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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU
Judicial DEPARTMENT

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No. 161. Read the following letter from the Adjutant General, to the Secretary to Government, Military Department, Fort Saint George; dated Fort Saint George, 21st December 1867, No. 720.

I have the honor, by order of the Commander-in-Chief, to request you will submit to Government the accompanying correspondence, relative to a Batta Peon entering the Lines of the 23rd Regiment-L. I., at Palamcottah, with a warrant to arrest a Camp-follower, no previous notice having been given to the Officer Commanding.

2. The result of the above was that a Lance Naigue and Bugler were fined 7 and 20 Rupees, respectively, by the Cantonment Magistrate.

3. Major General Duke, Commanding Southern Division, has referred the point, with the view of being informed if he possesses the power of demanding that warrants for the arrest of persons living in Regimental Lines should, in the first place, be sent to the Military authorities, who would then render all necessary aid.

4. Report from the Judge Advocate General is attached, by which it would appear that the fines inflicted cannot be legally sustained.

From Major General T. A. DUKE, Commanding Trichinopoly and Southern Division, to the Adjutant General, Fort Saint George; dated Trichinopoly, 4th December 1867, No. 186.

I have the honor to submit the following circumstances for the information and orders of His Commander-in-Chief.

Per 1867, Major Serres, Commanding Detachment 23rd Regiment L. I., brought to my notice that a Batta Peon, by name Dadamean, had entered his Lines on the night of the 24th October 1867, with a warrant to arrest the mother of a Bugler of his Corps; that there had been a disturbance, and that it had ended in a Lance Naigue and Bugler of his Corps being fined 7 and 20 Rupees, respectively, by the Cantonment Magistrate, on the charge of "obstructing a public servant in the discharge of his public duties;" and that the said warrant had not been sent to him as Commanding Officer for endorsement prior to the Peon entering the Lines; and, further, that the Lance Naigue and Bugler considered they had been unjustly fined—vide letter marked A.

On receipt of the above, I called upon the Deputy Judge Advocate General, Southern Division, for an opinion on the case, and he replied that, under Section 411 of the Code of Criminal Procedure, no appeal was allowed, but that, in his opinion, under Clause 2, Section 15, of Act I of 1866, a warrant involving personal arrest of a person residing in the Lines of a Regiment should first be sent for the endorsement of the Officer Commanding the Corps—vide letter marked B.

I then called upon Major Brown, Cantonment Magistrate and Justice of the Peace, to know by whom the warrant had been issued, and he replied by the Judge of the Court of Small Causes—vide letters marked C and D.

On receipt of letter D, I requested the Cantonment Magistrate to inform me why the warrant had not been served agreeably to Clauses 1 and 2, Section 15, Act I of 1866 (vide letter marked E); and by his reply, marked F, it is evident that Major Brown ignores that I have any jurisdiction in the matter, and that he is at liberty to send his Peons into the Lines at any hour, to arrest people, without the Commanding Officer of a Regiment being acquainted with the circumstance.

As such a procedure might in most cases lead to very serious disturbances, Sepoys being so very jealous and suspicious of any one entering their houses, and also to abuse of power, all of which might most easily be avoided by the warrant being sent for endorsement either to the Commanding Officer or Adjutant, who would immediately send a Non-Commissioned Officer to assist the

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Peon in the execution of his Warrant, I have the honor to request that I may be informed if I have not full power to request, or even to demand, that such warrants for the personal arrest of people residing within the Lines should be sent, in the first place, to the Military Authorities, who would at once render all necessary aid, and thus prevent any disturbance or breach of the peace.

In conclusion, I beg to state that, in former years, all warrants for the apprehension of Military and Non-military persons residing in Lines of Corps were, in the first place, duly sent to the Commanding Officer or Adjutant of Corps.

A.

From Major W. SERRES, Commanding Detachment 23rd Regiment L. I., to the Brigade Major, Trichinopoly; dated Trichinopoly, 22nd November 1867, No. 46.

