

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 363

Press
~~Mis.~~

Dated

7— 3— 1918

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
7th March 1867.*

No. 65. Read the following letter from the Magistrate of Trichinopoly, to the Chief Secretary to Government, Fort Saint George; dated Trichinopoly, 29th January 1867, No. 6.

As requested in Government Proceedings, dated 9th January 1867, No. 51, I have the honor to forward, with translations—

1. The original 12 Occurrence Sheets.
2. The Original Petition to Head Assistant Magistrate by Rasilingam, brother of Maruday.
3. The Sub-Magistrate's Diary, in 2 books.
4. The Sub-Magistrate's defence.
5. Original-Deposition given by Rasilingam.
6. Original Notice, stuck up near Prosecutor's house, implicating Maruday and others.
7. Two Remand Sheets.

2. I may add, for the information of Government, that, since these subsequent records have been called for, Major Bates has resigned the Police, and Maruday has been detected *in flagrante delicto*, and now awaits his trial before the Session Court, together with others of his gang, on a charge of Torch-light Robbery.

No. 66. ORDER THEREON, 7th March 1867, No. 363.

In September last, the attention of Government having been drawn to an article which appeared in the *Madras Times*, on a case of alleged torture by the Police at Trichinopoly, the Inspector General of Police was instructed to report upon the matter.

2. In pursuance of the above orders, Mr. Robinson, on the 28th of September, reported that, having received information from the Deputy Inspector General, under whose notice the case had, in the absence of the Superintendent, first come, he had previously caused an investigation to be instituted, and had also addressed the Magistrate on the conduct of the Town Sub-Magistrate Kristniah.

3. The Government having had under their consideration the final report of the Inspector General of Police, the records connected with the investigation of the Head Assistant Magistrate into the conduct of the Sub-Magistrate, the Calendar of the trial of the Police Officers before the Court, together with the remarks of the Magistrate on Mr. Robinson's report, and, lastly, the defence of the Sub-Magistrate, are now in a position to pass final orders upon the case.

4. The facts are briefly as follows:—On the 12th May 1866, the house of one Rutnum Chetty, in Warriore, a suburb of Trichinopoly, was broken into, and property stolen. No clue was obtained at the time by the Police.

5. On the 21st May, Vythilingam, Head Constable of Copoo, a Police station distant about 8 miles from Trichinopoly, volunteered information, and was placed in charge of the case by Major Bates, Superintendent of Police.

6. On the 22nd May, three persons, Maruday, Rettamalay, and Scenevassien, were arrested without warrant by Vythilingam; the Sub-Magistrate, on application made by the Police, issued a remand warrant for their detention in Dark's Bridge station till the 25th May; this warrant was renewed, upon the request of the Head Constable Vythilingam, on the 26th, and again on the 29th May,—again on the 4th

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7th March 1867.

June, on the 9th June, and on the 16th June, the latest remand extending to the 20th June,—all these remands were addressed to the Head Constable of Dark's Bridge station.

7. On the 5th June, the Prisoners Maruday and Seenevassien were removed to Copoo, a station out of the jurisdiction of the Town Sub-Magistrate, and in another Police Range; the 3rd prisoner was kept at Dark's Bridge station. This removal appears to have been effected with the consent of the Superintendent, Major Bates.

8. On the 18th June, Mr. Simpson, Inspector of Police, found the two prisoners at Copoo station. Maruday complained of having been ill used, there being at the time marks and bruises on his arms. The Inspector took the prisoner into Trichinopoly, and a charge was framed against Head Constable Vythilingam, under Section 330, Indian Penal Code. The case was referred by the Head Assistant Magistrate to the Taluq Magistrate, by whom it was thrown out. At the suggestion of the Head Assistant Magistrate, the complainant applied to the Session Judge to order a further inquiry, and the case was eventually committed to the Session Court, where the Head Constable was convicted and sentenced to one year's rigorous imprisonment, the other Police Officers implicated being acquitted.

9. On the 23rd June, the original charge was called up by the Town Sub-Magistrate Kristniah, and the prisoners were released.

10. Major Bates has resigned his appointment in the Police; the Head Constable Vythilingam has been convicted and punished by the Session Court; and the other Police Officers implicated in the case of torture have been dismissed from the Force.

