

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	2135	Press ~~Mis.~~
Dated	31-12-1887	

Not to be folded or roughly handled

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

Read the following papers :—

No. 324. From the Inspector General of Police, to the Chief Secretary to Government, Fort Saint George ; dated Madras, 2nd December 1867, No. 2207. General Department.

I beg to submit the accompanying letter from the Commissioner of Police, and think that it is very desirable that the opinion of the Law Officer should be obtained on the point raised by the Magistrate of the Royapettah Court.

2. It has, I believe, been usual hitherto to try receivers in the Magistrates' Courts under the circumstances alluded to.

From the Commissioner of Police, Madras, to the Inspector General of Police ; dated Madras, 2nd December 1867, No. 751.

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

2. Recently a woman, named Fatma Bee, having committed the offence of house-breaking 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 with an inhabitant of Arcot, named Mahomed Emam, 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, Penal Code ; the 2nd under Section 411, for receiving stolen property.

4. The Magistrate convicted the 1st prisoner and sentenced her to nine months' rigorous imprisonment, but discharged the 2nd prisoner, on the ground that the Court had no jurisdiction to try an offence of receiving stolen property committed at Arcot.

5. The Magistrate subsequently gave his reasons demiofficially for conceiving that he had no jurisdiction, viz. :—

1. That Section 31, Code of Criminal Procedure, is not applicable 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.

6. It is needless to point out the inconvenience and hardship entailed on prosecutors and witnesses, and also on the Police, by this restriction ; since, to convict of 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 Madras and received in Sydapet, 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 Madras Town Magistrates should be deprived of a power which the Legislature has given to all Magistrates elsewhere.

7. 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 Madras Town Magistrates do or do not possess under existing laws a similar power with respect to offences under Sections 411, 412 and 414, Penal Code, to that defined in Section 31, Code of Criminal Procedure.

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

Referred to the Advocate General for his opinion.

FORT SAINT GEORGE,
6th December 1867.

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

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

No. 325. From the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 12th December 1867; No. 797.

I have the honor to acknowledge the Order of Government noted in the margin, with its enclosure, requesting the Advocate General's opinion as to the jurisdiction of Magistrates of Town Police Courts over offences defined in Sections 411, 412 and 414 of the Penal Code, and committed out of their local limits.

2. Having submitted the matter for the consideration of the Advocate General, and having also conferred with him thereon,

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

OPINION.

In cases in which the substantive theft takes place in Madras, and the receiving occurs up-country, and both parties are brought to Madras and charged before a Town Police Magistrate, he has a right, under Section 13 of Act VIII of 1867, to convict summarily the principal offender.

2. But I do not think the Magistrate would exercise a sound discretion in acting thus in a case like the present. The object of Act VIII of 1867 was to relieve the High Court of the trial of petty offences at Sessions. But where there arises any complication, such as in the case put to me, I think it would be better for the Magistrate to commit both principal and accessory to the High Court for trial.

3. I am clear that the High Court has jurisdiction to try the accessory, though not a British subject, when the act of receiving takes place beyond its original jurisdiction. 9 Geo. IV, Chap. 74, Section 109, and Act XVI of 1851 make that clear. The latter Act has been repealed by Act XVII of 1862, but not as regards the Presidency High Courts. Act XVIII of 1862, Section 32 is also conclusive on this point.

4. The principal offence would have to be proved before the High Court before the accessory could be convicted. Much inconvenience might arise if both the accused were not before the Court; but the principal had been summarily convicted by the Magistrate, while the receiver was left to be dealt with by the Court. One trial would suffice for both the accused, if both cases were committed for trial at the Sessions.

5. I do not think the Magistrate ought to let the receiver loose. Justice is probably defeated by such a course.

10th December 1867.

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

(True Copy).

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

No. 326.

ORDER THEREON, 31st December 1867, No. 2135.

Ordered that the opinion of the Advocate General be communicated to the Inspector General of Police, and to the Magistrates for the Town of Madras.
(True Extract).

Chief Secretary.

To the Inspector General of Police.
" Magistrate of the Town Police Court.
" Do. of the Vepery do.
" Do. of the Royapettah do.
" Government Solicitor.

Exd. J. H. Burns.

Read No. 2658 and 2758.

31st Decr. 1867 No. 2135.

Ordered that the opinion of the Advocate General be communicated to the Inspector General of Police, and to the Magistrates for the Town of Madras.

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To the Inspector General of Police.
" Magistrate of the Town Police Court.
" Do. of the Vepery do.
" Do. of the Royapettah do.
" Government Solicitor.