I have the honor to forward the following Statement, with a request that the same may be laid before the Officer Commanding the Garrison for his consideration, as the men consider that they have been unjustly fined by the Cantonment Magistrate, Trichinopoly.

2. On the night of the 24th of October 1867, between the hours of 7 and 8 o'clock, Dadamean, a Batta Peon of the Cantonment Court, with a Sowcar named Mootosawmy, came to the Buglers' Lines, and one of these two knocked an old woman down, named Arlane, the mother of Bugler McCally, at Bugler Talbot's door. On hearing the noise, Bugler Talbot, and several others who were in his house at the time, ran out, and, on seeing the old woman lying insensible on the ground, asked the Peon (who had been seized by a pensioner named Sears) who had knocked the old woman down. The man Sears said either the Peon or the Sowcar had done it. Bugler Talbot asked the Peon what business they had to do so. The Peon replied that he had a warrant against the woman, but refused to show it. Bugler Talbot told the Peon that he had no

the Lines without the Commanding Officer's permission to arrest any one of the women round this old woman, Arlane, who was still on the ground insensible, so Bugler Talbot went to the Quarter Guard of the Regiment, and reported the circumstances to the Havildar of the Guard, as there was no Non-Commissioned Officer present in the Buglers' Lines. The Havildar of the Guard sent a party of one Lance Naigue and two Privates to the said Lines. The Lance Naigue, on arrival, seeing the woman, asked Bugler Talbot who had knocked her down; he replied, and pointed out the Batta Peon and the Sowcar, and said that they had done so. The Lance Naigue then took both the Batta Peon and the Sowcar to the Quarter Guard. The Havildar of the Guard detained these two, and reported the circumstances to the Officer Commanding the Detachment (through the Native Officer of the day), who ordered them to be released after taking down their names and the number of the Peon's belt. Bugler Talbot was had up before the Cantonment Magistrate's Court on a charge of voluntarily obstructing a public servant in the discharge of his public functions, and fined 20 Rupees or 22 days' simple imprisonment, and the Lance Naigue was fined 7 Rupees, or forty days' simple imprisonment. Bugler Talbot had up five witnesses before the Court, who proved that he (Bugler Talbot) did not obstruct the Peon, but merely reported what had occurred to the Havildar of the Quarter Guard, as was his duty, the disturbance having taken place in front of his house, after dark.

3. The Lance Naigue and two Privates sent to have proceeded to Trichinopoly with the Detachment, but were detained, a penalty bond having been taken from them to appear before the Court when called for.

4. Bugler Wallace was also had up before the Court on the same charge, but dismissed with a caution.

5. Bugler McCally (the old woman's son) was not present when she was knocked down, having gone with Regimental Head Quarters.

5. Major Brown was asked for a copy of the Charge and Judgment on the above cases, and returned a reply, copy of which is herewith attached.

6. The Officer Commanding Detachment was not applied to for permission for the Batta Peon to enter the Lines or arrest the woman named Arlane.

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No. 175.

MEMORANDUM.

[Your letter, No. 46, dated 19th November 1867.]

Both Lance Naigue Sheikh Hoossain and Bugler Thomas Talbot have been convicted of voluntarily obstructing a public servant in the discharge of his public functions. The former was sentenced to pay a fine of seven Rupees, and in default to forty days' simple imprisonment, and the latter to pay a fine of twenty Rupees, and in default to twenty two days' simple imprisonment. The fines have been paid.

Copy of the charges and sentence of the Court can be obtained on application in the usual manner, with reference to the Stamp Act.

TRICHINOPOLY CANTT. MAGTE'S OFFICE,
19th November 1867.

(Signed) R. BROWN,
Cantonment Magistrate Trichinopoly.

the Officer Commanding Detachment, 23rd Regiment L. I.

B.

From the Deputy Judge-Advocate General, Southern Division, to the Brigade Major, Trichinopoly; dated Trichinopoly, 26th November 1867.

