

## MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

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| G.O. No. | 1833   | Press           |
|          |        | <del>Mis.</del> |
| Dated    | 13-11- | 1887            |

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,*  
13th November 1867.

Read again letters from the Inspector General of Police, dated 26th September and 26th October 1866, Nos. 1613 and 1780, recorded in Proceedings, dated 13th October and 7th November 1866, Nos. 1617 and 1756; and letter from the Government Pleader, dated 13th November 1866, No. 128, recorded in Proceedings, dated 23rd idem, No. 1865.

No. 171. Read also the following letter from W. WILSON, Esq., Acting Magistrate of the Kistna District, to the Acting Chief Secretary to Government, Fort Saint George; dated Masulipatam, 13th September 1867, No. 257.

With reference to the Government Order\* noted in the margin, I have the honor,

\* Dated 23rd November 1865, No. 1865.

herewith, to forward the papers † called for by the Government Pleader in paragraph 6 of his letter, on which the Order quoted was passed. He remarks that he is of opinion that the question "whether Superior Officers of Police are amenable to the jurisdiction of Native Magistrates" was not, in his opinion, raised. It was, as a perusal of the petition of appeal will show, waived by the appellant, who admitted the jurisdiction in express

terms. It seems, however, from paragraphs 11 and 12 of the Judgment in appeal, to have been present to the mind of the Judge, who seems to have considered and regretted that the provisions of Section 50 had been repealed by Act III of 1865.

2. The Government Pleader doubts whether the High Court would allow the question to be argued. It might or might not; it is a question of procedure that may arise every day, and it is desirable that the matter should be set at rest definitively. Better than reference to the High Court, I would suggest that the Governor in Council should, under the authority which Section 2 confers upon him, declare whether the provisions of Section 50 of Act XXIV of 1859 were intended to be included within Act III of 1865. For myself, I entertain no doubt that they are not. The Act abolishes all exceptional legislation embodied in special or local laws. The legislation of Section 50 is exceptional, and Act XXIV of 1859 is both special and local.

† 1 Copy of Proceedings of the Madras Government, dated 23rd November.

2 Copies of Calendars in Cases, Nos. 48 and 49 of 1866, on the file of the Deputy Magistrate, Vinukonda.

1 Extract from the Proceedings of the Session Court of Guntur, dated 3rd August 1866.

1 Copy of a letter from the Deputy Magistrate, Vinukonda, to the Magistrate, Kistna District, dated 6th October 1866.

1 Copy of a letter from the Magistrate of Kistna District, to the Inspector General of Police, Madras, dated 26th December 1866.

1 Copy of a letter from the Inspector General of Police, to the Magistrate of Kistna District, dated 10th January 1867.



CALENDAR of persons tried by Vadlamannati Venkatchellam, Deputy Magistrate of Kistna District.