11. It only remains, therefore, for the Government to consider the conduct of the Town Sub-Magistrate Kristniah. The charges against him are three: first, that he granted repeated remand warrants for the prisoners, without evidence being laid before him to justify such remands, and without having the prisoners produced before him; secondly, that, on the remands granted by him, he committed the prisoners to custody, not to the Lock-up attached to his own office, where they would have been under his personal supervision, but to the Police station, where they were in the power of the Police, and where opportunity was afforded for ill-usage, which was actually committed; thirdly, that he neglected or delayed to attend to, and investigate, the complaint presented by Rasilingam, a brother of the prisoner Maruday, which complaint was referred by the Head Assistant Magistrate to the Sub-Magistrate on the 2nd June, and attention to which would have prevented the torture of Maruday.

12. The Government are of opinion that the first charge is established; but, while they cannot but censure the delay which occurred in disposing of the case, and the issuing of repeated remands without production of satisfactory evidence for their necessity, it may be remarked, in extenuation of the Sub-Magistrate's conduct, that the case had been taken up by the Superintendent, and by him confided to an Inspector specially deputed as a Detective, and that there is little doubt that it was rather from unwillingness to interfere with the efforts of the Police, or from a want of independence, than from any more culpable motive that the Sub-Magistrate was induced to grant repeated remands, and postpone the inquiry.

13. With regard to the illegality of a Magistrate's granting a remand without seeing the prisoner, the Government observe that the law does not appear to

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7th March 1867.

require that, on each application for a remand, the prisoner should be produced before the Magistrate. The Sub-Magistrate cannot, therefore, be held responsible for the non-production before him of the prisoners in this case. It is, however, very desirable that the person for whose detention a remand is applied for should be brought before the Magistrate, that he may have an opportunity of knowing the grounds on which he is to be detained, and of showing cause against his detention; and the Government are of opinion that this course should be followed whenever it may be practicable.

14. As to the second charge, it is proved that the prisoners were removed to the Police station at Dark's Bridge; but, adverting to the limited amount of accommodation in the buildings at present provided for the custody of prisoners under examination before Committing Magistrates, the Government, referring to the defence of the Sub-Magistrate on this point, are willing to believe that the arrangement for lodging the prisoners in the Dark's Bridge station house was resorted to in good faith, and as an unavoidable expedient.

15. The Government do not believe that the Sub-Magistrate was aware of the removal of the prisoners from the Dark's Bridge station to Copoo.

16. The third charge appears to be fully established. There is no doubt that the Sub-Magistrate has acted in a very irregular manner. His conduct in connection with the case was scrutinized by the Head Assistant Magistrate, who severely reprimanded him for the laxity and irregularity of his procedure, and the Magistrate, in reviewing the proceedings of the Head Assistant, has expressed his opinion that the Head Assistant Magistrate had exercised a wise discretion in allowing the matter to pass with a reprimand.

17. The Inspector General is of opinion that the Sub-Magistrate has been too leniently dealt with; but although it is unquestionable that Kristniah has been treated with considerable leniency by the Magistrate, still, as it appears that in this case the ready compliance of the Sub-Magistrate with the wishes of the Police was in a great measure caused by a desire to assist, or by fear of opposing, the Superintendent of Police, and as high testimony is borne to Kristniah's character and general efficiency by Mr. Comyn, Mr. VansAgnew, and Mr. Banbury, the Governor in Council deems it sufficient to repeat the reprimand administered by the Magistrate, and to warn Kristniah that any similar laxity of procedure in future will lead to his dismissal from the Service.

(True Extract).

Chief Secretary.

To the Magistrate of Trichinopoly.
" Inspector General of Police.

Exd. J. H. Burns.

3
Judicial DEPARTMENT.

No. 229.

From the Magistrate of Trichinopoly

Dated 29th January 1867.

FOR ORDERS.

The Head Constable by delinquency has been punished by the Sessions Court and the other Police Officers who were concerned in the former case with the acquittal by the Court have been dismissed from the Force.

Major Bates has resigned his appointment as Sup^t of Police.

We have then for only to consider the conduct of the Sub-Magistrate Kistner.

The charges against him seem

then -

First that he presented repeated re-
-mands for the prisoners without any
evidence to justify such remands
and without having the prisoners
produced before him -

Secondly that on his remands he
committed the prisoners to custody
not to his own lock up, when they
could have been under his own
super vision, and could not have
been troubled with by the Police, but
to a Police Station where they were
in the power of the Police, and oppor-
-tunity was afforded for a misuse,
actually committed.