I have the honor to acknowledge the receipt of your letter, No. 168, dated 23rd instant, forwarding one from the Officer Commanding Detachment 23rd Regiment Light Infantry, No. 46, and enclosure, and, in reply, to state—

1st.—That when an Officer exercising the full powers of a Magistrate, like the Cantonment Magistrate, passes a sentence of imprisonment not exceeding one month, or of a fine not exceeding Rupees, no appeal is allowed; but, otherwise, an appeal will lie to the Session Court—see Sec. 10 of Criminal Procedure Code.

2nd.—That I am of opinion that, under Clause 2, Section 15, of Act I of 1866, any process, whether personal arrest issued by the Cantonment Magistrate or other Civil authority against a person, whether Military or Non-military, residing in the Lines of a Regiment, should first be submitted for endorsement to the Officer Commanding the Regiment or Detachment, who is bound to submit the Civil power by delivering him up.

C.

From the Brigade Major, Trichinopoly, to the Cantonment Magistrate, Trichinopoly; dated Trichinopoly, 27th November 1867, No. 177.

I have the honor to request that you will inform me, for the information of the Major General commanding Southern Division, by whom the warrant for the arrest of Arlane, mother of Bugler McCally, 23rd Regiment Light Infantry, was issued.

D.

No. 185.

MEMORANDUM.

Reference.—Your letter, No. 177, of 27th November 1867.

Subject.—The warrant referred to was issued by the Judge of the Court of Small Causes in Cantonment of Trichinopoly.

TRICHINOPOLY CANTT. MAGTE'S OFFICE,
27th November 1867.

(Signed) R. BROWN,
Cantonment Magistrate.

the Brigade Major, Trichinopoly.

E.

From the Brigade Major, Trichinopoly, to the Cantonment Magistrate, Trichinopoly; dated Trichinopoly, 29th November 1867, No. 171.

The Officer Commanding Detachment 23rd Regiment Light Infantry having represented that Batta Peon, by name Dadamean, came into his Lines on the night of the 24th October 1867,

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with a warrant to arrest Arlane, the mother of Bugler McCally, and that the said warrant was not brought to him prior to the Peon proceeding to execute it, I have the honor to request that you will inform me, for the information of the Major General Commanding Southern Division, why the warrant was not served agreeably to Section 15, Clauses 1 and 2, of Act I of 1866.

F.

PROCEEDINGS of the Cantonment Magistrate of Trichinopoly, 2nd December 1867.
Read letter, No. 177, of 27th November 1867, from the Brigade Major of Trichinopoly asking, for the information of the Major General Commanding the Southern Division, by whom the warrant for the arrest of Arooloie, mother of Bugler McCally, of the 23rd Regiment L. I., was issued?

On the same date, the Brigade Major was informed that the warrant referred to was issued by the Judge of the Court of Small Causes in the Cantonment of Trichinopoly.

Read letter, No. 171, of 29th November 1867, from the Brigade Major of Trichinopoly, further asking, for the information of the Major General Commanding the Southern Division, why the (said) warrant was not served agreeably to Section 15, Clauses 1 and 2, of Act I of 1866.

In issuing the warrant, the procedure was identical with that which might, under similar circumstances, have been pursued by the High Court of Judicature, or by the Session Court, or by any other Civil or Criminal Court.

The procedure of the Cantonment Magistrate, in common with that of all other Magistrates, is subject to review by the Superior Courts, and the Cantonment Magistrate has yet to learn that he is accountable to the Military authorities for any Judicial act. The mode of obtaining information from Courts is to be found in the Civil and Criminal Rules of Practice. The Stamp Act does not exempt any individual, in virtue of military position, from the operation of the Stamp Act. Information can be afforded by the Cantonment Magistrate to the Brigade Major, and the course open to the general public.

(Signed) R. BROWN,
Cantonment Magistrate.