| CALENDAR of persons tried by Vadlamannati Venkatachellam, Deputy Magistrate of Kistna District.                                                                                                                                                                                                                                                                                                                                                                                             |                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                     |                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                      |                  |                    |                                     |                           |                   |                       |
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| 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 2                                                                    | 3                                                                                                                                                                                                                                                                                                                                                                                                   | 4                                                            | 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 6                                   | 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 8                                                                                                                                    | 9                | 10                 | 11                                  | 12                        | 13                | 14                    |
| Number of the Case.                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Name and description of the accused.                                 | Copy of the charge, or substance of the complaint.                                                                                                                                                                                                                                                                                                                                                  | Name of the complainant.                                     | Names of witnesses for the prosecution.                                                                                                                                                                                                                                                                                                                                                                                                                                          | Names of witnesses for the defence. | Statement of evidence and ground of conviction.                                                                                                                                                                                                                                                                                                                                                                                                                                      | Finding and sentence.                                                                                                                | Date of offence. | Date of complaint. | Date of apprehension or appearance. | Date of commencing trial. | Date of sentence. | Explanation of delay. |
| No. 49 of 1866.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Areperala Bramhajirow, Police Inspector of Rajapett Taluq (Brahmin). | That the defendant, being Police Inspector of Rajapett Taluq, in the month of October 1865, attempted to obtain from the Deputy Constable and other Constables of Martur, and from the Constables of other stations which are under his authority, gratification other than legal remuneration, and that he has thereby committed an offence punishable under Section 161 of the Indian Penal Code. | Lieutenant R. G. Briggs, Assistant Superintendent of Police. | 1. Mahomed Galub, Deputy Constable of Martur, No. 916.<br>2. Shaik Iman, Constable, No. 683, of stable of Martur Station.<br>3. Tirumalasetti Venkataswami, Constable, No. 680, of stable of Martur Station.<br>4. Shaik Meera, Constable, No. 871, of Martur Station.<br>5. Golla Purushottam, Constable, No. 421, of the Rajapett Station.<br>6. Galub Khan, Constable, No. 922, of the Kommalapad Station.<br>7. Savaram Venkappa, Constable, No. 862, of Kommalapad Station. |                                     | The complainant (Lieutenant Briggs) produces a chit given by the 1st witness (Deputy Constable of Martur), telling that it was handed from certain Constables to him by the defendant. The complainant further states that the other than legal remuneration, and the extra batta granted by Government, an offence punishable under Section 161 of the Indian Penal Code, and directs that he be fined in a sum of fifty-ono Rupees, commutable to thirty-days simple imprisonment. | The Court finds (Lieutenant Briggs) that Areperala produces a chit given Bramhajirow attables gratification to him by the defendant. | October 1865.    | 7th April 1866.    | 7th April 1866.                     | 7th April 1866.           | 7th April 1866.   |                       |
| the Deputy Constable of Martur, dated 3rd March 1866, written in the hand-writing of the defendant, to compare his hand-writing. The chit is to the following effect: "In this month, the Deputies got 2 Rupees, and Constables got one Rupee, promotion. They, of their own pleasure, told me that they will pay what they get as an increase. This you should tell to your Constables, and tell me their reply. The rest promised to pay in the next month; this you need not tell them." |                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                     |                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                      |                  |                    |                                     |                           |                   |                       |
| The 1st witness (Deputy Constable of Martur) deposes that on 29th October 1865 the defendant came to Martur Station, and at 9 o'clock A. M.; that after 3 o'clock, he has written in his own hand-writing a chit referred to above, and gave it to him; that he having read it, and asked the Constables as to the request of the defendant for pay-                                                                                                                                        |                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                     |                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                      |                  |                    |                                     |                           |                   |                       |

ling him the increased salary, they refused to pay him; and that he having told the same to the defendant, he requested him to tell them to pay him in the next month, and went away. This witness states that he informed of this chit being given to him to the Inspectors of Guntur and Bapatla Taluqs who came to Martur.

The 2nd, 3rd, and 4th witnesses (who are Constables of the Martur Station) deposes that the defendant has written a chit, and gave it to the 1st witness; that the 1st witness having asked them that the Inspector requires that the increased rate of pay may be paid to him, they refused to pay so; that the 1st witness informed the Inspector of the same, and that he requested that they may pay in the next month.

The 5th witness (Constable of Rajapett Station) deposes that the defendant asked him and other Constables to give him one Rupee each, as they got promotion, and that they refused to pay him so.

The 6th, 7th, and 8th witnesses (Constables of Kommalapad Station) depose that the defendant asked them to give him each one Rupee, as their salaries have been increased, and that they refused to give him so.

The defendant pleads not guilty. He denies having asked any Constable for anything; he states that the chit was not written by him, and that he heard that the 1st witness (Deputy Constable) fabricated it and asked other Constables for money in his (defendant's) name.

It is proved by the evidence of the 1st, 2nd, 3rd, and 4th witnesses that the defendant has written the chit in their presence. There is no doubt that it is written by the defendant, as the hand-writing of it and of the Memorandum, which the defendant admits to be his writing, correspond.

The fact of the defendant having asked the Constables to pay him the increased salary, is fully proved by all the witnesses; consequently, the defendant is found guilty of the charge.

The defendant (Inspector) urges that, as it is not stated that he asked the money as a motive or reward for doing, or forbearing to do, any official act, Section 161 of Indian Penal Code does not apply to this case.

Although it is true that he did not inform the Constables the favor which he may do on their paying the sum as required, still it is an implied fact that the object of a Superior Officer in receiving a bribe from his subordinates is to show favor towards them; consequently, Section 161 of Indian Penal Code is deemed applicable to the public servant who attempts to obtain any gratification other than legal remuneration from his subordinates.

