

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1636	Press ~~Mis.~~
Dated	14-10-1867	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
14th October 1867.*

Read the following papers:—

No. 116. From Captain T. WELDON, Magistrate of Police, to the Acting Chief Secretary to Government, Fort Saint George; dated Madras, 6th September 1867, No. 32.

On 3rd September 1867, one Mahomed Yacoob, a blind man, made a complaint before me. His statement involved possible charges of kidnapping, abduction, theft, receiving stolen property, or adultery. It was a case in which it appeared to me very desirable to obtain a report from the local Police before taking action; indeed, the man's statement was so confused that I would have had great difficulty in framing a charge in a summons or warrant. Owing to the complainant's affliction I considered he was peculiarly entitled to the assistance of the Police in ascertaining the real facts of the case, and I, therefore, gave complainant an endorsement to the Police for inquiry, to which the Acting Commissioner of Police subscribes, "*Inquiries were made by me yesterday. It did not appear, nor is it, a case for Police inquiry, and the petitioner is accordingly re-referred to Magistrate,*" that is, the Commissioner, as Chief of Police, claims to exercise a discretion as to allowing compliance with the requisition of a Magistrate for a report by the Police on the circumstances attendant on the alleged commission of an offence.

2. This is a question of such general importance that I trust I may be excused for troubling Government by a reference of the matter for consideration.

3. Section 133 of the Code of Criminal Procedure prohibits a Police Officer from inquiring into certain offences without the express order of a Magistrate. Section 4, Act VIII of 1867, (Madras), substituted the words "*Commissioner of Police*" for the word "*Magistrate*." A strictly literal reading of Section 133 of the Code of Criminal Procedure, as amended by Act VIII of 1867, (Madras), may therefore appear to favor the construction, that Police Officers in the town of Madras can institute inquiries into the exceptional cases mentioned in Section 133 of the Code of Criminal Procedure *only* when authorized by the "*Commissioner of Police*."

4. But the Commissioner of Police, himself *qua* Constable, is, I submit, subject to the duties and obligations imposed upon every Police Officer by the Statute or common Law.

5. The Police Force is the only proper agency of the Magistrates and Justices of the Peace, and I cannot think it is either the intention of the Legislature, or consistent with the policy of the law, that any Police Officer, whatever his rank in the Force, should be held justified in refusing to assist the Magistracy in arriving at a true conception of the facts connected with the alleged commission of offences.

6. I beg respectfully to submit the question—

"Are Magistrates of Police empowered to require or authorize Police Officers to institute inquiries in cases not entered in Column 3 of the Schedule annexed to the Code of Criminal Procedure, as offences for which Police can arrest without warrant?"

7. Magistrates must, of course, exercise a reasonable discretion in referring cases to the Police for inquiry, and it is not probable that the power, if it exists, would be exercised except in the event of the complainant not being able to place the Magistrate in a position to act at once on the complainant's sole information.

Proceedings of the Madras Government, Judicial Department,

14th October 1867.

8. If the Magistrates cannot command the services of the Police, the relative positions of the Magistracy and the Police, as laid down by law (Preamble, Act XXIV of 1859), will be reversed, and, instead of the Police being "at the disposal of the Magistrates," the Magistrates will be mere machines at the disposal of the Police.

Referred to the Advocate General for his opinion.

FORT SAINT GEORGE,
17th September 1867.

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

No. 117. From the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 2nd October 1867, No. 644.

I have the honor to acknowledge the Order of Government noted in the margin, requesting the Advocate General's opinion as to the power of a Magistrate of Police to require or authorize

Dated 17th September 1867, and made on letter from Magistrate of the Royapettah Police Court to Government of 6th September 1867, No. 32.

Police Officers to institute inquiries in cases not coming within Column 3 of the Schedule annexed to the Code of Criminal Procedure, as offences for which the Police can arrest without warrant.

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

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

OPINION.

In the Mofussil a Magistrate has the power, under Section 133 of the Criminal Procedure Code, to direct the Police to institute inquiries into offences which do not come within Column 3 of the Schedule to the Act. But this Section does not apply to the Town Police, except as modified by Section 4 of Act VIII of 1867, (Madras). The result is, that in the Town of Madras the Police cannot enter upon the investigation of such cases, unless by express order of the Commissioner of Police. The Magistrate cannot compel him to issue such an order.

28th September 1867.

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

(True Copy).

(Signed) H. J. BROCKMAN,
Government Solicitor.

No. 118. ORDER THEREON, 14th October 1867, No. 1636.

Ordered that the opinion of the Acting Advocate General be communicated to Captain Weldon, Magistrate of Police, Madras, and also to the Inspector General of Police.

(True Extract).

Chief Secretary.

To Captain T. Weldon, Magistrate of Police.

To the Magistrates of the Town and Vepery Police Courts.

„ Inspector General of Police.

Exd. J. Tulloch.

Office of Inspector General of Police.

