

(1) Number of pages 14
(2) Date of repair 1.2.86
(3) Initials of the Referencer bus

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No.	182	Press.
B.P. No.		Mis.
Dated	4.2.1968	197

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
4th February 1868.*

Read the following papers :—
No. 47. From the Acting Inspector General of Police, to the Chief Secretary to Government, Fort Saint George; dated Madras, 13th January 1868, No. 63.

The Assistant Superintendent of Police, Cuddapah District, reports that a Police Inspector has been in the habit of making arrests and searching without warrant in cases referred to him by the Magistrate under Section 133, Code of Criminal Procedure, other than those specified in Column 3 of the Schedule as offences for which arrest may be made without warrant. The Assistant Superintendent requests instructions in the matter.

2. The practice is most objectionable, and, as I believe, quite illegal, but it would appear to be authorized by the opinion of the late Government Pleader, published with the Order of Government, No. 1, of the 5th January 1863.

3. The cases thus referred are distinctly specified in the Schedule to the Code of Criminal Procedure as cases in which arrest cannot be made without warrant. It is difficult to understand, therefore, how a Magistrate can by a mere order confer powers on the Police which are distinctly precluded by law. It is true that Section 3, Code of Criminal Procedure, defines that the words "inquired into" shall be deemed to comprise every proceeding preliminary to trial, and arrest is one of these proceedings. But the arrest must surely be carried out as prescribed by law, i. e., either with or without warrant according to the nature of the case.

4. I have the honor to solicit, therefore, that this question may again be submitted to the Law Officers of the Crown for re-consideration. Under the opinion formerly given, arrests and searches which I believe to be quite illegal are being made all over the country, and the wise distinction between offences of greater and less gravity laid down in the Code of Criminal Procedure is totally obliterated.

Referred to the Advocate General for his opinion.

Fort Saint George,
20th January 1868.

(Signed) R. S. ELLIS,
Chief Secretary.

No. 48. From the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 25th January 1868, No. 51.

I have the honor to acknowledge the Order of Government noted in the margin, with its enclosures, requesting the Advocate General's opinion as to the powers of a Police Officer authorized under Section 133 of the Code of Criminal Procedure to make inquiry into offences other than those described in Column 3 of the Schedule to that Act.

2. I have submitted the matter for the consideration of the Advocate General, and I now forward a copy of his Opinion.
3. I likewise return the Order and enclosures above noted.

OPINION.

I think the views expressed by the Acting Inspector General of Police are perfectly sound, nor do I read the late Government Pleader's opinion of 5th December 1862, No. 175, as opposed to these views.

R. S. Ellis
Government Pleader

*Proceedings of the Madras Government, Judicial Department,
4th February 1868.*

2. When an inquiry is directed, it must be according to law. If a warrant is required by law in the course of such inquiry, it must be procured. The Magistrate cannot confer on the Police powers with which the law has not invested them. The most serious consequences might result from any other construction. The necessity for a warrant which the law imposes might be got rid of by the Magistrate merely delegating the inquiry to the Police.

3. All that Section 133 says is that, in certain cases, the Police shall have jurisdiction, unless ordered by the Magistrate. The Magistrate may order the Police to inquire even in such cases; but the inquiry must, nevertheless, be conducted according to law.

4. Section 9 must be read as pointing to every proceeding legally preliminary to trial.

5. All that the late Government Pleader appears to have laid down is that, when the Police is ordered to inquire, he may take all the legal steps necessary to render such inquiry effectual.

23rd January 1868.

(Signed) J. B. MORTON.

Advocate General.

(True Copy.)

(Signed) H. J. LEVERMAN.

Government Solicitor.

No. 49.

ORDER THEREOF, 4th February 1868, No. 182.

Ordered that a copy of the Opinion of the Advocate General be furnished to the Acting Inspector General of Police and to all Magistrates of Districts.

(True Extract.)

Chief Secretary.

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

Ed J. H. Barr.

*No. 51.
Madras 25th Aug. 1868.*

From.

H. J. Brockman.

Government Solicitor, Madras.

To.

*The Honble R. S. Ellis, Esq.,
Chief Secretary to Government,
Madras.*

Sir,

*dat. 23rd Jan. 1868.
I enclose herewith
a copy of the
Opinion of the
Advocate General
of 23rd Jan. 1868.*

*I have the honor to acknowledge
the order of Government noted in the margin,
with its enclosures, requesting the Advocate
General's opinion as to the power of a Police
Officer, authorized under Section 133 of the
Code of Criminal Procedure to make inquiry
into a offence other than those described
in Section 3 of the Schedule to that Act.*

*I have submitted the matter for the
consideration of the Advocate General,
and send forward a copy of his opinion.
I likewise return the order
and enclosures above noted.*

*I have the honor to be
Yours most obedt. Servant
H. J. Brockman
Government Solicitor*

182
3

Opinion.