The Inspector argues that, as more than three months have expired since the offence was alleged to have been committed, no prosecution can be instituted against him, under Section 53 of the Police Act, which enacts that actions and prosecutions against Police Officers shall be commenced within three months after the act complained of shall have been committed and not otherwise, and under the Government Proceedings, dated 9th February 1864, which circulated Mr. Mayne's opinion on the subject.

The offence having been committed in October 1865, five months have expired to the date of this prosecution, i.e., 7th April 1866.

The offence of attempting to receive a bribe is punishable, under Section 46 of the Police Act, by imprisonment not exceeding twelve months. The same offence is made punishable by three years' imprisonment, under Section 161 of Indian Penal Code.

Section 51 of the Police Act enacts that nothing contained in that Act shall be construed to prevent any person from being liable, under any other law, Regulation or Act, to any other or higher penalty or punishment than is provided for such offence by this Act.

Agreeably to this Section, 51 of Police Act, this Inspector is tried under Section 161 of the Indian Penal Code, which fixed higher penalty than that prescribed by Police Act. As the Penal Code and Criminal Procedure Code do not fix a time within which a prosecution must be commenced for offences punishable under Indian Penal Code, the argument of five months having elapsed does not avail. The Deputy Magistrate thinks that the time fixed in Section 53, Police Act, cannot be made applicable to the prosecution made under Indian Penal Code and Criminal Procedure Code, which are subsequent Acts to the Police Act.

The Barristers-at-Law are not unanimous in their opinion regarding the construction of Police Act. Mr. Dale, Government Pleader, expressed his opinion that a Sub-Magistrate acting under the Penal Code, or Code of Criminal Procedure, has not jurisdiction over the Officers of Police in contravention of the restriction enacted by Section 50 of the Police Act. Mr. Mayne expressed his opinion that if the offence is punishable both by summary conviction under Police Act, and by prosecution under the ordinary Criminal Law, then the option of proceedings by the latter Law is expressly preserved by Section 51; and that if the party aggrieved selects the latter method, he may proceed before any functionary, European or Native, subject only to the limitations laid down, and the protection afforded by Sections 53 and 54.

The Deputy Magistrate is of opinion that Sections 53 and 54 are applicable to actions or prosecutions preferred on the Civil side of the Courts, and that the limitation of time fixed in Section 53 is not applicable to criminal prosecutions preferred before the Magistrate.

It may be said that of the two terms in the beginning of Section 53 "Actions," and "Prosecutions," the first is applicable to civil suits, and that the other is applicable to criminal proceedings. The Deputy Magistrate begs to refer to Section 54, wherein the terms "Action," "Prosecution," and the term "Proceeding" occur. As it is enacted by that Section that the defendant shall thereupon be entitled to a "decree" in his favor, it is plain that the procedure intended is a civil one, as the term *decree* is used in civil matters, and is not used in criminal cases. Weerein the term *sentence* is expressly being used. Further, such action shall be given to the Superintendent of Police. If this provision be applicable to Magisterial proceedings, to whom should the complainant in this case, who is himself the Assistant Superintendent of Police, give notice?

All the public servant, including those who are not removable except by orders of Government, are liable to be tried, under Section 161 of the Indian Penal Code, for receiving bribes, as soon as the offence is detected by their Superior Officers, without reference to the time expired after the commission of the offence; and there is no cause why the Police servants only should enjoy immunity from such prosecution after three months. Under these grounds, the Deputy Magistrate is of opinion that the Police Inspector is legally triable under Section 161 of the Indian Penal Code.

KISTNA DISTRICT, DEPUTY MAGISTRATE'S COURT,  
KOMARAVULLIPAD, 9th April 1866.

(True Copy).

(Signed) V. VENKATACHELLEN,  
Deputy Magistrate.

(Signed) W. WILSON,  
Acting Magistrate.

EXTRACT from the Proceedings of the Session Court of Guntur, dated 3rd August 1866, No. 90.

Read again Criminal Appeal Petition No. 9 of 1866, presented by A. Bramhajirow, defendant in Cases Nos. 48 and 49 of 1866, on the file of the Deputy Magistrate in charge of the Palnad Taluq, Kistna District.

Read also Records of the said cases received from the said Officer.