Thirdly that the complaint of the
Prisoners made by brother referred

to the Sub Mag. by a Petition dated 24th
in 1824 - a Petition to which was
him presented the return of the magis-
-trate allowed to him for a month.

The first charge appears to be extra-
-ordinary but in continuation of the, it
may be remarked that the case had
been taken up by the Sub Mag. Major
Mortis and by him considered to a
special detection out of their usual
course. The Sub Mag. might there-
-fore be unwilling or afraid to in-
-fer. The remands of a Mag. Mr. Bar-
-ney on this point in his letter of 8
Dec 20th seem to me of weight.

The law does not seem to require
that on each application for remand
the prisoners should be produced

before the Mag. The Sub Mag. cannot
Hampson be held accountable for this
non production before him. It is how-
-ever very desirable that the Court
should always be followed. It is only
just that the party whose for the
detention is a prisoner for should know
why he is to be longer detained and
have an opportunity of showing
cause against it.

On the second charge there is no
doubt that the Prisoner was man-
-dred to the Police Station Court. but
if what the Sub Mag. says is his de-
-ference on this head, as to the state
and extent of accommodation is
his look up to him - and we know
what sort of places some of these

look up are - the proceeding may
have been unavoidable. It is how-
-ever essential, as this very case
shows, that the Magistrate's look up
should be of a condition and size
to receive all unarmed prisoners,
and to bear no extent for their
being committed to the charge of
the Police.

I do not believe that this man
was away from the prisoner, long
been removed to the Copps Police
Station.

The third charge, on which I do not
see that the Sub Mag. has offered
any explanation, is made out -

It is clear that the Sub Mag. has
acted very irregularly and that

A Inspector General of Police was
right in criticizing his conduct &
action. I am not sure that Mr
Robinson is not correct in his
opinion that Kistner has been
too leniently dealt with. But on
the whole considering the high
testimony brought in, character
- the and general efficiency by
Mr. Corry. Mr. Van Hyne and
Mr. Baumburg and that in this
matter he must have been a good
deal under the influence of the
Sup^t of Police Major Bates, who
certainly shows very inadequately
in the affair. I am

disposed to think that it will be
enough to report the circumstances
given by the Investigator, and
leave Kistner that similar
cavity for the future will lead
to his dismissal from the post-
ice service.

JF2

6/2/07

I concur in the views taken of this
matter by Sir T. B. Wright. The nature
of the case & our position may be
summarized as dealing with cases in
which we know that European officers
are taking an interest, and it will be a
long time before we can secure a really
independent people because of the money
belonging to them. Kistner's motives
are too deeply fraudulent. The demand cannot
be unpunished.

ADK

8
I concur in the views expressed by
Sir J. Pycroft and Mr.
Phillips. -
N.

For the
proceedings.

7
My dear Arthur Muir. How about the
High Court's decision in respect of para
13 - the clause, "or in the case of a
woman, many cases seem to be where bringing
the accused person face to face with the
magistrate may be inconvenient & hard on the
accused. But within the scope of the para, as it
stands, goes beyond the Code law. See Section
62, the only section which treats of demands. The
demand must be authorized in leg order in
writing, and it seems probable that what
we are proposing to do, was unintentionally omitted
from the framers of the Code. -
It would be better to impress the opinion
that accused persons should be ^{generally} kept
separate from the remaining magistrates.
But as the Code of Criminal Procedure does not appear
to have declared that course to be imperative
anyway, the views of our most influential
magistrates will be taken into consideration & if
it be found necessary appropriate matter
for an amendment of the Code in this
respect. - Very respectfully, Arthur Muir

1. 1 11 2 3 4 5 6 7 8 9 10 11 12
Can go beyond the Code - in fact
whether they can make law. —
It may be well to consider the point
before the order goes out.
See I agree in P. 10 of the remarks
but I suspect that at the time any
private doubt did not arise.

Very sincerely
Yours
W. A. C.

27 July

28

Trichinopoly Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter
from the Magistrate of
Trichinopoly.

(Here enter 27th January 1867 No. 6)

Order thrown 7 March 1867 No. 363.

