

MADRAS RECORD OFFICE.

Government of Madras.

Indic DEPARTMENT.

G.O. No.	964	Press ~~Mis.~~
Dated	14-6-1867	

Not to be folded or roughly handled

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No. 119. Read the following letter from T. G. CLARKE, Esq., Magistrate of Police, to the Chief Secretary to Government, Fort Saint George; dated Madras, Town Police Court, 29th April 1867, No. 25.

I have the honor to request that you will do me the favor to submit the following circumstances for the consideration and orders of the Right Honorable the Governor in Council.

2. Some time in the month of July 1866, Mr. Mayne, the Acting Advocate General, instructed by Mr. Alldritt, Solicitor of the High Court, appeared on behalf of one Parthasarathy Iyengar, the Dubash of Messrs. Maxwell and Company, and, on his information and complaint before my colleague, Mr. Campbell, and after due investigation of the charge, one Bungaroo Ramoo Reddy was committed to take his trial at the Criminal Sessions of August last, on the prosecution of the Queen against the said Bungaroo Ramoo Reddy, for giving false evidence in a civil action at the High Court, in a suit brought by the said Bungaroo Ramoo Reddy against Messrs. Maxwell & Co., which suit was dismissed with costs.

3. Bungaroo Ramoo Reddy was tried at the Sessions and acquitted.

4. On the 13th August 1866, after the trial at the Sessions, Mr. John Miller, a member of the Bar, instructed by Mr. George Branson, Solicitor, appeared on behalf of the abovenamed Bungaroo Ramoo Reddy before Mr. Campbell, and applied for a summons against Parthasarathy Iyengar, on the ground that he, Parthasarathy Iyengar, had given false evidence in the civil suit, as well as in the criminal prosecution.

5. Mr. Campbell gave a patient hearing to the application, and promised every assistance in his power for the ends of justice, if further reliable information could be tendered than the mere statement of Counsel, or the information of the prosecutor Bungaroo Ramoo Reddy, who, although acquitted by the Jury at the criminal trial, had failed to obtain a judgment in the Civil Court. After due consideration, however, of all the circumstances stated by Counsel, he was eventually induced, upon his own showing, to decline to issue any process in the case.

6. It may not be irrelevant here to submit that, owing to the increase in the number of Solicitors and Vakeels, applications are constantly made to Magistrates at this Court, charging parties with giving false evidence in the several Civil and Criminal Courts in the Town of Madras.

7. Exclusive of a number of such charges verbally inquired into, in the ordinary course of business, in which, as in the present instance, no process were issued, there have been, within the last six months, fourteen cases, in which distinct charges were preferred: six were dismissed after having been duly investigated, and ~~from~~ process; one only was committed for trial; in four cases parties were either absent or had privately compromised; one was withdrawn; and two are pending investigation.

8. Although it is much to be regretted that false evidence is often resorted to, yet it is impossible that Magistrates can reach every individual so charged, or issue process and more formally investigate every such charge.

9. It has been usual for Magistrates in case of alleged perjury (in all other cases as well), before actually instituting a formal judicial investigation, or even before serving process, first to be satisfied by verbal inquiry that the complainant has reasonable grounds for preferring the charge, or has sustained any injury, and

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whether, from his own showing, there is a probability of a *prima facie* case being made out, to induce a judicial investigation by the issue of process.

10. In the present instance, Mr. Campbell considered that there were not sufficient grounds laid before him to oblige him to entertain the case, or outweigh the evidence given in the civil action, and in the previous criminal trial, against Bungaroo Ramoo Reddy.

11. Subsequently, the application was renewed by Mr. George Branson, the Solicitor, at a time when there was a great pressure of work, and, as he had no further information to afford in connection with the case than what Mr. Miller, his Counsel, had preferred, Mr. Campbell again refused to entertain the charge; but, at the request of the Solicitor, he permitted him to renew his application to the full Bench, viz., Mr. Campbell and myself. I then had an opportunity of hearing all that Mr. Branson had to urge, and I quite concurred in the view originally taken by Mr. Campbell.

12. Eventually, the High Court, on the application of Mr. Branson, and upon the affidavit of Bungaroo Ramoo Reddy granted an Order Nisi for a Writ of Mandamus, which was duly served upon Mr. Campbell, to take the information, unless good cause were shown within four days.

13. Mr. Campbell could not then avail himself of the service of the Crown Prosecutor; in fact, he could only have done so (had he been present) by securing his services through an Attorney, and paying his fees. In his absence, Mr. Brockman, the Acting Government Solicitor, advised that Mr. Campbell should not file an Affidavit in answer to the Mandamus, as he had no personal interest in the matter; but that he should, through the Acting Advocate General, as his Counsel, show cause. He, accordingly, instructed Mr. Advocate General in the matter, who appeared on behalf of Mr. Campbell, on the 23rd January 1867, when the High Court made the order for a Writ of Mandamus absolute.

14. Mr. Campbell, in compliance with the Writ, took the information and complaint of Bungaroo Ramoo Reddy, and more formally and fully investigated into the charge, and issued process.