1. These are two appeals from the decision of the Deputy Magistrate of the Palnad Taluq in Calendars Nos. 48 and 49 of his file.

In 48, the charge against the prisoner Bramhajirow, an Inspector of Police, is for "furnishing false information" to his Superior Officer, the Assistant Superintendent of Police, and the offence consisted in stating that he paid the salaries of the Police of Martur at Martur, whereas he called them in, and actually paid them at, Rajapett. For this, he was fined, under Section 177 of the Penal Code, Rupees 51, the odd Rupee being evidently for the purpose of allowing him an appeal.

2. In case 49, he was charged, as a public servant, with attempting to obtain for himself a gratification, other than legal remuneration, and sentenced to pay a fine of Rupees 51, under Section 161 of the Penal Code.

3. These charges were preferred and prosecuted to conviction by the Assistant Superintendent of Police five months after the date of the particular offences, which the Petitioner is found, by these convictions, to have committed.

4. On this circumstance, the petitioner raises in appeal the question of the Deputy Magistrate's jurisdiction, as, under the provisions of Section 53 of Act XXIV of 1859 (Mofussil Police Act), there is a special limitation of *three months*, as the period within which either an "Action or Prosecution" must be brought for any act done under the provisions of that Act, or under the general Police powers thereby given; and this being so, the petitioner holds that the limitation and protection afforded to him by Section 53 are equally to be extended to his case, when the prosecution is under the Penal Code, supposing the charge to be such as the Officer trying it admittedly has jurisdiction over both under the Police Act and under the Penal Code, and the particular act or acts, as in the petitioner's case, to have been done in his official capacity. The Deputy Magistrate, on the other hand, contends that "Action" and "Prosecution" are used to mean one and the same course of civil proceeding against the Officer of Police; in this (53) and the following Section (54), the word "Decree" (always confined to civil actions) being employed in both, in speaking of the decision passed in such "Actions" or "Prosecutions." From the tenor of the whole Section, it is abundantly clear that the object in view was to prevent Officers of Police from being needlessly harassed by civil actions, or criminal prosecutions after the lapse of three months, and to provide against their being subjected to both, at one and the same time, for the same offence.

5. The Session Judge is of opinion, therefore, that the petitioner's objection to the jurisdiction of the Deputy Magistrate must prevail.

6. Act III of 1865 merely extended to the Magistracy, generally, jurisdiction under all such special and local laws, as previously excluded the jurisdiction of certain subordinate classes of the Magistracy, not being Europeans. Act XXIV of 1859 (Police Act) is a special law, which excluded the Native Magistracy altogether, where the Police Officer to be tried was above the rank of Private; and punishment of his offence was sought by summary conviction under that Act. Where the offence was one punishable, either by summary conviction under the Police Act, or by prosecution under the ordinary Criminal Law, Section 51 of Act XXIV of 1859 expressly reserved the option of proceeding against the offender by the latter law. The Officiating Advocate General has given a case in point. He says, "for instance, suppose a man had been assaulted by a Deputy Constable; if the party assaulted is satisfied with the punishment which can be inflicted under Section 44 (Act XXIV of 1859) as for unwarrantable personal violence, he may proceed by summary process before a European functionary." "If, however, he desires to have the act punished under Section 330 of the Indian Penal Code, as an attempt to extort a confession by causing hurt, he may lay his complaint before any Magistrate who has power to commit to the

Session Court (that is any Sub-Magistrate), and the final trial must take place before that tribunal."

7. Act III of 1865 cannot be held to abrogate any of the provisions of the Police Act, and as Section 5 of the Indian Penal Code does not "repeal, vary, suspend, or affect any of the provisions \* \* \* of any special or local law," it seems to follow, as a necessary consequence, that whether a Police Officer, of any grade, is prosecuted under the Police Act, or under any provision of the Penal Code, for any act done in his official capacity, he is still entitled to the benefit of the limitation and protection conceded to him by Section 53 of Act XXIV of 1859, alike when the remedy sought is by a Civil action to redress a wrong done under color of his office, and when the act committed by such Police Officer is an offence punishable either under the Police Act or the Indian Penal Code.

8. The Session Judge is therefore of opinion that the Deputy Magistrate had not jurisdiction in either of these cases, by reason of the term prescribed by Section 53, within which such charges should have been preferred, having elapsed before they were laid.