In September last
the attention of
Government in drawing the
attention of the Inspector
General of Police to an
article which appeared in
the "Madras Times" on a
case of alleged torture by
the Police at Trichinopoly
the Inspector General of Police
was instructed
to report upon the matter.

2 In pursuance of the
above orders Mr. Pollock on
the 28th of September

reported

W. A. C.
but see a separate
note to Mr. C. S. S. S. S.
about para 13
10/11

reported that, having received information from the Deputy Inspector General under whose notice the case had, in the absence of the Superintendent first come, he had previously caused an investigation to be instituted, and had also addressed the Magistrate on the conduct of the Town Sub Magistrate Christiah.

3 The Government having now had under their consideration the final report of the Inspector General of Police, the records connected with the investigation of the Head Assistant Magistrate into the conduct of the Sub Magistrate, the Calendar

20
Calendar of the trial of the Police Officers before the Court, together with the remarks of the Magistrate on Mr. Robinson's report, and, lastly, the defence of the Sub Magistrate, are now in a position to pass final orders upon the case.

4 The facts are briefly as follows: on the 12th May 1866 the house of one Patnam Chetty, in Warior, a suburb of Trichinopoly, was broken into, and property stolen. No clue was obtained at the time by the Police.

5 On the 21st May Vytalingam, Head Constable of Coppos, a Police Station distant about 8 miles from Trichinopoly volunteered information and was placed in charge of the case

case by Major Bates
Superintendent of Police.

6 On the 22nd May
3 persons Maraday, Patta-
malay and Senevaselien
were arrested without
warrant by Vytalingam,
the Sub Magistrate on
application made by the
Police issued a remand
warrant for their detention
in Dorki Bridge station
till the 25th May; this
warrant was renewed upon
the request of the Head
Constable Vytalingam, on
the 26th and again on the
29th May - again on the 4th June,
on the 9th June and on the
16th June, the latest
remand extending to the
20th June - all these remands
were addressed to the
Head Constable of Dorki
Bridge.

Bridge station.

7 On the 5th June the
Prisoners Maraday and
Senevaselien were removed
to Copoo a station out of
the jurisdiction of the Town
Sub Magistrate and in
another Police Range; the
3rd Prisoner was kept at
Dorki Bridge station (his
removal appears to have
been effected with the con-
sent of the Superintendent
Major Bates).

Prisoners after 24th June
1844

8 On the 15th June Mr.
Simpson, Inspector of Police
found the two Prisoners at
Copoo station. Maraday com-
plained of having been ill
wired, there being at the
time marks and bruises
on his arms: the Inspector
took the Prisoner into
Trichinopoly and a charge
was framed against Head
Constable

Constable Vytatingam, under
Section 330 Indian Penal
Code. The case was referred
by the Head Assistant
Magistrate to the Taluk
Magistrate by whom it was
thrown out, ~~on the grounds~~
~~that although there was~~
~~reason to believe the charge~~
~~the evidence produced was~~
~~not reliable.~~ ^{It is sufficient to say} The Head

Assistant Magistrate ^{appeal & the main judge}
referred the complainant to
^{to order} apply for a further enquiry
and that case was ^{eventually} committed to the
Sessions Court
where the Head
Constable was convicted
and sentenced to one year's
rigorous imprisonment
the other Police Officers
implicated being acquitted.

9 On the 23rd June
^{original charge} the case was called up
by the Town Sub Magistrate
Christiah

511
Christiah and the Prisoners
were released.

10 Major Bates has resigned
his appointment in the Police.
The Head Constable Vytat-
ingam has been convicted
and punished by the Sessions
Court and the other Police
officers implicated in the case
of torture have been dismis-
sed from the Force.

11 It only remains then-
for, for the Government
to consider the conduct of
the Town Sub Magistrate
Christiah. The charges against
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granted repeated remand
warrants for the Prisoners
without evidence being laid
before him to justify such
remands, and without having
the Prisoners produced
before him, secondly that
on the remands granted by
him

him, he committed the
Prisoners to custody, not to
the Lock up attached to
his own office, where they
would have been under
his personal supervision,
but to the Police station
where they were in the
power of the Police, and
^{where} ~~that~~ opportunity was
~~thus~~ afforded for ill usage,
which was actually com-
mitted. Thirdly that he
neglected or delayed to attend
to, & investigate the complaint
presented by Rasibingam,
a brother of the Prisoner
Maradaya and which com-
plaint was referred by the
Head Assistant Magistrate
to the Sub Magistrate on
the 2nd June, and attention
to which would have
prevented the torture
of Maradaya.

