urgently called for. I beg very earnestly to press upon you to apply to Government to exercise the powers lodged in it by Section 23. I am assured on good grounds that, otherwise, neither of the cases can come to issue. already the witnesses in the Tranquebar case are dispersing themselves in search of employment. In the case that I myself have committed, I have seen unmistakable indications of a desire on the part of the seamen to back out of their charge, on the ground of the trouble and expense of attending in Madras. Nay, further, the Ship *Java*, the Captain of which I have committed, under charge of an offence under Section 308 Indian Penal Code, is under orders, as I understand, to leave the Coast of India before August, and in this case, the Captain and his crew would lose their voyage and ruin their prospects with their employers. So formidable has the attending for the trial seemed to all parties, that I have received overtures to allow the crew to withdraw their charge, to which, of course, I could not listen. I am persuaded that none of the crew will be forthcoming in Madras at the trial. They are already using their best endeavours to get their discharge or exchange into another ship. It is futile to take heavy security to prosecute from seamen who refuse to serve under their present Captain, and are seeking work in other vessels, which may take them, meanwhile, a thousand miles away.

2. The *Jaffna*, the Commander of which has been committed by Mr. Burnell, is also in Negapatam roads, and the Captain in Jail at Tranquebar. We can undertake to keep the witnesses together for a week or two longer, and I most earnestly press that you will use your best arguments that a High Court Judge may be sent down to dispose of these cases. If the provisions of this Act are not taken advantage of to meet the necessities of *two such cases occurring together as these*, the Act would seem to have been framed to no purpose, and the result will be that Justices of the Peace in ports, having to deal with offences of this nature, will hesitate, hereafter, to commit cases on evidence which would abundantly justify their doing so.

No. 132. ORDER THEREON, 14th June 1866, No. 935.

In the letter above recorded, the Acting Magistrate of Tanjore urges the advisability of a Commission being issued by the Governor in Council, under Section 23 of Act No. XIII of 1865, to a Judge of the High Court at Madras, for the trial at Tanjore, or Negapatam, of two European British subjects, who have been committed for trial on serious charges.

2. In one case, the prisoner, Captain of the Steamer *Jaffna*, is charged with having (while in a fit of drunken phrensy) endeavoured to kill the Mate of the vessel, and then run the latter on shore. The Captain has been committed for trial under Sections 323, 506, 280, and 437 of the Penal Code, and is in Jail, awaiting his trial. There are 10 witnesses in the case, of whom 6 are sailors.

3. In the other case, the prisoner, Captain of the *Java*, is charged with having, under grave and sudden provocation, fired a pistol at one of his crew. He has been committed under Section 308 of the Penal Code, and is now on bail. There are 12 witnesses, all of whom are English sailors.

4. The Acting Magistrate apprehends that, unless measures are adopted, in the manner abovementioned, for the speedy trial of these cases, there will be a failure of justice, as those of the witnesses who are sailors (6 out of 10 witnesses in one case, and all 12 witnesses in the other) will, in all probability, not appear at the Sessions which is to be held in Madras in August next.

5. The Acting Magistrate has not laid this matter before the Government so clearly and fully as he ought to have done, and he has omitted to state whether the procedure prescribed in Section 28 of Act XIII of 1865 has been adhered to by

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the Committing Magistrates, Mr. Hutchins and Mr. Burnell. The Government are not furnished with any description of the nature of the evidence, while the tendency of the remarks in paragraph 3 of the Acting Magistrate's letter is to induce the impression that, in one of the cases, the extenuating circumstance alleged, "grave and sudden provocation", may very materially affect the character of the crime charged.

6. The Acting Magistrate, further, is silent as to the probable practicability of empanelling a jury, the majority of whom must, if the accused demand it, consist of Europeans or Americans at either of the places he names.

7. There are also other important considerations connected with the subject, on which it is not necessary here to dilate.

8. Much as any failure of justice is to be regretted, the Government do not, under all the circumstances, feel themselves in a position to issue a Commission as recommended by the Acting Magistrate, who will, therefore, require the Magistrates by whom the preliminary inquiries were conducted, immediately to follow the course prescribed in Section 28 of Act XIII of 1865, should it not already have been taken.

9. Meanwhile, the papers will be forwarded to the Advocate General for his advice, as to the best course for the Government to pursue, should the matter again come before them.

(True Extract).

Acting Chief Secretary.

To the Acting Magistrate of Tanjore.
" Government Solicitor.

Exd. J. H. Burns.

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No. 935 of 14th June 1866

In the letter above
recorded the As Mag^{te}
of Tanjore urges the
advisability of a
Commission being
issued by the Gov^t of
under Sect ~~xxiii~~ of
Act No. xiii of 1865
to a judge of the High
Court at Madras, for the
trial of two ^{European} ~~European~~
~~Cases of importance~~
at Tanjore or Negapatam.

British subjects who
have been committed
for trial on serious
charges.

In one case - the Pri.
Soner - Captain of the
Steamer *Jaflua* is
charged with having
(whilst in a fit of Drunkenness

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Shrenty/ endeavored
to kill the mate of
the vessel - and then
run the latter on
shore - The Captain
has been committed
for trial under Sect.
323 - 500 - 280 & 437
of the Penal Code &
is jail, awaiting his
trial - There are 10
witnesses in the case
of whom six are
sailors.

In the other case,
the prisoner - Capt:
of the Java - is charged
with having, under
grave and sudden
provocation fired
a pistol at one of
his crew: He has
been committed

under Sect. 308 of the
Penal Code and is
now on bail - There
are 12 witnesses, all
of whom are English
sailors -

The A. F. Magistrate
prebends that unless
measures are adopted
in the manner above
mentioned, for the
speedy trial of these
cases, there will be
a failure of justice
as those of the wit-
nesses who are sailors
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in one case and all
twelve witnesses in
the other) will in all
probability not ap-
pear at the sessions
which is ~~to~~ to be
held in Madras in

August next.

The Atty. Genl. has not laid this matter before the Just. so clearly & fully as he ought to have done, ^{and} He has omitted to state whether the procedure prescribed in Sect xxviii of Act ~~xxxiii~~ of 1865 has been adhered to - and it is not clear whether the prisoners already stand committed for trial before the High Court at Madras or are - the one in jail and the other out on bail, pending the directions of the High Court as to the place of trial. as laid down in Sect 30 of the same Act. The Just. are

by the Committee of Magistrates Mr. Hulchur and Mr. Burnell.

should omit to mention the point.
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not furnished with any description of the ^{nature} ~~character~~ of the evidence - while the tendency of the remarks in para 3 of the Atty. Genl's letter is to induce the impression that in one of the cases, the Exonerating Circumstances alleged - "para 4 be deduced from the evidence" - may very materially ~~be~~ affect the character of the crime charged. The Atty. Genl further is silent as to the ^{practicability} ~~probability~~ of circumventing a jury the majority of whom

W.D.M.

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Much as any
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by the Cap. Magistrate.

Who will therefore require the Magistrates
by whom the preliminary
inquiries were conducted
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follow the course
prescribed in
Sect 28 of Act
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been taken.

[Meanwhile]

There are also other
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Should

N.

J. D. S.

Noting Magistrate of Tangio despatch 14/6 in due.
Gov. Lohitika despatch 15/6

Judicial Report

21st Dec 35

Proceedings of 1865

dated 14 June 1866.

Off 1322-1363.