9. These convictions are accordingly annulled, and the fines collected from the petitioner will be refunded to him.

10. He stated, during the hearing of these appeals, that he had been suspended or dismissed, with a promise of restoration to Office, if he were acquitted on appeal. Without offering any opinion on the merits of these convictions, supposing the jurisdiction of the Deputy Magistrate not to have been barred, the Session Judge would remark that it may be desirable that the records should be placed before the Inspector General of Police, to enable him to form his own opinion on this subject; and if application be made to this Court with that view, they will be officially forwarded to that Officer, or handed over to the Superintendent of Police for submission to him.

11. Based on his experience of the injurious operation of Section 51 of the Act XXIV of 1859 and of Act III of 1865, in allowing an option to complainants to prosecute Police Officers above the rank of Private, for acts done exclusively in their official capacity, otherwise than under the protection of Section 50 of the Police Act, that is, trial by a European functionary, the Session Judge would take this opportunity of recording his conviction that, if such persons of rank and family position as may be at present in the Police Force are to be retained, and persons of equal standing and social condition are hereafter to be enlisted, it is indispensably necessary that the Police Act should be excluded from the operation of Act III of 1865, as provided under the powers vested in the Governor in Council, under Clause II of the latter, and that Section 51 of the former (Police Act) should be so modified as to meet the requirements of the case.

12. It may be broadly stated, as a fact, without any reflection upon the Native Magistracy (worthy, conscientious, and upright, as very many of them are, to the Session Judge's knowledge), that their countrymen have not that confidence in any Native tribunal which they place in every European Court of Justice. However wrong and ill-founded this impression on the part of Natives, it is nevertheless patent to every one who has much intercourse with them, that there is this feeling of distrust, and the only substantial relief in the case of Officers of Police of the superior grades, who are peculiarly exposed to malicious prosecutions for their smallest official acts (when all sorts of influences are brought to bear on them), is to render them amenable solely to the European Magistracy, whether their criminal prosecution is to be under the Mofussil Police Act, or the ordinary Criminal Law. With this protection, and the limitation already provided by Section 53 of the Police Act, the frivolous and false charges now often preferred to annoy and intimidate them would be reduced in number, and an existing bar to the future enlistment of really superior men removed.

Ordered that Extract from these Proceedings be sent to the Magistrate of the District, and to the Assistant Superintendent of Police, for their information.

(True Extract).

(Signed) W. HODGSON,  
Session Judge.

(True Copy).

(Signed) W. WILSON,  
Acting Magistrate.

From V. VENKATACHELLEM, Deputy Magistrate, Kistna District, to the Magistrate, Kistna District; dated Vinukonda, 6th October 1866, No. 76.

I have the honor to return the Proceedings of the Gunttoor Session Court, dated 3rd ultimo, held upon the appeals preferred by Areperala Bramhajirow, Police Inspector of Rajapett Taluq, against my decisions in Cases Nos. 48 and 49 of 1866 on my file.

2. In paragraph 4, the Session Judge observed that "from the tenor of the whole Section (53, Act XXIV of 1859) it is abundantly clear that the object in view was to prevent Officers of Police from being needlessly harassed by civil actions or criminal prosecutions after the lapse of three months, and to provide against their being subjected to both at one and the same time for the same offence."

3. With all deference to the opinion of the Session Judge, I beg to submit my humble opinion that Sections 53 and 54, Act XXIV of 1859, are applicable to civil actions and not to criminal prosecutions on the grounds:—

1st.—That sufficient amends are allowed to be tendered to the plaintiff;

2nd.—That sufficient money is allowed to be paid into Court by the defendant;

3rd.—That the term "decree" (always confined to decisions in civil actions) is employed in Sections 53 and 54 in speaking of decision passed in such actions.

4. If these two Sections be applicable to criminal prosecutions, it will be the duty of a Superintendent of Police, who may intend to prosecute a Police Inspector criminally, for receiving bribes or for attempting to receive bribes (which are offences punishable under Section 161 of the Indian Penal Code), to accept if a tender of sufficient amends be made.

5. You are well aware that Section 213 of the Indian Penal Code prescribes punishment to any person who accepts anything for his not proceeding against any person for the purpose of bringing him to legal punishment.

