

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	2134	Press ~~Mis.~~
Dated	31-12-1918	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
31st December 1867.*

No. 323. ORDER THEREON, 31st December 1867, No. 2134.

Ordered that a copy of the Opinion of the Advocate General be communicated to the Magistrate of the Royapettah Police Court, and to the Commissioner of Police, Madras.

(True Extract).

Chief Secretary.

To the Magistrate of the Royapettah Police Court.
" Commissioner of Police, Madras.
" Inspector General of Police.
" Magistrates of the Town and Veery Police Courts.

Exd. J. H. Burns.

Proceedings of the Madras Government, Judicial Department,
31st December 1867.

These are therefore to command you that if the said Narasoo Chetty do remain in your custody in the said Criminal Jail for the said cause and for no other you shall forthwith suffer him to go at large upon his duly entering into his own recognizance in the manner and form mentioned in my warrant of commitment in this behalf.

Given under my hand and seal this 28th day of November 1867 at Madras aforesaid.

(Signed) T. WELDON, [L. S.]
Magistrate of Police.

The Superintendent of Jails has no authority to take recognizances from prisoners.

27th November 1867.

(Signed) C. S. HEARN,
Superintendent of Jails.

Referred to the Advocate General for his opinion.

FORT SAINT GEORGE,
3rd December 1867.

(Signed) R. S. ELLIS,
Chief Secretary.

No. 322. From the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 14th December 1867, No. 806.

I have the honor to acknowledge the Order of Government noted in the margin, with its enclosures, requesting the Advocate General's opinion as to the powers of the Superintendent of Jails to accept a recognizance, and of the Committing Magistrate to call for the production from Jail of a prisoner before him for taking recognizance.

2. Having obtained from the Magistrate of the Royapet Police Court such further information as was needed, I submitted the matter for the consideration of the Advocate General, and have also conferred with him thereon; and

3. I now forward a copy of his Opinion, and also return the Order and enclosures above noted.

OPINION.

The Superintendent of Jails happens to be a Justice of the Peace. As Superintendent of Jails, he has no power to accept a recognizance; as Justice of the Peace, he might do so. A time may arrive when the Superintendent shall not be a Justice of the Peace, and I think that Act VIII of 1867 is defective in not providing a course for the taking of recognizances in such cases as that which has led to the present reference. The Superintendent, as such, has no duty cast upon him. The Committing Magistrate has no power to call for the production of the prisoner before him. It is desirable that the Committing Magistrate should take the recognizance, for it should be to his satisfaction, which, if taken by the Superintendent of Police, it might not. Again, it is desirable that the Committing Magistrate should have the recognizance, in event of its becoming necessary to take proceedings on it for its estreat.

2. In the present case, the prisoner appears to have got ultimately before the Committing Magistrate; how, does not appear.

3. I think that the difficulty might be got over by the addition of a few words to Section 64, empowering the Committing Magistrate to call for the production of the prisoner before him for the purpose of entering into a recognizance.

12th December 1867.

(Signed) J. B. NORTON,
Advocate General.

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

Proceedings of the Madras Government, Judicial Department,
31st December 1867.

also Justices of the Peace. Is not a prisoner confined in default of executing a recognizance justified in insisting on any Justice who visits the Jail taking the recognizance for want of which alone the prisoner is detained? The course I adopted is one perfectly well known and pursued in England, and I submit is equally proper and advisable here.

P. S.—Since the foregoing was written Narasoo Chetty, the prisoner, appeared before me, in custody, and I took his recognizance.

A.

To the Superintendent of Jails for the Town of Madras, and to the Keeper of Her Majesty's Jail there, and to Ramasawmy, Police Constable, No. 189.

Madras, Whereas on the 23rd day of October instant before the undersigned Magistrate of Police for the Town of Madras aforesaid Narasoo Chetty was convicted of fraudulent breach of a contract made on 21st day of December 1866 with one Vysel Curney Lubbay and the said Vysel Curney Lubbay having applied for an order directing the said Narasoo Chetty to perform certain work according to his contract it was thereby ordered that the said Narasoo Chetty should complete the contract namely "to weave 39 pieces of cloth as per said contract on or before the 23rd March 1868" and further to execute a recognizance himself in Rupees 30 and one surety in Rupees 30 for the due performance of the said work.

