

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	853	Press
		~~Mis.~~
Dated	23. 5.	19/867

5/6

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
23rd May 1867.*

Read the following papers :—

No. 252. From the Acting Session Judge of Chingleput, to the Chief Secretary to Government, Fort Saint George; dated Chingleput, 27th April 1867, No. 207.

In pursuance of the Order of Government, No. 605, dated 17th April 1867, I have the honor to state that the Calendar and Appeal Petition were submitted to my predecessor, Mr. E. C. G. Thomas, by whom "the Cantonment Magistrate was requested to forward the record", and the appeal, being heard by his successor, Mr. A. W. Phillips, was disposed of with no other remark than "the appeal is dismissed."

2. With reference to the stricture on "the extraordinary terms of the sentence", I beg to point out that the Cantonment Magistrate has, I observe, quoted in his sentence the Section of the Law under which he acted, namely, Section 72 of the Indian Penal Code, which authorizes an alternative finding.

No. 253. From the Magistrate of the Madras District, to the Chief Secretary to Government, Fort Saint George; dated Sydapet, 3rd May 1867, No. 76.

With reference to the Proceedings of Government, dated the 17th April last, No. 605, I have the honor to forward, herewith, at the request of Captain Clementson, a letter from that gentleman, from which the Government will perceive that the sentence passed by him upon the Pensioned Sepoy was perfectly legal and regular, and was upheld by the Session Court.

From Major C.D. CLEMENTSON, Cantonment Magistrate, Saint Thomas' Mount, to the Magistrate, Madras District; dated Saint Thomas' Mount, 1st May 1867, No. 58.

I beg to acknowledge the receipt of Proceedings of Government, Judicial, Department, under date 17th April 1867, and, with reference to the Order thereon, No. 605, paragraph 2, I would beg to observe that Section 72 of the Indian Penal Code, and Sections 242, 381, and 382 (Clause 5), of the Code of Criminal Procedure, do not appear to have been brought to the notice of Government. Section 242 states "when it appears to the Magistrate that the facts which can be established in evidence show a case falling *within some one of two or more Sections* of the Indian Penal Code, *but it is doubtful which of such Sections will be applicable*, the charge will contain two or more heads, framed, respectively, under each of such Sections." Section 381 of the Code of Criminal Procedure states "when the trial is concluded, the Court, in passing judgment, if the accused is convicted, shall distinctly specify the offence of which, and the Section under which, he is convicted, *or, if it be doubtful under which of two Sections* the offence falls shall distinctly express the same, and pass the judgment in the alternative, according to Section 72 of the Indian Penal Code." Section 382 of the Code of Criminal Procedure, Clause 5 and preceding paragraph, gives the form of the finding and judgment when an offence is proved but it is doubtful under which of two or more heads of the charge the offence falls.

2. The sentence in the Case No. 244 of 1866 was passed in accordance with the provisions of the above Sections, and in the form laid down in Clause 5, Section 382, of the Code of Criminal Procedure. Under those Sections, it will be observed that it is sufficient to find a prisoner guilty of one or other of two crimes, which of the two being left in doubt, the only proviso being that he shall be subject to the punishment provided for the lesser offence.

3. As the words in the Government Order seem to imply that I have passed either an improper or illegal sentence, I request that you will be good enough to forward this letter for the consideration of Government, as I respectfully submit that, as the Order now stands, it conveys a reflection upon me as a Magistrate, which I do not consider that I have deserved.

4. I would also add that the case was heard on appeal before the Session Court of Chingleput, and that the sentence was confirmed.

Proceedings of the Madras Government, Judicial Department,
23rd May 1867.

No. 254.

ORDER THEREON, 23rd May 1867, No. 853.

The Governor in Council observes that the sentence passed by the Cantonment Magistrate in the case referred to was in accordance with Section 72 of the Indian Penal Code, the provisions of which had been overlooked by the Government when they called attention to what appeared to them an extraordinary sentence.

(True Extract).

Chief Secretary.

To the Session Judge of Chingleput.
" Magistrate of the Madras District, with enclosure, returned
" Cantonment Magistrate, Saint Thomas' Mount.
" Military Department.

Ed. J. H. Burns.

DEPARTMENT.

No. 946 & 999.

From The Session Judge - Chingleput.
" The Magistrate of the Madras District.
Dated 27th April & 3rd May 1867.

FOR ORDERS.

I am not quite clear that 72 of the Indian Penal Code was meant to be inserted in the case as the present - but either way the fact is proved but its exact quality doubtful. See the note on this section in the Appendix
I think -

The letter of the Law Officer seems to be in the line of the above & his explanation seems satisfactory.

PP
WOL

Then 72 of the Indian Penal Code, the provisions of which had been overlooked by the Government when they called attention to what appeared

to accept. His intention has
been confirmed on appeal by
the Senior Judge.

I think so. There has
been an error. W. H.

Yes, I think that the explanation
should be accepted as satisfactory
and that the Govt. should state
that the Cantonment Magistrate
is exonerated from any blame which
he might think attached to him
by the wording of the previous order.

N.

Ed. J. H. Burns.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter.

From the Sp. Session Judge - Chingleput Resolved 27 April 1867 N^o 207
Magistrate of the Madras District — 22 May — 76.

Order thereon 23rd May 1867 N^o 853.

The Governor in
Council observed that the
sentence passed by the Can-
tonment Magistrate in
the case referred to was
in accordance with sec-
tion 72 of the Indian
Penal Code, the pro-
visions of which had
been overlooked by the
Government when they called
attention to what appeared

N.
JP
WHL

to them an extraordinary sentence.

To the Honorable Judge of Chancery
Magistrate of the County of Suffolk.
County Court House, Suffolk County, N.Y.

William C. 1864. Department.

No. 153.

PROCEEDINGS OF GOVERNMENT.

Dated. 23 May 1864.