

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	239.	Press ~~Mis.~~
<i>115-116</i>	Dated	18-2-1918

*415*Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
18th February 1867.*

No. 115. Read the following letter from the Acting Magistrate of Salem, to the Chief Secretary to Government, Fort Saint George; dated Salem, 19th January 1867, No. 4.

In the trial of a criminal case by the Head Assistant Mr. Bliss, the Session Court has taken exception to the manner in which the case was conducted, and I should feel obliged if you would favor me with the opinion of the Advocate General on the subject. The facts of the case are as follows:—

First prisoner was charged with misappropriation, and the second, his mother, with being found in possession of the stolen property. Besides the owner of the property there was but one witness, a Constable, who deposed to having found the cloth in the house of the second prisoner. The Acting Head Assistant convicted both prisoners, and the Session Judge concurred in the finding, but with these remarks—

“The Head Constable, who was the only witness in the case, appears to have been permitted to put questions to the complainant. In what capacity he thus acted the Magistrate’s notes do not shew, but the proceeding was irregular and objectionable. There is no provision in the Code for the prosecution in a case under trial before a Magistrate being conducted by any person other than the Magistrate himself. In strictly public prosecutions it may be necessary for some public Officer to appear to conduct the prosecution, but subordinate Officers of Police should not be allowed to interfere in criminal trials by putting questions to the complainants and witnesses, or by otherwise performing any of the functions of prosecutors.”

From these remarks three distinct questions arise.

1. Can any person be allowed to act as prosecutor in a case tried before a Magistrate?

2. Can a Police Officer so act?

3. Can a person act in that capacity who also appears as a witness in the case?

It would appear that the High Court have ruled that in a criminal case the complaint may be laid, and the prosecution conducted by any person acquainted with the facts of the case, and having an interest in the issue. It has been the custom in this District for the Police to prosecute, and watch the proceedings of cases in which they place the charge sheet before the Magistracy. This was introduced at the instance, I believe, of the Inspector General of Police, and I consider the custom most beneficial and useful, and well calculated to further the ends of justice. As to the prosecutor being also called as a witness, of course it is expedient that, except in rare cases, such should not be done. In the present instance the Head Constable who prosecuted appeared as witness to depose to his having accidentally found certain property in a certain place, and as a prosecutor he appeared, as above stated, in the manner which has been customary in this District.

No. 116. ORDER THEREON, 18th February 1867, No. 239.

The Governor in Council considers it unnecessary to refer the three questions raised in the foregoing letter for the opinion of the Advocate General. It was clearly objectionable to allow the Head Constable, who was a witness in the case, to examine the prosecutor.

(True Extract).

Chief Secretary.

To the Magistrate of Salem.

„ Inspector General of Police.

Exd. J. Tulloch.

Salim Magistrate's Office
No 4. Salim Magistrate's Office
From the Honble. Mr. Justice
C. A. Pochun Esquire
Acting Magistrate of Salim

To,

The Honorable A. J. Arbuthnot

Chief Secretary to Government

Fort St. George, Madras.

Sir,

In the trial of a criminal case by the
Honble. Mr. Justice, the Session Court has
taken exception to the manner in which the
case is conducted, and I should feel obliged if
you would favour me with the opinion of the
Advocate General on the subject. The facts of the case
are as follows:—

1st Prisoner is charged with misappropriation
and the 2nd his mother with being found
in possession of the stolen property. Besides the
owner of the property there was but one witness
a constable who deposed to having found the
cloth in the house of the 2nd prisoner. The
Acting Honble. Mr. Justice convicted both prisoners and
the Session Judge concurred in the finding but
with these remarks:—
"The Honble. Constable who was the only witness
in the case appears to have been permitted to put
questions to the complainant. In what capacity
he was permitted to do so is not stated."

he then asked the Magistrate notes do not show
 but the proceeding was irregular and objectionable.
 There is no provision in the Code for the prosecution
 in a case under trial before a Magistrate being con-
 ducted by any person other than the Magistrate himself.
 In strictly public prosecutions it may be necessary
 for some public Officer to appear to conduct the
 prosecution but subordinate Officers of police
 should not be allowed to interfere in criminal
 trials by putting questions to the complainants
 and witnesses or by otherwise performing any
 of the functions of prosecutors.

- From these remarks 3 distinct questions arise -
1. Can any person be allowed to act as Prosecu-
 -tor in a case tried before a Magistrate; -
 2. Can a Police Officer so act; -
 3. Can a person act in that capacity who also
 appears as a witness in the case. -

It would appear that the High Court have
 ruled that in a criminal case the complaint
 may be laid and the prosecution conducted
 by any person acquainted with the facts of the
 case, and having an interest in the issue.

It has been the custom in this District for the
 Police to prosecute, and watch the proceedings of
 cases in which they place the charge sheet before
 the Magistracy. This was introduced at the instance
 I believe of the Inspector General of Police, and
 I consider the custom most beneficial and useful
 and well calculated to further the ends of justice.

in the event of
 the person robbed
 being unavoidably
 prevented from
 appearing in Court
 who usually any
 servant or person
 acquainted with the
 facts of the case
 interest, may be

x they may watch
 from but ought
 not to prosecute

o the Court ought
 not to have called
 to the P. G. & instance

State the very
 opposite view
 - certainly not of
 justice - tho' it may be
 in prosecution.

As to the prosecutor being also called as a witness;
 of course it is expedient that in rare cases
 such should not be done. In the present instance
 the H^d Constable who prosecuted appeared as witness
 to depose to his having accidentally found certain
 property in a certain place, and as a prosecution
 he appeared as above stated in the manner
 which has been customary in this District.

I have the honor to be
 Sir

Your Most Obedient Servant

C. H. Posthumus -
 Acting Magistrate

submitted to appear
 instead of the person - but a Police Officer
 robbed. Such was the ruling
 of the H^d Court - a person as the ruling
 referred to (C.V. 1)

No 239. 18th February 1867

The question in Council
concerned it being proposed that
the question raised in the foregoing
letter for the opinion of the
Associate General. It was
clearly objectionable to allow
the head committee who was
in charge in the case to examine
the documents.

W. H. H. H.

W. H. H. H.

In the House of Commons
on 18th February 1867

CHAS
A15

MS. No. 3

1867. Grant & Co. Ltd.
From George & Co. Ltd.

Building & Repairing
of houses

Mr. Henry H. H. H. H.
of the House

London

18th February 1867

1867

1867

No 153-

Respecting to the

General and the General
of the Associate General

the subject of a matter

was given by the head

Magistrate in which the

Associate General has to be

exception to the answer

which the case involves

with the matter