

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1041	Press ~~Mis.~~
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Dated 2-7-1918	1867

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
2nd July 1867.*

Read the following papers :—

No. 7. From the Magistrate of the Godavery District, to the Chief Secretary to Government, Fort Saint George ; dated Cocanada, 29th May 1867, No. 122.

I have the honor to forward copy of a letter from the Acting Joint Magistrate of the District, requesting instructions whether "any" Magistrate may issue the "special order" required under first part of Section 152 of the Code of Criminal Procedure, in order to allow of the party to be sent before "the Magistrate having jurisdiction" being sent under a lawful warrant for his detention in custody, till he arrives before the Officer who is to try him.

2. But for two opinions given by the late Advocate General, I should say that "any" Magistrate may issue the requisite order ; but the opinions referred to seem to me rather contradictory of each other, and I therefore refer the matter for further advice.

3. The opinions I refer to are contained in Government Proceedings, Judicial Department, of 20th September 1865, and of 7th November 1865.

4. In the first quoted Proceedings Mr. Robinson, Inspector General of Police, asks in paragraph 6 of his letter, if the nearest Sub-Magistrate, in cases over which a Sub-Magistrate has no jurisdiction, can grant the "special order" alluded to, meaning, evidently, the "special" order alluded to in first part of Section 152, Code of Criminal Procedure.

The Advocate General seems to have omitted to give a particular opinion on this point, though he does say in paragraph 3, "again, Section 152 repeats the language of Section 135 ;" and in paragraph 2 he says, "Section 135 expressly names the Magistrate having jurisdiction," thus apparently considering "the Magistrate having jurisdiction" to be alone referred to.

I would remark that in the first part of Section 152 "a" Magistrate is specially mentioned as the person to give the special order required.

5. From the wording of the opinion in the last quoted Proceedings I should think that "a" Magistrate, as referred to in first part of Section 152, Code of Criminal Procedure, means, as its definition states, all persons exercising "any" of the powers of a Magistrate, but the first quoted opinion seems to me to require that it should mean "the Magistrate having jurisdiction in the case."

6. The High Court have ruled* that a 2nd Class Sub-Magistrate cannot "commit" a case for trial to a Magistrate with higher powers as he would do to a Session Court, but must simply send on the charge sheet filed before himself by the Police on ascertaining that he himself cannot dispose of the case. At present during the adjournment of the Session and Principal Sudder Amcen's Courts, many cases that would go before the latter have to be tried by Magistrates having full powers, or by 1st Class Sub-Magistrates ; and, therefore, the parties in them have to be sent long distances, two and three days' march at times, ere they can reach the head quarters, or station for the time being, of a Magistrate competent to try them.

7. The query is, who is the person authorized to give the "special order" required under Section 152 to detain the prisoner in custody till then. Is it the nearest Sub-Magistrate, or the Magistrate having jurisdiction in the case ?

* Proceedings of High Court, 22nd December 1864, paragraph 6.

*Proceedings of the Madras Government, Judicial Department,
2nd July 1867.*

From the Acting Joint Magistrate of the Godavery District, to the Magistrate of the Godavery District; dated Nursapur, 23rd May 1867, No. 7.

I have the honor, with reference to Circular Memorandum, No. 335, of the 18th May 1867, in the *Police Weekly Circular*, to request that you will be good enough to obtain instructions as to the procedure to be observed in cases when the Magistrate having jurisdiction happens to be at the time at a considerable distance, say 100 miles, or when it is not known where he may be.

2. It is true that, under Section 151 of the Criminal Procedure Code, the Police must forward the accused to the Magistrate having jurisdiction; but at the same time I would observe that in this section no period of time is fixed, whilst in the following section we have the words, "no Police Officer shall, without the special order of 'a' Magistrate, detain an accused person in custody for a longer period than twenty-four hours." I have marked with italics the article "a," which I take to include any Magistrate, and not the Magistrate having jurisdiction only.

3. Police are forbidden without special orders (remand) to keep accused persons in custody longer than twenty-four hours; how is it then that we find accused parties constantly detained in custody by the Police for days and even weeks, as I presume they cannot be considered otherwise than in custody whilst being carried about the country under a Police escort in search of the Magistrate having jurisdiction, who may likewise be on the move on other business. If such persons are in custody, I submit that without special order of a Magistrate that the custody is illegal, and that they are, therefore, exempt from the penalties attached to escape from legal custody.