1862
11/2/62

I think the views expressed by the Acting Inspector General of Police are perfectly sound and do I read the late Government Pleader's opinion of 5th Decr. 1862. N. 175 as opposed to those views.

2. When an inquiry is directed, it must be according to Law. If a warrant is required by Law in the course of such inquiry, it must be procured. The Magistrate cannot confer on the Police powers with which the Law has not invested them. The most serious consequences might result from any other construction. The necessity for a warrant which the Law imposes might be got rid of by the Magistrate merely delegating the inquiry to the Police.

3. All that Sec. 133. says is that, in certain cases, the Police shall have no jurisdiction, unless ordered by the Magistrate. The Magistrate may order the Police to inquire even in such cases, but the inquiry must, nevertheless, be conducted according to Law.

4. Section 9 must be read as pointing to some proceeding legally preliminary to trial.

5. All that the late Government Pleader appears to me to have laid down is, that, when

22/11/62

22nd 1862. Deputy

Inspector General of Police.

to the Local Magistrate

at the Police Station.

22nd 1862. Deputy

Inspector General of Police.

22nd 1862.

to the Local Magistrate

at the Police Station.

22nd 1862. Deputy

Inspector General of Police.

22nd 1862. Deputy

Inspector General of Police.

22nd 1862.

From the day the first session / 10th June 1862 / from 10th June 1862

Remains the same

Order. 2. 11th June 1862

As the opinion of the Magistrate is given by himself or by the Inspector General or by some other Magistrate or by some other

Order

3. If the Judge or Magistrate is of opinion that the Magistrate or Magistrates are not competent to try the case

when the Police is ordered to inquire, he may take
all the legal steps necessary to render such inquiry
effective.

Signed John Bruce Norton.
Actg. Secy.

23rd Jan, 1868.

(true copy.)

A. M. Brewster
Government Printer.

182
5

Genl Dep'tt
48. 63.

Chief Office of the Chief Constable
Headra 13th January 1868

Item

Acting Inspector-General
of Police.

To

The Honble R. L. Ellis C.B.
Chief Secretary to Govt
Port Saint George

For

The Assistant Superintendent of Police
Cuddalore District reports that a Police
Inspector has been in the habit of making
arrests and receiving without warrant in
cases referred to him by the Magistrate,
under Section 133 C. C. P. other than those
specified in Col: 3 of the Schedule as offences
for which arrest may be made without
warrant. The Assistant Superintendent
requests instructions in the matter.

The practice is most objectionable and

Col: 3 of the Schedule also refers
to the Magistrate's Court
under Section 133 C. C. P.
and of Criminal Offences

Enclosure.

A letter from Govt dated
12th Aug 1868 to
Government of 16th Aug 1868.
No. 2025/68.

From 1st February 1868 to 1st Aug 1868

as I believe quite illegal, but it would appear to be authorized by the opinion of the late Government Pleader published with the Order of Government. 181 of the 5th January 1863.

3. The cases thus referred are distinctly specified in the Schedule to C. C. P. as cases in which arrest cannot be made without warrant. It is difficult to understand therefore how a Magistrate can by a mere order confer powers on the Police which are distinctly precluded by Law. It is true that Section 9 of C. C. P. defines that the words "inquired into" shall be deemed to comprise every proceeding, preliminary to trial, and arrest is one of those proceedings. But the arrest must surely be carried out as prescribed by Law i.e. either with or without warrant according to the nature of the case.

4. I have the honor to solicit therefore that this question may again be submitted to the Law Officers of the Crown for reconsideration. Under the opinion formerly

2
given arrests and searches which appeared to be quite illegal are being made all over the Country and the wise distinction between offences of greater and less gravity laid down in C. C. P. is totally obliterated.

I have the honor to be

Sir
Your most obedient servant

W. H. M.
Ag. Inspector General of Police

Referred to the Advocate
General for his opinion -

Wm. H. Page
20 January 1885

A. J. Davis
Chief Secy

By the Government Solicitor
with a copy of this page of
his letter the 5. Jan'y/85. at 11:15 AM 21/1/85

Rec'd at the Secy's Office 20 January 1885

Report that certain
quartz in the vicinity of
the agency has been
found to be of the same
character as the
residual.

See 13
and 15 } January 1885
Feb 202

See 13
and 15 }
The Chief Secy
at the Secy's Office

Rec'd 1885

Wm. H. Page