

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1430	Press <u>Mis.</u>
Dated	5-9-1867	

42-48

5/5

Not to be folded or roughly handled

No. 47. Read the following letter from the Inspector General of Police, to the Acting Chief Secretary to Government, Fort Saint George; dated Kotagiri, 16th August 1867, No. 1441.

I have the honor to request that, if the Government see fit, the opinion of the Officiating Advocate General may be taken on the following points.

2. I.—Is a Sub-Magistrate of the 2nd Class empowered by Section 133, Code of Criminal Procedure, to refer for preliminary inquiry by the Police, under Chapter IX of the Code of Criminal Procedure, a petition or complaint made to him respecting an offence which the Police are precluded from inquiring into without previously examining the complainant, as laid down by Section 66 of the Code of Criminal Procedure?

3. The reason for asking instructions on this point for the guidance of the Police is, that Sub-Magistrates are in the constant habit of referring to the Police for inquiry, under Section 133, Code of Criminal Procedure, Tappal petitions and Urzees full of exaggerations about petty assaults (new charges of insult and defamation), the right to the occupation of land (which are entertained under Section 447 of the Indian Penal Code), and the like, without having held any proceedings whatever, with a view to satisfy themselves that the grounds of complaint are well founded. A very large proportion of these complaints turn out, on inquiry from the complainant alone, to be false and frivolous; but public time is wasted and the Police become mixed up with matters which, I think, it is the policy of the law to prevent their meddling with. Many charges are preferred merely with a view to annoy an enemy by a Police investigation.

4. Under the former system it was usual for the Tahsildars to refer petitions of all kinds to the officers holding the certificate of Sub-Officer of Police, and practically many Subordinate Magistrates still endeavored to continue this practice and look on the officer in charge of the station as much in the same position as the old Sub-Officers of Police; whereas I think that the present law contemplates such cases being determined, as far as possible, without the intervention of the Police, which would generally be the case if the Sub-Magistrate at once examined the complainant and issued his summons or warrant as directed by Section 66, Code of Criminal Procedure.

5. Even if the practice above alluded to be not opposed to the letter of the law, I think that the spirit of Section 66 of the Code of Criminal Procedure, which requires that a deposition be recorded before a Magistrate can even issue a summons, would suggest that this procedure should be strictly observed before the large powers entrusted to the Police by Chapter IX of the Code of Criminal Procedure are put in motion by the Subordinate Magistracy in cases of no serious nature.

6. II.—When complaints of the nature alluded to are referred by the Subordinate Magistracy to the Police for preliminary inquiry, what procedure is to be followed? How far may the Police go?

7. Almost without exception these complaints are made against persons by name; the cases are not of a serious nature (Section 136), and are offences for which summons shall ordinarily issue in the first instance, and therefore the immediate apprehension of the accused is not necessary for the ends of justice (Section 137). It seems to me that the Police must abstain from proceeding in such a case, notwith-

*Proceedings of the Madras Government, Judicial Department,
5th September 1867.*

standing the reference, and merely report to the Magistrate accordingly. Chapter IX contemplates arrest without warrant as the only proceeding by which the Police can compel the person accused to appear for the purpose of inquiry, and I conceive that a mere reference by a Magistrate, under Section 133, would not authorize a proceeding on the part of the Police, which the Magistrate could not himself ordinarily adopt in cases for which summons is provided as the ordinary process.

No. 48. ORDER THEREON, 5th September 1867, No. 1430.

The Governor in Council does not consider that a reference to the Advocate General is required on the questions raised by the Inspector General of Police.
(True Extract.)

Acting Chief Secretary.

To the Inspector General of Police.

Memorandum for order

*reference to the Advocate
General seems hardly
warranted on this case
subject unless the opinion
of that officer is considered
a convenient means
of issuing a Circular to
the Magistrates.*

*If the practice described
by Mr. Robinson is
general it should have
been brought
to the notice of Magis-
trates of districts by*

Superintendents of Police
so as to enable the
Magistrates to instruct
their subordinate
officers.

Perhaps Mr. Robinson
argues from particulars
to generals.

Sec 133. certainly did
not contemplate the
cases described by
Mr. Robinson.

It will perhaps be
sufficient to request

The Magistrate of a District can
legally instruct his sub-magistrate
to abstain from doing what the
law enjoin. See the words
"otherwise" in Section 133.

I think he does - see my
response on other page

The words "otherwise"
in this Section are very
comprehensive, & include
the power of the sub-magistrate
enjoined by Mr. Robinson
Complaint W.D.

I think that this
will be the better course
J.P.

If we do this
~~we must~~ we must
be prepared for a rebuff in
the form of an application by a
resolute Magistrate, that
his power be not
infringed at, under Sec
133, and if it is, that it is
an abuse.

I would rather ask the Magistrate
to report personally to the
Superintendent of Police whether the
sub-magistrate has been to
make a statement of the number of complaints
received in the two months ending 31 July W.D.

Mr. Robinson is desirous
the Superintendents of
Police to bring to the
notice of the Magistrates
of District the occurrence
of such abuses as
he has described

J.P.

Under the authority of
 the Government of India
 the following is a list of
 the names of the persons
 who have been appointed
 to the various offices of
 the Government of India
 for the year 1887.

Annex of the 12th
 No. 12
 Memoirs of the

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C. J. Tulloch
 R. 24

Exd. J. Tulloch.

Settled in Council 3/9

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No 1430 - 5 Sept 1887.
 The Governor in Council
 does not consider that a reference
 to the Advocate General is
 required on the question raised
 by the Inspector General of Police.

N. W.

To the Inspector General of Police. 2/9