

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1106	Press
		~~Mis.~~
Dated	12-7-1906	

132-134

6/6

Not to be folded or roughly handled

23/10/06

*Proceedings of the Madras Government, Judicial Department,
12th July 1867.*

Read the following papers:—

No. 132. From the Acting Magistrate of the Madras District, to the Chief Secretary to Government, Fort Saint George; dated Saidapet, 4th June 1867, No. 111.

I have the honor to request the instructions of Government on the following point regarding the application of Act VI of 1864, (Whipping Act).

2. In cases referred by Sub-Magistrates of the 2nd Class under Section 357 of the Code of Criminal Procedure, to the District Magistrate for enhanced punishment, is it lawful for the District Magistrate to pass a sentence of whipping, to be carried out by the Sub-Magistrate of the 2nd Class in his own Division, when the offence is one for which whipping would be lawful if the case had been heard by an Officer competent to pass sentence of whipping? and if lawful, was such a course contemplated by the Government in passing their Order, No. 466, April 1864?

Referred to the Acting Government Solicitor for the opinion of the Advocate General, as to whether a District Magistrate, on a reference by a Subordinate Magistrate, is empowered, under the provisions of Section 357 of the Criminal Procedure Code, and Act VII of 1864, to pass a sentence of whipping to be carried out by a Subordinate Magistrate of the 2nd Class in his own Division, when the offence is one for which such punishment could be awarded if the case had been tried by an Officer competent to pass sentence of whipping.

FORT SAINT GEORGE,

(Signed) R. S. ELLIS,

27th June 1867.

Acting Chief Secretary.

No. 133. From the Acting Government Solicitor, Madras, to the Acting Chief Secretary to Government, Fort Saint George; dated Madras, 2nd July 1867, No. 435.

I have the honor to acknowledge the Order of Government noted in the margin, requesting the Advocate General's opinion as to the application of Act VI of 1864 for punishment of whipping in certain cases.

Dated 27th June 1867, and made on letter from Acting Magistrate of the Madras District to Government of the 4th idem, No. 111.

2. I have submitted the matter for the consideration of the Acting Advocate General; and

3. I now forward a copy on his opinion of the subject.

OPINION.

The sentence passed under Section 357 of the Criminal Procedure Code is the sentence of the Magistrate of the District, and may be, as to its nature and amount, "such sentence or order" in the case as he may deem proper and as shall be according to law." In all cases, therefore, where he might have awarded whipping, if the charges had been originally tried by himself, he may award it on a reference from the Subordinate Magistrate.

2nd July 1867.

(Signed) J. D. MAYNE,

Acting Advocate General.

(True Copy.)

(Signed) H. J. BROCKMAN,

Acting Government Solicitor.

Proceedings of the Madras Government, Judicial Department.

12th July 1867.

No. 134.

ORDER THEREON, 12th July 1867, No. 1106.

Ordered that the opinion of the Acting Advocate General be communicated to the Magistrate of Madras, and to the several Magistrates in the provinces.

(True Extract.)

R. S. ELLIS,
Acting Chief Secretary.

To the Magistrate of Madras District.

„ Magistrate of

„ Acting Government Solicitor.

Ed. J. Tulloch.

have had the Governor in Council in
an opportunity no objection to a District
of session. W.D. Magistrate's proposed sentence
of whipping, in cases re-
ferred to him by a Sub-
ordinate under Sec. 557 of
the Code of Criminal Pro-
cedure, or to his directing
that they be carried out in
the Division and by the Sub-
Magistrate who referred the
cases.

To be by Magistrate of the
Madras District

Ellis

I doubt the correctness of the proposed order. The Magistrate Mr. Thornhill's question relates to cases referred to him by Sub-Magistrates of the 2nd class, whose jurisdiction does not extend to offences requiring to be punished with whipping. Section VIII of the Act sets out that no sentence of flogging shall be passed by any officer superior to a Subordinate Magistrate of the first class. Now, if by simply declaring that he deems the punishment he can inflict in any particular case, is insufficient; depriving it for more severe punishment to his superior Magistrate, a 2nd class Sub-Magistrate can get a sentence of whipping passed, he contrives, and seems to me, to get behind the law & stultifies it. Further, it seems to me to be contrary to the intention of the Code to allow a mere reference of a record to secure corporal punishment for a man whom the Superior Magistrate will not

H

Pro. 5th April 1864 at 49-50

c. 18: June.
R. 21: 132
C. 18: 1210

Pro 12 July
Decision 1864 of Dep. Secy
There is a proviso in the head of D.
The Chief Secretary
to Government
For W. J. G. 1864

Dated 4th } June 1864.
Recd. 7 }
No. 111

No 1246

Requiring instructions on certain points regarding the application of whipping Act VI of 1864.

W. J. G. 1864
with a letter. 1864

12 July 1867 R: 1105-

Ordered that the opinion of
the Acting Advocate General
be communicated to the
Magistrate of Madras,
and to the several Magis.

W.D. R: to the provinces.

W.D.

(I am very doubtful
about this opinion but
we cannot avoid following it.
In a communication that with
kindness I found that he takes this
opinion I send on the original
copy from Mr. Thomhill.)

to the Magistrate of Madras
- " - Magistrate of all other Districts
- " - At Government Secretary

Feb. 1246

Pro. 12 July
Tudinal 1867 Sept

From acting Gov. Secy.
Madras.

To acting Chief Secy. to Govt.
Madras.

Dated 2nd July
Recd.

No. 435
No. 1440. ~~1440~~ 1440
From acting advocate
General's opinion as to the
application of Act VI of 1864
for punishment of whipping
in certain cases.

Ch. Secy.
R10"3 132 & 134.

With an order.

Krd. J. Tulloch.