My dear Ellis
I send you his
correspondence. I say
that Madras in this
refer the points & it
will not go there
The point is can
a Magistrate in Madras
refer to Police inquiring
a case of which they are specially
precluded from inquiring
into. Answer is especially
reserved for Magistrate
on complaint of the in
jured husband.
Of course in the
proposed by can but

3
The procedure is different
in balances in practice
But the clause is not
intended to affect magis-
trates of newspapers or to
confer a new juris-
diction on them - By
claiming the guidance of the
English rules of procedure
this is not one of them
who can be heard of a
Barrister - Magistrate
endorses a Complaint
to the Commission of Police
in London -
The House should be

London -
Suppose should be
referred to Mayor of sub
in this - I will not be
business to me but

I have been very much
 interested in your work
 and hope you will be
 able to do some more
 work in the future.
 I am very much
 interested in your
 work and hope you
 will be able to do
 some more work in
 the future.

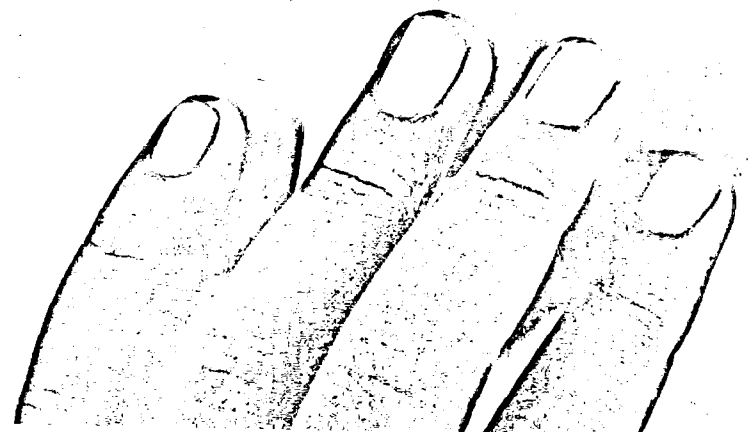
Visiting

1871
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The Miller Robinson the
 case seldom refers to was
 an "adultery" pure and
 simple - Complaint in
 the first instance came
 to me was referred
 verbally to master
 the latter finally referred
 his petition to me
 "for enquiry by Police"
 endorsed thereon - I
 again enquired
 it to the effect that
 it was not a case

for the Police to inquire
into the enclosure
in the suburbs. I have
told them I think I shall
bring some cases, no
that I will send some
Masters referring all
cases to Police.
if this were so, what
will the Police be in
6 months or what
the Masters have told?
but sit in judgment of
all matters previous
gone into by Police.

Of course there is the
other question as to
whether an endorsement
after kind of binding
is common. I should
certainly think not -
I never know
want Police to
enquire into adultery
perjury & cases
while he sat in
the magistrates bench
awaiting their disposal.
I suppose that goes at to
what I told I think I
will meet him
get him a copy.



The change was in-
-affected the magts in
the form of Madras
as far as it knows -
to the P. Code only
- affect Police only in
the Criminal who has
- power to refer on
a. h. to cases to Police
for enquiry, not the
magts. - the latter
sit to receive case
sent up by Police &
to hear other compl.
made to them by the
General public, such
as adulterers &

offences not cognizable
by Police in first-
instance not
referred to them (Police)
by Criminal - I merely
send you this
to let you know
the course of events.
Yours truly
R. S. D. S.

My dear Brewer

Enquiry
by Police
at request
of Magistrate

With reference to the Complaint
of that blind woman Mah. G. Jacob
endorsed by me for enquiry by Police
I think the question of such great
importance that it is better to refer
the matter to Court. The strict read-
ing of the Law would appear to
support the construction that
only the Com. of Police can
sanction or direct an enquiry
by the Police into offences not
included in Col. 3 of Schedule
C.P. as offences for which arrest
can be made without warrant
but I doubt if it was the intention
of the Legislature to place it in the
power of the Commissioner to

before an enquiry on the
acquisition of a Magt. If
the Law is held to allow of
this it may be thought ad-
-visable to alter it and so
I am referring the point to
Govt. I think every Magt.
should have the undoubted
power to direct an enquiry
by the Police into any alleged
offence or even into the facts
of any information.

In the endeavour to make some
sections of the new Act very
comprehensive I expect some
practical inconvenience will
be experienced. If General
principles are violated an

Amendment of the super-
-section may be thought
advisable.

6th Sept.

Wm
Medon

Judicial DEPARTMENT.

No. 1932

From Capt. Weldon, Magistrate of Police

Dated 6th September 1867.

FOR ORDERS.

The case cannot be settled without the opinion of the Advocate General, to whom I would refer the question raised by Captain Weldon sending the three deems official notes for information -

W.D.
V.P.

Judicial DEPARTMENT.

No. 1932

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Dated 6th September 1867.

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V.P.

Read Nos 1932 and 2120.

14 October 1867 No 1636.

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of the Acting Advocate
General be communicated
: to Captain Weldon
Magistrate of Police.
Madras, and also to
the Inspector General of
Police.

R WDL

to
by
despatch
to
Captain J. Weldon
Magistrate of Police.
Magistrate of the Town
& Vepery Police Courts.
Inspector General of Police.
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