6. With reference to paragraph 7, wherein the Session Judge observed that "Act III of 1865, cannot be held to abrogate any of the provisions of the Police Act," I beg to state that I have not referred to Act III of 1865 in my decision, as I did not consider that it is applicable to the Police Act.

7. The Session Judge having observed that the term of three months, prescribed by Section 53, Act XXIV of 1859, is applicable to Case No. 48, I beg to explain the nature of the case.

8. The Inspector having furnished to his immediate Superior Officer (Assistant Superintendent) false information through his Diaries, for several months, by stating that he proceeded to Martur and paid the salaries of the Constables of that station in the said village of Martur, whereas he has sent for the Constables to the Rajapett station and paid them there, the Assistant Superintendent of Police (Lieutenant Briggs) prosecuted the Inspector. As the Police Act does not provide for this offence, this case was tried and disposed of by me under Section 177 of the Penal Code, which enacts that "whoever, being legally bound to furnish information on any subject to any public servant as such, furnishes as true information on the subject which he knows or has reason to believe, to be false, shall be punished with simple imprisonment or fine, &c."

9. Section 21 of the Code of Criminal Procedure enacts that the Criminal Courts of all grades shall be guided by the provisions of that Act in the investigation and trial of all offences punishable under the Penal Code, or under any special or local law.

10. As the Penal Code, and Criminal Procedure Code do not limit a time during which a prosecution for an offence must be made, I respectfully submit that the limitation of three months referred to in Section 53, Act XXIV of 1859, cannot be made applicable to offences triable under the Penal Code.

11. If it be the intention of the Legislature to prohibit, after three months, criminal prosecutions against Police Officers (including Constables, Deputy and Head Constables, who are appointed and removed by Superintendents of Police) for offences committed by them, I submit that such privilege would not have been denied to Officers and other servants in more responsible

and important posts; and that Section 167 of the Criminal Procedure Code, which enacted that prosecutions against any Judge or public servant, not removable without the sanction of Government, shall not be entertained against such Officer without the sanction of Government, has not fixed similar limit of time (three months) for the prosecution.

12. I respectfully request that you will be pleased to submit the following points for the orders of the High Court, and lay before them copies of the Calendars sent by me in Cases Nos. 43 and 49 of 1866, and the Proceedings of the Session Judge, and this letter:—

- Q. Whether the limit of three months in Section 53, Act XXIV of 1859, is applicable to civil actions, or to both civil actions and criminal prosecutions?
- Q. If it be applicable to criminal prosecutions preferred by a Superintendent of Police against an Inspector of Police for corruption, is he bound to receive the money which may be deposited by the Inspector in the Court?
- Q. If the limit of three months be applicable to criminal prosecutions against Police Officers, is it applicable only to prosecutions preferred under the Police Act (XXIV of 1859), or is it applicable to the prosecutions preferred under the Penal Code (45 of 1860) which is a subsequent Act?

13. With reference to paragraph 12, wherein it is stated that the Native Police Officers have not that confidence in any Native Tribunal which they place in every European Court of Justice, I beg to state that the cause may be inferred from the following passage in the letter of the Inspector General of Police:—

*Police Weekly Circular, page 231, dated 7th October 1865.  
Letter to the Chief Secretary to Government, paragraph 4, 10th line.*

"For the immediate presence of a Native Magistrate, whom it is difficult to deceive, is a useful check on the Police, and we need to keep up their interest in the Police."

14. I beg to state that Mr. A. Maskell, Police Inspector, who was sentenced by me, in

Case No. 97 of 1866, to five weeks' simple imprisonment, has preferred no appeal against the decision; and I beg to annex a copy of the Proceedings of the Guntour Session Court, dated 3rd January last, held upon the appeals preferred by Pratapa Venkata Subbiah, late Police Inspector of Vinukonda Taluq, against two decisions passed by me in