4. If I am wrong in my reading of the law, the sooner it is amended the better. One instance will suffice to show the hardship entailed by the present practice. Ellore is at present under the charge of the Head Assistant Magistrate, and accused parties are conveyed thence to Rajahmundry, his head quarters, where it is ascertained that he has proceeded to Tuni, thus entailing a further journey, and by the time they have reached this place, it will, in all probability, be found that the Magistrate has left for Rajahmundry, *via* Peddapur or by some other route; however, Sub-Magistrates are generally acquainted with their immediate superior's movements, and would, therefore, be able to remand the accused to be placed before the Magistrate at a fixed place and time, thus doing away with the entirely needless expense and trouble incurred at present.

5. It appears to me that the present uncertainty and confusion as to the law on this point has arisen from the conflicting opinions given by the late Advocate General regarding the force and weight to be attached to the indefinite and definite articles as used in the Criminal Procedure Code, but his opinion is not infallible, and was in a noticeable instance recently controverted by the High Court; it would be as well, therefore, when his opinions are conflicting that a further ruling be obtained.

Referred to the Advocate General for his opinion.

FORT SAINT GEORGE,
10th June 1867.

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

No. 8. From the Acting Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 14th June 1867, No. 391.

I have the honor to acknowledge the Order of Government noted in the margin, requesting to be informed of the Advocate

Dated 10th June 1867, and made on letter from Magistrate, Godavery District, to Government, of the 23rd May 1867, No. 122.

General's meaning of Section 152 of the Code of Criminal Procedure.

2. I have submitted the reference for the Acting Advocate General's consideration; and,

3. I now forward a copy of his opinion and return the order above noted.

*Proceedings of the Madras Government, Judicial Department,
2nd July 1867.*

OPINION.

I am of opinion that the special order referred to in Section 152 can only be issued by a Magistrate having jurisdiction in respect of the offence. If the section had ended at the words "twenty four hours" it would have been open to a different construction, but reading the first part of Section 152 with the last part, and with Section 151, the meaning seems to me to be quite clear. The sections prior to Section 151 provide for an enquiry by the Police. Section 151 directs that when that inquiry leads to strong suspicion against the accused, he is to be forwarded under custody to the Magistrate having jurisdiction in respect of the offence. Section 152 begins by directing that a prisoner is not to be kept in custody under inquiry longer than twenty-four hours without the special order of a Magistrate. These words, standing by themselves, might be taken to mean "any Magistrate." But then the section goes on to say what is to be done if a longer period of custody is necessary. The officer "shall, nevertheless, forward the accused to the Magistrate," &c.; taking all together I think that the special order must be made by the Magistrate to whom the accused is to be forwarded, and that that Magistrate is the one referred to in Section 151 as the Magistrate having jurisdiction. On principle too it seems natural that the accused should be forwarded for the purpose of obtaining a remand order to a Magistrate who would have authority to release him, if the charge seemed to him wholly unsustainable. In fact it would be a contradiction in terms to apply for a remand to a Magistrate who could not refuse it. But no Magistrate could refuse a remand, that is, set the accused at large, without taking upon himself jurisdiction in respect of the offence.

2. The inconvenience apprehended by Mr. Horsfall will no doubt arise as long as Magistrates are posted at great distances, and more about the country, but the custody will not be illegal as he supposes. The twenty-four hours custody specified in Section 152 is a custody for purposes of Police inquiry, prior to the accused being forwarded to the Magistrate. Once he is sent off to the Magistrate every custody is legal which is necessary and proper for the purpose of placing him before the Magistrate, however long it may last.

3. I may observe that I have considered the two opinions of the Advocate General referred to in the correspondence now submitted to me. I cannot perceive any contradiction in those opinions, and I agree with both.

26th August 1865.
21st October 1865.

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

13th June 1867.

(True Copy.) (Signed) H. J. BROCKMAN,
Acting Govt. Solicitor.

No. 9. ORDER THEREON, 2nd July 1867, No. 1041.

Resolved that the opinion of the Acting Advocate General be communicated to the Magistrate of the Godavery District, and to all Magistrates; also to the Inspector General of Police.

(True Extract).

Acting Chief Secretary.

To the Magistrate of the Godavery District.

" Magistrate of
" Inspector General of Police.
" Acting Government Solicitor.

Ed. J. Tulloch.

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2^d July 1867 R^d 1041.

W.H.

Resolved that the opinion of
 the Acting Advocate General
 be communicated to the
 Magistrate of the Godavay
 District. and to all
 Magistrates. also to the
 Inspector General of Police.

N.

13/1/55

To the Magistrate of the
 Godavay District } despatch 4/7
 To the Magistrate of all Districts }
 To the Inspector General of Police } despatch 3/7
 To the At Genl. Police