

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	859	Press
		~~Mis.~~
Dated	25. 5. 1918	

Not to be folded or roughly handled

3/3

*Proceedings of the Madras Government, Judicial Department,
25th May 1867.*

Read the following papers :—

No. 263. From the Inspector General of Police, to the Chief Secretary to Government, Fort Saint George; dated Madras, 6th May 1867, No. 756.

General Department.

Several Magistrates have animalverted on the failure of the Police when holding inquiries under Chapter IX of the Code of Criminal Procedure, 1st, to go into any defence the accused may offer, and examine persons named by him as able to verify his statement; and, 2ndly, to inquire at first who are wanted by the accused as witnesses, and thereby producing delay before the Magistrates, which ought to be avoided.

2. I find that a feeling is very prevalent amongst Police Officers, that they should confine themselves to the prosecution, and that they are to leave the accused's case to be gone into before the Magistrate. They never bind over the witnesses for the defence.

3. On the first point, I think that Police Officers are required by law to examine every person who, from the statement of the complainant or otherwise (including of course any person named by an accused person), appears to be acquainted with the facts and circumstances of the case into which they are inquiring (Section 44, Code of Criminal Procedure), and that they should give the accused an opportunity to offer any explanation and give the names of persons whom he would wish them to examine, both with a view to verify a true and check a false defence.

4. But on the second point, I am not so clear. Section 153, Code of Criminal Procedure, requires the Police Officer making the inquiry to bind every prosecutor and witness, whose attendance before the Magistrate may be deemed necessary by him, to appear. The words would include the witnesses named by the accused, and there is no provision of the law forbidding the Police to bind over witnesses whom the prisoner proposes to cite. But it has not been usual to ask the accused to name his witnesses.

5. There is no doubt that much time would be saved if it were done on all occasions.

6. I should be glad to learn the opinion of the Advocate General on these points, for the guidance of the force under me.

Referred to the Advocate General for his opinion.

FORT SAINT GEORGE,
7th May 1867.

(Signed) F. BRANDT,
Under Secretary.

No. 264. From the Acting Government Solicitor, Madras, to the Under Secretary to Government, Fort Saint George; dated Madras, 10th May 1867, No. 290.

I have the honor to acknowledge the Order of Government noted in the margin, referring for the Advocate General's opinion certain questions arising out of the operation of Chapter IX of the Code of Criminal Procedure.

Dated 7th May 1867, and made on letter from the Inspector General of Police to Government, of the 6th idem, No. 756.

2. I have submitted the matter for the consideration of the Acting Advocate General; and

3. I now forward a copy of his opinion on the subject, and return the order above noted.

*Proceedings of the Madras Government, Judicial Department,
25th May 1867.*

OPINION.

I agree with the Inspector General of Police in the opinion expressed by him in paragraph 3 of his letter under reference. The preliminary inquiry is conducted by the Police, with a view to ascertain whether "the person arrested appears, from the information obtained, to have committed the offence charged"—(Criminal Procedure Code 151,); and for this purpose the Police Officer is authorized to require the attendance before himself, and to examine orally any person who is supposed to be acquainted with the facts of the case. (Sections 141, 145). His inquiry need not be exhaustive, but it must be impartial; and I am of opinion that he would not discharge his duty if he declined to listen to or call for information, tendered by the accused, which went directly to negative the charge against him. But if the evidence was of a nature which, if adduced and believed, would still have the accused under such a degree of suspicion, as would justify his transmission before the Magistrate, then I do not think the Police are bound to delay the inquiry with a view to such investigations.

2. On the second point, I do not think that it is the duty of the Police to bind over and produce before the Magistrate the witnesses for the defence. Sections 151, 153 and 158 seem to refer to witnesses in support of the complaint, and I cannot imagine that the power of detaining witnesses in custody, which is given by Section 159, was intended to apply to the prisoner's witnesses. Further, Sections 207, 227, 228, 252, 253 and 232 appear to assume that, when the case comes on before the Magistrate, the witnesses for the accused will, in general, not be in attendance. A little delay may sometimes arise. But, considering the quantity of irrelevant evidence which prisoners are always anxious to adduce, I think that grave inconvenience would arise if the Police were instructed to bind over their witnesses.

(Signed) J. D. MAYNE,
Acting Advocate General.

9th May 1867.

(True Copy).

(Signed) H. J. BROCKMAN,
Acting Government Solicitor.

No. 265.

ORDER THEREON, 25th May 1867, No. 859.

Ordered that the foregoing letters, together with the opinion of the Acting Advocate General, be communicated to the Inspector General of Police, and to all Magistrates.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Inspector General of Police.
„ Magistrate of
„ Acting Government Solicitor.

Ed. J. Tulloch.

*Read the following letters.
From the Insp. Genl. of Police Dated 6 May/67 No. 756.
— „ — Ag. Genl. Solicitor, Madras — 10 May/67 No. 290*

Order, 25 May 1867 No. 859.

*Ordered that the foregoing
letters together with the opinion of
the Acting Advocate General
be communicated to the Inspector
General of Police, and to all
Magistrates.*

*to the Insp. Genl. of Police
Magistrate of all districts
by Gov. Solicitor — 29/5*