And whereas the said Narasoo Chetty on the abovementioned date appeared before me the undersigned Magistrate of Police for the Town of Madras aforesaid to answer unto the said complaint and it was ordered and adjudged and I do hereby order and adjudge the said Narasoo Chetty shall enter into his own recognizance in the sum of Rupees 30 with one sufficient surety in the sum of Rupees 30 for the due performance of the aforesaid order. And inasmuch as the said Narasoo Chetty hath not produced such sufficient surety as aforesaid. These are therefore to command you the said Constable forthwith to take the said Narasoo Chetty and him safely to convey to Her Majesty's Jail in and for the Town of Madras aforesaid and there to deliver him to the Keeper thereof together with this precept, and I do hereby command you the said Superintendent of Jails and the Keeper of the said Jail and each of you to receive the said Narasoo Chetty into your custody in the said Jail and there to imprison him and keep him to hard labor for the space of three calendar months unless he in the mean time enter into such recognizance with such surety as aforesaid and in the terms abovementioned. Herein fail not.

Given under my hand and seal this 24th day of October 1867.

(Signed) T. WELDON, [L. S.]
Magistrate of Police.

B.

To the Superintendent of Jails for the Town of Madras.

Town of Madras, Whereas Narasoo Chetty of Madras was on the 24th day of October 1867 duly committed to the Criminal Jail at Madras aforesaid under Section 3 Act XIII of 1859 in default of executing a recognizance himself in a sum of Rupees 30 with one surety in the sum of Rupees 30 conditioned for the due performance of an order duly passed as aforesaid namely "that the said Narasoo Chetty should on or before the 23rd day of March 1868 complete a contract made by the said Narasoo Chetty with one Vysel Curney Lubbay namely to weave 39 pieces of cloth as per said contract and further to execute a recognizance himself in Rupees 30 and one surety in Rupees 30 for the due performance of the said work." And whereas one Nursimloo has this day appeared before me the undersigned Magistrate of Police in and for the Town of Madras aforesaid and duly executed a recognizance as aforesaid as surety for the due performance by the said Narasoo Chetty of the said order.

Proceedings of the Madras Government, Judicial Department,
31st December 1867.

Read the following papers:—

No. 321. From Captain T. WELDON, Magistrate of Police, Royapettah, to the Chief Secretary to Government, Fort Saint George; dated Royapettah Police Court, Madras, 29th November 1867, No. 34.

On 24th October 1867, one Narasoo Chetty was duly convicted before me, under Act XIII of 1859, of fraudulent breach of contract, and was thereupon ordered to perform, within a stated time, the work which the said Narasoo Chetty had contracted for; and, at the request of the complainant in the case, it was further ordered that the said Narasoo Chetty should enter into a recognizance himself in the sum of Rupees 30, with one surety in the sum of Rupees 30, for the due performance of the order; in default of his entering into such recognizance and furnishing such security, he was sentenced to imprisonment for the space of three months, unless he, in the meantime, entered into the required recognizance with surety.

2. Narasoo Chetty having failed to furnish the required surety was duly committed. (Copy of warrant is attached, Appendix A).

3. On 27th November, one Nursimloo appeared before me and tendered his bail for the prisoner Narasoo Chetty. I explained to him that as there was no case now pending before me in which it was necessary to examine the prisoner Narasoo Chetty either as defendant or witness (Section 64, Madras Act VIII of 1867), I had no authority to order his production before me, but, as I had entered in his committal warrant that he was to be detained only in default of his executing the required recognizance and furnishing the required surety, I had no doubt that the Commissioner of Police, who was also Superintendent of Jails, would allow the necessary recognizances to be executed before him on application made for the purpose.

4. On 28th instant, Nursimloo returned to my Court and stated that the Commissioner of Police refused to take the recognizance and had sent him back to me. I then told Nursimloo that as far as I could act in the matter I would. I therefore took a recognizance from Nursimloo as surety, and forwarded an authority (Appendix B) to the Superintendent of the Jail to release the prisoner Narasoo Chetty on his executing his own recognizance as required in the committal warrant.