To the Brigade Major, Trichinopoly.

No. 5167.

MEMORANDUM.

Forwarded for the opinion of the Judge Advocate General, with reference to G. O. G., dated 20th December 1850, No. 252, page 403.

To be returned.

ADJUTANT GENERAL'S OFFICE,
FORT SAINT GEORGE,
13th December 1867.
To the Judge Advocate General.

(By Order),
(Signed) J. M. PRIMROSE, Colonel,
Adjutant General.

No. 573.

MEMORANDUM.

The Judge Advocate General has the honor to return the papers received with Memorandum from the Adjutant General, No. 5167, of 13th instant, in the case of the Cantonment Magistrate, Trichinopoly, and the service of warrants under Madras Act I of 1866 as Judge of the Court of Small Causes.

2. The Rule of Practice of the Madras Court of Small Causes was made applicable by the Governor in Council in G. O. G., No. 252, of 20th December 1850, to the service of summonses, through Regimental authorities, on defendants residing in Military Lines, Barracks, or Quarters, when such defendants are serving as soldiers only, but it is silent as to followers of the Army and other persons resident in Military Lines.

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3. Madras Act I of 1866, Section 15, Clause 1, goes further, and includes all persons of the Military class, or attached to, or serving with, the Army resident within the limits of a Military Cantonment; but Clause 2 of that Section distinctly provides that certain processes issuing from any Civil or Criminal Court for any person not Military, or attached to or serving with the Army, may be served direct in the usual way, without communication to the Regimental authorities, or endorsement by them "on such notice or process not involving personal arrest." This is the law affecting the case.

4. In that under reference, it appears the Peon entered the Lines of the Detachment 23rd Light Infantry on the night to serve a Warrant to arrest one Arlane, or Arooloie, the mother of a Bugler of that Detachment, without communication with the Officer Commanding the Detachment, which is prohibited by Clause 2, Section 15, of Madras Act I of 1866. The Peon in so doing cannot, therefore, be said to have been in the lawful discharge of his public functions, and consequently no obstruction to such could exist.

5. The Cantonment Magistrate of Trichinopoly is bound to observe the provisions of Section 15, Clause 2, of Act I of 1866, whether he acts in his capacity as a Magistrate or as Judge of the Cantonment Court of Small Causes, and so must his subordinates. Under the circumstances related, the punishment awarded Lance Naigue Sheikh Hoossain and Bugler Thomas Tallot appears to be unwarranted; and as no appeal to any Court or Officer is permitted, under Section 411, Code of Criminal Procedure, against the sentences the Magistrate has passed on them, a reference to Government may become necessary to obtain any redress.

JUDGE ADVOCATE GENERAL'S OFFICE,
FORT SAINT GEORGE,
18th December 1867.

(Signed) H. PRITCHARD, Colonel,
Judge Advocate General.

Transferred to the Judicial Department for disposal.

FORT SAINT GEORGE,
7th January 1868.

(Signed) C. S. ELLIOT, Major,
Offg. Dy. Secy. to Govt., M. D.

No. 165. ORDER THEREON, 22nd January 1868, No. 103.

Before passing orders on the foregoing letter from the Adjutant General, the Governor in Council resolves that the Cantonment Magistrate at Trichinopoly be called upon to submit for the consideration of Government a translation of the warrant issued by him, and also of the record of the case in which the Lance Naigue and Bugler of the 23rd Regiment L. I. were fined.

2. Major Brown will also explain, with reference to the provisions of Clause 2, Section 15, of Act I of 1866, on what grounds he considered himself at liberty to issue a warrant of personal arrest without the previous endorsement of the Commanding Officer or Staff Officer of the Detachment at Trichinopoly.

(True Extract).

Chief Secretary.

To the Cantonment Magistrate of Trichinopoly.
" Magistrate of Trichinopoly.
" Military Department.

Ed. J. H. Burns.

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No. 108.

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Dated 22nd January 1868