*Extract from the Proceedings of the Session Court of Guntour, dated 3rd January 1866.*  
Read again Appeal Petitions, Nos. 13 and 15 of 1865, presented by K. Lakshminarayana, Vakeel, on behalf of Pratapa Venkata Subbiah, Prisoner in Cases Nos. 50 and 51 of 1865 on the file of the Deputy Magistrate of the Kistna District.  
3. Read Records of the said cases received from the above Officer.  
1. The evidence in these two cases is very positive as to the prisoner's guilt. There are his own admissions of the facts, and the explanations which he gives of these are, of course, the best that he could offer under the circumstances. They are supported by evidence which is open to the strongest suspicion, inasmuch as it was not forthcoming at the outset.  
The Session Judge has given the sentences and these appeals the fullest consideration, and is of opinion that the petitioner richly deserved the punishment awarded to him. It is not often that so clear a case of abuse of authority and rudely intimidation is brought home to the accused person, and, therefore, the Session Judge will not interfere even to reduce the amount of fine inflicted, which he would have done if there had been any single circumstance of extenuation discoverable in the case.  
4. These cases will be brought prominently to the notice of the Superintendent of Police, on the ground that it would be highly prejudicial to the interests of the Force if it should be conceded that such gross misconduct on the part of a Police Officer subjected him to the penalties of the law alone, and not to peremptory dismissal from the Service departmentally.

two cases where in he was fined, from which it appears that the Inspector was ordered by the Session Court to be dismissed.

From the Magistrate of the Kistna District, to the Inspector General of Police, Madras; dated Masulipatam, 20th December 1866.

Adverting to Government Order, No. 1863, dated 23rd November 1866, published in *Police Weekly Circular*, dated 8th December 1866, page 333, I have the honor to forward, for your perusal, copy of a letter addressed to me regarding the cases which passed the subject of the above quoted order by the Deputy Magistrate of Vinukonda and Palnad Taluqs.

2. You will observe, the Deputy Magistrate is anxious that the cases should be brought before the High Court, and I shall be glad to know if you propose recommending the Government to direct the Government Pleader to move in this matter, or, in the event of your not intending to

do so, if you think it desirable that I, as Magistrate of the District, should forward the records and papers to the High Court, under Section 404 of the Code of Criminal Procedure.

From the Inspector General of Police, to the Magistrate of Kistna; dated Madras, 10th January 1867, No. 48.  
General Department.

With reference to your letter, dated 26th December 1866, I beg to inform you that I do not purpose moving in the case in question.

2. I think an authoritative decision much to be desired, and would strongly urge your moving for one, if you think the High Court will entertain the matter under Section 404, Code of Criminal Procedure.

No. 172. ORDER THEREON, 13th November 1867, No. 1833.

Before passing orders on the foregoing letter, and the papers received with it, the Governor in Council directs that the Magistrates named in the margin be requested to favor Government with their opinion on the question whether, assuming Section 50, Act XXIV of 1859, to have been rendered inoperative by Act III of 1865 (Madras), it is desirable to revive the privilege of trial by an European Judge by a Notification under Section 2 of the latter enactment; such as the Acting Magistrate of Kistna has suggested.

Mr. G. A. Ballard.  
" D. F. Carmichael.  
" H. S. Thomas.  
" R. K. Puckle.  
" G. L. Morris.  
" J. A. C. Boswell.

(True Extract).

*Chief Secretary.*

To the Magistrate of  
with copies of the Proceedings above recorded.

Exd. J. H. Burns.

Proceedings of the Madras Government  
23<sup>rd</sup> November 1866.

No 262. Reads the following letter from the Government.  
Chader, Madras, to the Secretary to Government, Fort  
Saint George, dated Madras, 13<sup>th</sup> November 1866. No 128.

I have the honor to acknowledge the receipt of the  
Proceedings of the Government, under the date  
7<sup>th</sup> November 1866, and number noted in  
No 128. Judicial Department the margin.

2. Before, however, taking any steps  
in the matter, I deem it my duty <sup>to draw</sup> to the attention of the  
Right Honorable the Governor in Council that both the  
cases referred to by the Session Judge have been finally  
disposed of, there being no appeal from the decision  
of the Session Judge, inasmuch as the prisoners in both  
cases was acquitted, and that, therefore, there is no  
Proceeding or case now pending with which the High  
Court could deal.

3. Questions have sometimes been raised before  
Courts in suppositions cases, but the Courts invariably  
have refused to entertain applications of that nature,  
or to give any opinion in cases where there is not a lis  
pendens, or a real and bonafide proceeding in existence.  
It frequently occurs that questions arise on which it may  
be desirable to obtain an authoritative decision; but,  
however desirable it may be to have such a decision,  
the English Courts invariably refuse to give it unless  
there is some judicial Proceeding pending at the  
time.