12 The Government
are

for their acceptance.

x than from any
more important
motives

612
are of opinion that the first
charge is established, but
while they cannot but condemn
the delay which occurred in
disposing of the case, and the
issuing of repeated remands
without production of
satisfactory evidence, it
may be remarked in
extenuation of the Sub Magis-
trate's conduct that the
case had been taken up
by the Superintendent
and by him committed to
an Inspector specially
deputed as a Detective
and that there is little
doubt that it was from
rather than unwillingness to interfere
with the efforts of the
Police, or from a want of
~~that~~ independence, ~~which is~~
~~essential to the discharge of~~
~~Magistrate's duties~~ that
the Sub Magistrate was
induced to grant repeated
remands

remands and delay the
enquiry.

? postpone

13. With regard to the
illegality of a Magistrate
granting a remand without
seeing the Prisoner, the
Government observe that
the law does not appear
to require that on each
application for a remand
the Prisoner should be
produced before the
Magistrate. The Sub
Magistrate cannot
therefore be held responsible
for the nonproduction
before him of the Prisoner
in this case. It is
however very desirable
that the person for whose
detention a remand is
applied for should have
an opportunity of know-
ing the grounds on which
he

be brought before the
Magistrate that he may

he is to be detained and of
showing cause against his
detention, and the Govern-
ment direct that this
course be invariably follow-
ed in future.

14. As to the second charge
it is proved that the Prisoners
were removed to the Police
Station at Daks Bridge,
but adverting to the limited
amount of ^{in his} accommodation & buildings
at present provided for the
custody of Prisoners under
examination ^{before} of committing
Magistrates, the Government,
referring to the defence
of the Sub Magistrate
on this point, are willing
to believe that the arrange-
ment for lodging the pri-
soners in the Daks Bridge
Station House was resorted
to in good faith and as an
unavoidable expedient.

The

15 The Government do not believe that the Sub Magistrate was aware of the removal of the Prisoners from the Durie's Bridge Station to Ceylon.

16 The third charge appears to be fully established, and there is no doubt that the Sub Magistrate acted in a very irregular manner; his conduct in connection with the case was criticized by the Head Assistant Magistrate who severely reprimanded the Sub Magistrate him for the laxity and irregularity of his proceedings, and the Magistrate in reviewing the proceedings of the Head Assistant has expressed his

his opinion that the Head Assistant Magistrate had exercised a wise discretion in allowing the matter to pass with a reprimand.

17 The Inspector General is of opinion that the Sub Magistrate ^{has} been too leniently dealt with, and ~~no doubt he would~~ ^{has} ~~to bring his conduct to~~ ^{his Sub Magistrate} ~~notice~~ ^{although it is} ~~impossible~~ ^{not to} ~~to~~ ^{admit} ~~that~~ ^{that} ~~Prisoners~~ ^{Prisoners} ~~has~~ ^{been} ~~been~~ ^{treated} ~~with~~ ^{with} ~~leniency~~ ^{leniency} by the Magistrate, ~~the~~ ^{with} ~~Government~~ ^{as it appears} ~~in~~ ^{Government} ~~believing~~ ^{believing} that in this case the ready compliance of the Sub Magistrate with the wishes of the Police was in a great measure caused by a ~~wish~~ ^{desire} to assist or ~~through~~ ^{by} fear of opposing the Superintendent of Police and ~~advising~~ ^{as} ~~to~~ ^{the}

A high testimony borne
to Christinah's Character
and general efficiency by
Mr. Comyn, Mr. Vane, Spence
and Mr. Bannister ^{my Gov. in Council}
~~opinion that it will be~~
sufficient to repeat the
reprimand administered
by the Magistrate
and to warn Christinah
that any similar laxity
of procedure in future
will lead to his
dismissal from the
Service.

Yr.

To the Magistrate of Highgate
Inspector General of Police
Para 13 to the other 18 Magistrates
dispt. 8/3
Sept 19/10

Judicial 185 . Department.

No. 363.

PROCEEDINGS OF GOVERNMENT.

of 1874.

Dated 27 March 1874.