

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	84	Press
		~~Mis.~~
Dated	15. 1. 1867	

Not to be folded or roughly handled

84/67

*Proceedings of the Madras Government, Judicial Department,
15th January 1867.*

Read the following papers :—

No. 150. From the Magistrate of Nellore, to the Chief Secretary to Government, Fort Saint George ; dated Nellore, 21st December 1866, No. 63.

With reference to my letter of 13th, and the enclosed correspondence*, I have the honor to request that early orders may be given as to the powers to be exercised by Mr. Stokes, who was appointed in the *Fort Saint George Gazette* of the 4th instant to act as Head Assistant Magistrate in this District.

* From H. E. Stokes, Esq., Acting Head Assistant Magistrate, to Magistrate, Nos. 203 and 205.
From Magistrate to Acting Head Assistant Magistrate, No. 171, dated 21st December 1866.

2. Mr. Stokes declines to take upon himself the responsibility of exercising the full powers of a Magistrate, and though I have requested him to reconsider his views on the subject, as any responsibility incurred would rest on me, it is desirable that the question should be authoritatively settled as soon as possible.

From H. E. STOKES, Esq., Acting Head Assistant Magistrate of Nellore, to the Magistrate of Nellore ; dated Nellore, 20th December 1866, No. 203.

I beg leave to direct your attention to the Proceedings of the Madras Government (Judicial Department), under date 12th July 1865, No. 970.

2. The Government there order that "no Officer is to be permitted to exercise any of the powers of a Magistrate, until they shall have been duly conferred upon him by Notification in the *Official Gazette*." With reference to the second paragraph of the Order of Government, I observe that I have not been "specially invested" with any powers but those of a Subordinate Magistrate of the 2nd Class. I, therefore, under Section 356 of the Code of Criminal Procedure, refer for your orders a case of Criminal Breach of Trust, the charge sheet in which is enclosed.

From H. E. STOKES, Esq., Acting Head Assistant Magistrate of Nellore, to the Magistrate of Nellore ; dated Nellore, 21st December 1866, No. 205.

With reference to your Memorandum, No. 170, dated 19th December 1866, forwarding copy of your letter to the Chief Secretary to Government, No. 62, dated 13th December 1866, I have the honor to state that, in the face of the Government Order of the 12th July 1865, No. 970, Judicial Department, by which the Notification of the 8th November 1864 is, it appears to me, virtually, if not formally, rescinded, and of the fact that Government have, in every instance, specially invested Officers appointed Assistant or Acting Head Assistant Magistrates with the powers they are to exercise, by Notification in the *Official Gazette*, I cannot take on myself the responsibility of exercising the full powers of a Magistrate, as proposed by you in your letter to the Chief Secretary.

From the Magistrate of Nellore, to H. E. STOKES, Esq., Acting Head Assistant Magistrate of Nellore ; dated Nellore, 21st December 1866, No. 171.

I have the honor to acknowledge the receipt of your letters of the 20th and 21st, observing that, under the Order of Government of the 12th July, "no Officer" is to be permitted to exercise any of the powers of a Magistrate, till duly notified in the *Official Gazette*, and, in the face of this Order, you decline to take on yourself the responsibility of exercising the full powers of a Magistrate, as proposed by me in my letter to the Chief Secretary.

2. Supposing the remark to which you refer to apply to Officers appointed direct by Government, as well as Sub-Magistrates, the responsibility incurred in complying with my request would not rest with you but with myself, who permitted you to exercise the full powers of a Magistrate, though the Government had omitted to invest you therewith in the order of appointment ; and I beg that you will be so good as to reconsider your views on the subject, as your refusal to take up the cases which I have forwarded to you involves considerable inconvenience to the public service.

3. Meanwhile, your objections shall be communicated to the Chief Secretary.

*Proceedings of the Madras Government, Judicial Department,
15th January 1867.*

No. 151. From the Magistrate of Nellore, to the Chief Secretary to Government, Fort Saint George; dated Nellore, 28th December 1866, No. 64.

In continuation of my letter, under date the 21st instant, No. 63, requesting early orders as to the powers to be exercised by Mr. Stokes, the Acting Head Assistant Magistrate, I have the honor, as requested, to forward copy of a letter, No. 206, of the 22nd instant, received from that Officer, in reply to my requisition to reconsider his views on the subject.

From H. E. STOKES, Esq., Acting Head Assistant Magistrate of Nellore, to the Magistrate of Nellore; dated Nellore, 22nd December 1866, No. 206.

I have the honor to acknowledge the receipt of your letter, No. 171, dated 21st December 1866, requesting me to reconsider my refusal to exercise the full powers of a Magistrate as you proposed, inasmuch as the responsibility incurred by my compliance would rest with you only.

2. I regret to be obliged to differ with you on this point. If, as is my opinion, which the

* Dated 12th July 1865, Judicial Department.

Government by their Order* and practice apparently endorse, it would be illegal for me to exercise the full powers of a Magistrate without

formal investiture under Section 23 of the Code of Criminal Procedure, I cannot see that your assumption of the responsibility, though it might perhaps excuse me in the eyes of Government, could have any effect in legalizing my proceedings, or in relieving me from personal liability to

† Act XVIII of 1850, and Indian Penal Code, Section 77.

those persons whom I should thus illegally punish. Such liability would, I think, be both Civil and Criminal†, as I should not be acting in good faith, believing that I had jurisdiction.

3. Further, it seems to me that, as the Notification of the 8th November 1864 has reference to Section 22 of the Code, it must be taken as intended merely to declare the powers which Government deem fit to be exercised by the several grades of the Magistracy.

4. In conclusion, I can only express my regret that inconvenience should be caused to the public service by my refusal, and request that you will have the goodness to forward this letter also to the Chief Secretary to Government, as explanatory of it.

No. 152. ORDER THEREON, 15th January 1867, No. 84.

Recorded, with reference to G. O., 26th December 1866, No. 2001.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

Recd 5 Feb

*Judicial Dept 1867
From, 15th Jan 1867
The Magistrate of
Nellore
The Chief Secretary to
Government,
Judicial Department,
Fort St George*

*Dated 28th December 1866
No. 206
Recd - 3 Jan - 67*

*No 7 N: 64
Enclosure One!*

*Submitting copy of a letter
No. 206 from the As: Head
Asst: Magistrate, Nellore,
in connection with the powers
to be exercised by him*

*Recorded with
reference to G.O.
26 Dec 1866 N: 2001*