15. Every Subpoena applied for on behalf of the prosecution was granted, and received as evidence was carefully scrutinized; and after a patient and thorough investigation of the whole case, which occupied the greater portion of 5 or 6 days, it resulted eventually in the dismissal by the Magistrate of the charge.

16. Mr. Campbell gave me an opportunity of reading the depositions taken by him, after he had himself come to a determination; and I have only to add that I concurred with him in his judgment. The proceedings are voluminous, and I should be sorry to trouble the Government with the papers, but they will be submitted if required.

17. Messrs. Boyson, Brockman, and Prichard, having presented to Mr. Campbell, for payment, the accompanying bill, amounting to Rupees 70-8-0, for their own and the Acting Advocate General's costs and fees, for showing cause, on Mr. Campbell's behalf, against the application for the Mandamus, I now beg to submit

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it to the Government, and, under the circumstances set forth in this communication, to solicit special sanction for the amount being disbursed from the Government Treasury.

18. While preferring this request, I beg to state that, within my knowledge, extending to many years, this has been the only Writ of Mandamus that has ever been served on a Presidency Town Magistrate.

19. Some two or three years ago, an attempt was made to induce the Court to serve a similar Writ on me; but the Court held, on the affidavits of the parties themselves, that I was correct in my judgment, and declined to make the Rule Nisi, as it is called, absolute. Under these circumstances, I was not required to show cause through Counsel, and was thereby saved incurring any expense on that account.

20. I would beg to take this opportunity to request that the Government would be pleased to pass some definite orders for the future guidance of the Magistrates in reference to the position of the Crown Prosecutor and the Government Law Officers, as to whether, in cases like the present, or in cases in which the Magistrates may be obliged to avail themselves of professional aid, they may apply for advice and assistance to any, and, if any, which, of these Officers, and not have to meet the expense from their own private means.

21. As matters now stand, the Crown Prosecutor's advice and assistance is always available in cases in which the Magistrates have determined, or are about, to commit prisoners. In cases, however, such as that of Bungaroo Ramoo Reddy, above referred to, where the Magistrates have decided on not committing, or refusing process against, persons charged before them, or where Writs of Certiorari or Mandamus are applied for against the Magistrates, they cannot, it would appear, command the advice or assistance of the Crown Prosecutor, or any of the Government Law Officers, except upon the terms of paying the usual professional charges for such advice or assistance. This is a distinction which I submit is hardly necessary or reasonable. It would be more consistent, if I might be permitted to suggest, that the duties of the Crown Prosecutor should embrace and extend to advising and acting for the Magistrates on all matters in which they may officially require his services.

22. Considering the nature and extent of duties the Magistrates are required to perform daily, I beg to observe that they seldom or ever have occasion to avail themselves of legal advice; but, at the same time, it would be desirable if the Government would be pleased to issue the necessary instructions on the subject.

No. 120. ORDER THEREON, 14th June 1867, No. 964.

Under the circumstances represented in the foregoing letter, the Governor in Council sanctions the payment of the bill of costs and fees of Counsel employed by Mr. Campbell, one of the Town Magistrates, with respect to a Writ of Mandamus issued by the High Court.

2. The Magistrates must invariably act upon their own judgment in hearing, or declining to hear, a complaint laid before them. The Law Officers of Government cannot be required to assist the Magistrates with their advice on such occasions, but it is open to the Magistrates to seek such advice, should they need it, at

*Proceedings of the Madras Government, Judicial Department,
14th June 1867.*

their own cost; and, in the event of proceedings being instituted against them, the Government will, if they desire it, advance the funds requisite for the purpose, and, after the proceedings have terminated, will consider whether such advance should be recovered from the Magistrates, or whether the cost of their defence should be borne by the Government.

(True Extract).

Chief Secretary.

To the Magistrates of Town Police, with bill.
" " of Vepery Police.
" " of Royapettah Police.
" Commissioner of Police.
" Accountant General.
" Examiner of Claims.
" Government Solicitor.

Ed. J. H. Barrat

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter
from Mr. J. G. Clark, Magistrate
of Police.
(Received 29th April 1867 A. 25)

No 170 Order thereon 14 June 1867 H. 964.

Under the circumstances
represented in the foregoing
letter, the Governor in Council
sanctions the payment
of the Bill of costs and
fees of Counsel employed
by Mr. Campbell one of
the Town Magistrates,
with respect to a writ of
Habeas Corpus issued by the
High Court.

W.D.

2 The Magistrates
must invariably act upon
their own judgment in
hearing

cle Apr 20

(Time Spent)

Aug. 22nd

To the Magistrate of Town Police - with 48.26
To the Magistrate of Vepery and Royapettah Police -
" Commisary of Police
" Accountant General
" Examiners of Claims -
" Public Solicitor

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Historical 1867. Department.

No. 1111

PROCEEDINGS OF GOVERNMENT.

Date 14 June 1867.

C 10 June.
1867