5. The Superintendent of the Jail returned the warrant to me with the following endorsement:—"The Superintendent of Jails has no authority to take recognizances from prisoners."

6. The prisoner remained in custody.

7. Cases of this nature may constantly occur, and I trust Government will sanction the obtaining of an opinion from the Advocate General for the future guidance of the Magistrates.

8. I cannot understand why the Superintendent of the Jail, who, in common with every Officer in charge of a Jail in India, is a Magistrate, imagines he has no authority to take a recognizance from a prisoner. Are not prisoners, on the contrary, specially entitled to his consideration? Doubtless an important Jail like the Penitentiary is daily visited by the Officer in charge, or one of his Deputies, who are

No 751 of 1867/68

Madras Police
Commissioner's Office
2nd December 1867

From

Major C. S. Henry

To

Commissioner of Police

W. Robinson Esquire. C. S. J.

Sir,

Inspector General of Police

I have the honor to bring to notice the following circumstances.

2. Recently a woman named Fatma Bee having committed the offence of Housebreaking by night and theft in Madras absconded and was subsequently apprehended on warrant at Arcot where also a considerable portion of the stolen property was found in the care of an inhabitant of Arcot named Mahomed Euseeb under circumstances indicating guilty knowledge.

3. Both these individuals were brought to Madras in custody and were charged before the Magistrate of Royapettah Police Court. The 1st under Section 457 P. C. the 2nd under Section 411 for receiving stolen property.

4. The Magistrate committed the 1st Prisoner and sentenced her to 9 months

Rogerson

Rigorous Imprisonment, but discharged the
20th Prisoner on the ground that the
Court had no Jurisdiction to try an offence
of Receiving Stolen property committed at
Arcot.

4. The Magistrate subsequently gave
his reasons ~~deci-~~ officially for conceiving
that he had no jurisdiction. Viz:

1. That Section 31 C. C. P. is not ap-
plicable within the Presidency
Town limits.

2. That the provisions of 24 and 25
Vic. C. 96. S. 96 (where a similar
principle is laid down) have
not been extended to India.

3. That Sections 13 and 14 Act VIII of
1867 absolutely restrict the extent
of the Town Police Magistrates
jurisdiction to offences committed
within their local limits.

5. It is needless to point out the incon-
venience and hardship entailed on Prose-
cutors and witnesses and also on the Police
by this restriction. Since to commit an offence
of receiving

receiving, the original theft must be proved
and all the evidence must be produced
in both places. In this case a journey
to Arcot was involved. but cases more
constantly occur where the property is
stolen in Marwar and received in Lydappah,
the Mount or elsewhere in the vicinity,
and though the distances are comparatively
short, yet it is obviously most desirable
that both offences should be dealt with
in one Court where all the evidence
is present. And it would seem anomalous
that the Marwar Town Magistrates
should be deprived of a power which
the Legislature has given to all
Magistrates elsewhere.

6. I request therefore that should
the Government deem it advisable the
opinion of the Law Officers may be
obtained on the following point viz:

Whether the Marwar Town Magistrates
do or do not possess under existing
laws a similar ^{power} with respect to
offences

Officers under sections 411, 412 and 411, P.C.
to that defined in Section 31 C.C.P.

7. If not I would submit that
the provision of such power is desirable

I have the honor Sir,

Your most Obedt. Servant.

Wm
Commissioner of Police

8th Dec

The Commissioner of Police
Requests that the
opinion of the above Officers
may be obtained as to
whether the above power
should be given to such
Officers under certain
sections of the C.C.P.
is not desirable that
the provision of such
power is desirable

Dated 12th Dec
1867

and to be
made of the
amendment of the
act at the
has suggested 1867

Read 7th Dec 1867 and 1868.

31st Dec 1867 No. 2134.

Ordered that the opinion
of the above Officers
be communicated to the
Magistrate of the Royal
Police Court, and to the
Commissioner of Police
London.

Wm
N. M.

To the Magistrate of the Royal Police Court
Commissioner of Police London.
The Inspector General of Police.
Magistrates of the Court
Capt. W. Hammett - in view
of a note being made.
Capt. W. Hammett - in view
of a note being made.