4. I am of opinion that, in framing the said  
Section of the Criminal Procedure Code, the legis-  
lature did not contemplate or intend that, when

a case has been finally put an end to, so that no further action could be taken under it, the Sudder Court should call for the record in such defunct case, and pass an order upon it. The words of the Section are certainly very wide, but in my opinion, the Legislature must be supposed to have acted on well known principles by which Courts are guided.

5. The Inspector General of Police says, there are two points on which a decision is desired, viz. 1st. Whether Superior officers of Police are amenable to the jurisdiction of a Native Magistrate; and, 2ndly, whether Section 53 applied to prosecutions under the Penal Code.

6. So far as the papers before me disclose the case and Proceedings, I am unable to gather that the first of these questions has been raised either before the Deputy Magistrate or the Session Judge. From a careful perusal of the papers I incline to think that that question never was raised. The question raised, appears to have been generally whether the jurisdiction of a Native Magistrate, European or Native, was not gone, because the period of three months, within which, under the provisions of Section 53 of the Criminal Procedure Code, all suits civil prosecutions must be brought, had expired before the Prosecution in question had been commenced; and consequently, no decision, by either the Magistrate or the Session Court, has ever been passed on the point in the case now under consideration. Under such circumstances, I do not suppose the High Court would allow that question to be raised and argued before them, even if they decided to act under the 106th Section of the Criminal Procedure Code.

7. If the High Court can be induced to call for the record under Section 106, I think the 2nd question may be argued with every probability of the Court arriving at a different conclusion from that enunciated

by the Session Judge.

8. If after further consideration, His Lordship in Council should still wish the High Court to be moved, I ought to be furnished with a full plain Copy of the Records in both of the cases, Nos 108 and 109, on the file of the Deputy Magistrate in Charge of the Paluado Taluq, Kistna District, as also of the Proceedings before the Session Court, and the orders, to enable me to prepare the Petition which must be presented to the High Court. Moreover, I am informed that Certified copies of the Orders passed by the Deputy Magistrate and Session Judge must be filed with my Petition.

No 263. Order thereon 23rd November 1866, No 1865.

Communicated to the Inspector General of Police, with reference to his letter of the 26th ultimo, No 1780.

True Extract

Signed J. F. Sproughton,  
Chief Secretary.

Wm

Acting Magistrate

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read again letter from the Inspector  
General of Police of 26<sup>th</sup> Sept. 1866 No. 1615<sup>1780</sup> recorded  
in Nos. of 13<sup>th</sup> Oct. 1866 No. 1617<sup>1780</sup> and 1756  
and letter from the Government Pleader  
of 13<sup>th</sup> November 1866 No. 128, recorded in Nos.  
of 23 idem No. 1065.

Read also the following letter  
from the M. Magistrate, Nistna District.  
(See letter 13<sup>th</sup> Sept 1867 No. 25)

Order thereon 13<sup>th</sup> Nov<sup>r</sup> 1867 No. 1833.

Before passing orders on  
the foregoing letter and the  
papers received with it, the  
Governor in Council directs  
that the Magistrates named  
in the margin be requested  
to favor Government with  
their opinion on the question

raised  
whether,  
assuming

- M. A. Ballard.
- " R. F. Carmichael.
- " H. J. Thomas.
- " R. H. Puckle.
- " L. L. Morris.
- " J. A. C. Rossmell.

WOK

the Magistrates of the 6 Districts  
with copies of the Proceedings  
above recorded - Section 50 act. 24 of 1859  
to have been rendered  
to the

Encl. No. 1

In a letter from the

Magistrate of Nistna District  
dated 11<sup>th</sup> Sept 1867 No. 23

Copy of

a Decree of the  
Madras Government  
dated 23<sup>rd</sup> November 1866

13<sup>th</sup> Nov 1867  
No. 2007/67

operation by Act 3  
of 1865 (Madras) it is  
desirable to revive  
the principle of trial by  
an European Judge, by  
a Statute under  
Section 2 of the latter  
enactment such as  
the Act of 1865  
which has suggested

that the  
... for the  
...  
...  
...  
...

W. H.

15  
W. H. There are papers  
in the collection but letters  
which have been already printed  
in the collection of  
should like to have a  
copy of the paper now  
out to be printed  
when ready W. H.

