

MADRAS RECORD OFFICE.

Government of Madras.

Food
Department DEPARTMENT.

G.O. No. 275	- Press - Mis.
Dated 20 - 9 - 1967	

Not to be folded or roughly handled

9/9

From

3 (Police that is)
Unanimous of Jt. Magistrate to allow the officers to
attend with the execution of sentences of Jt. Mag.

Judicial DEPARTMENT.

No. 2476

From the Registrar of the High Court of Judicature
at Madras.

Dated 7th December 1866.

FOR ORDERS.

No doubt the Jt. Magistrate order
it is a Commission with the
particular sentences at
particular times. Para 3 of O.
10 Dec 66 No 1646. is somewhat
too strong word. It must be
advised as a command, but as a
suggestion or recommendation.
I purport whether the Chief
Magistrate is to pass or to abstain from
passing any particular sentence at
any particular time.

is correct in his view that if a
Person found to be in custody & flopping
on Saturday, he can be kept in
prison till he is out of
his flopping. Lie on until
then.

J.P.

The High Court are right in their opinion
of the duties of the Executive, but the point
was never doubted. It has been rather the
fashion in the Madras High Court to find the
Govt. guilty of an intention to treat on judicial
privileges. Certainly in this case, the third
para of the G. Order ought have treated these
privileges more tenderly & I am sorry to see
that the entire paternity of the order belongs
to myself, but after all, there is a dear
opportunity in this matter, for nothing more
have been used as an objection to the order.

(No 70)
From
3 (Police that is)
Termination of Govt - not to allow its officers to
except with the execution of sentences of flogging
to execute such sentences on the Sabbath - if
that determination had simply been
made by the Magistrate & the person under
conviction for their information with a request that
they would endeavor to meet the arrangement
by changing their sittings accordingly.
I have no doubt that the order of Govt.,
whether proper or improper, legal or illegal, has
done some good by attracting the attention
of the Criminal Courts to the matter -
As for Mr. Cresson Esq. Child's law, which
next week have been laid down if he had only
in view the necessity of placing before the High
Court the anti-Sabbath flogging order -
I differ from it. Act VI of 64 (the Flogging
act) is silent as to the time when a sentence
of only flogging is passed although times &
period are prescribed when flogging is an
accessory to a sentence of imprisonment -
The inference seems, that, unavoidable, that
a sentence of flogging, nothing but flogging,
should immediately be executed and that
imprisonment for more than the time necessary
for its infliction would be illegal. W.R.

The power of the Executive to issue
orders to the Criminal Courts direct-
ing them to pass or to abstain from
passing any particular sentence at
any particular time.

Encl. 200/10
25/10/6

I think that a
gov. order should
be framed to the
effect that the
rule laid down
by Govt. in 1858
relative to the
order in
relation to convey
a recommendation
to the Magistrate
and not a
to the authority
in question.

N

Spoken in this manner,
have been used as an objection to the

(No. 10)

From

P. P. Hutchins, Esquire,

Registrar of the High Court of
Judicature at Madras.

To

The Honourable A. J. Arbutnot,
Chief Secretary to
Government.

Honourable Sir,

I am directed by the Acting
Chief Justice and Judges to forward
for the consideration of Government
the annexed copy of a communication
from the Session Judge of Tinnevely.
As they have been appealed to on the
matter by a Judicial officer, the
Judges feel bound to point out to the
Government that it is not within
the power of the executive to issue
orders to the Criminal Courts direct-
ing them to pass or to abstain from
passing any particular sentence at
any particular time.

2.

Any general rules as to Judicial discipline which the Government may think fit to issue would undoubtedly be borne in mind by Judicial officers in the sentences passed by them; but to fetter by a positive order of Government the discretion which the law gives them is a very different thing.

High Court of
Indicature, Madras,
7th December 1866.

I have the honor to be,
Honorable Sir,
Your most obed^t servant,
P. P. Hutchins
Registrar,
Appellate Side.

L. P. S.
Hutchins.

No. 632.

Trincomelly Session Court
17th November 1866.
From
F. S. Child, Esquire,
Session Judge of
Trincomelly.

To
P. P. Hutchins, Esquire,
Registrar of the High Court of
Indicature, Appellate Side,
Madras.

Sir,
I have the honor to forward a copy of an order issued by Government which appears to me to be both unnecessary and illegal and therefore not binding on either Judges or Magistrates.

2. Act VI of 1864 provides for the punishment of flogging and a warrant to flog includes that the prisoner be in custody till it be carried out as he was in custody till he was tried. If he is sentenced on Friday evening he is kept till

See also the
order of the
Magistrate.

Saturday morning and then flogged,
and in the same way if sentenced on
Saturday evening to be flogged he will
be flogged on Monday morning. I do
not myself see any difficulty ^{in the law}
about the matter, and the Act
authorizing flogging for certain
offences it appears to me that
nothing under an Act can restrict
such sentences being passed on
Saturday as well as any other
day.

3. I had intended at all
events to have brought the order to
the notice of the High Court at
the end of this Session but as
it happens I have today Saturday
found a prisoner guilty in a
case in which flogging was the
most appropriate punishment
and have so sentenced him. The
sentence certainly was signed
as early as 12 1/2 but it appears to
me ^{leaving ample}
^{time for the}
^{execution}
^{of the sentence}

me that time has nothing to do with
the matter.

I have, &c.,
Signed F. S. Child,
Session Judge.

True Copy

M. M. M.
Registrar,
Appellate Side.

Edgemoor
Handlanow.

13
Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Recd letter from the Registrar of the
High Court at Madras.

27 Decr 1866 No 70.

Order thereon 20th February 1867 No 275.

The Governor in Council
assents to the opinion
given in the 1st para
of the foregoing letter
that it is not within
the power of the Executive
Government to issue
orders to the Criminal
Courts directing them
to pass or to abstain
from passing any par-
ticular sentence at
any particular time.
His Lordship in Council
accordingly resolves
to intimate to the
several Session Judges
and

W

W

No 1874 Decr 1866 No 275 to 234

Judicial 1866 Decr 27

From Mr. Registrar of the
High Court at Madras
to the Secretary
to the Government

To the Chief Secretary
to the Government

Dated 17th Decr 1866
Received 18

No 70. No 2676.

Enclosing copy of the
communication from the
Registrar of the High Court
for the consideration of the
Government and directing
that it is not within
the power of the Executive
Government to issue
orders to the Criminal
Courts directing them
to pass or to abstain
from passing any par-
ticular sentence at
any particular time.

and Magistrates that
the rule laid down
in the proceedings of
Govt under date the
18 October last No 646,
is to be regarded rather
as a recommendation
than as a positive
injunction. -

[Signature]

Honble the Judges of the
High Court.
Civil & Session Judge of all Districts.
Magistrate of all Districts.
Inspector Genl. of Jails

{ desd 25/2 }

Indiana 1867. Department.

No. 235

PROCEEDINGS OF GOVERNMENT.

Dated. 26 February 1867.

(unrecorded)

104. 185