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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No.	525	Press.
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Dated	26. 3. 1868	197.

21/11/86

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
26th March 1868.*

Read again letter from the Acting Magistrate of the Kistna District, dated 22nd January, No. 57, and recorded in Proceedings of Government of the 21st February 1868, No. 300.

No. 277. Read also the following letter from the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 18th March 1868, No. 121.

Read also the Government noted in the margin, requesting the Advocate General's opinion as to the legality of an Officer in the position of a Sub-Magistrate, referring a criminal case to his own subordinate, the Sheristadar of his office, supposing him to be invested with Magisterial powers.

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

3. I now forward a copy of his Opinion.

OPINION.

I do not think that a Taluk Magistrate can depute his Sheristadar (though a Magistrate) to act under Section 278 of the Criminal Procedure Act. The High Court Proceedings of 20th February 1864 on Section 18 set this matter at rest. They will be found in the "Hand Book on the Code of Criminal Procedure," by M. Bagavath Iyengar pages 4 and 5.

2. The Judges have ruled that the reference can only be made to a subordinate. The Taluk Magistrates have no Magistrates subordinate to them. Their Sheristadars are subordinates in office, but not in Magistracy.

Sd/- March 1868.

(Signed) J. B. NORTON,
Advocate General.

(True Copy).

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

No. 278. ORDER FOLLOWING, 26th March 1868, No. 529.

In his letter above recorded the Acting Magistrate of the Kistna District reports the negligent conduct of the Sub-Magistrate of P. Jaud, Kuntcher Annassee, in connection with a case of suspected murder reported to him on the 10th September 1867.

2. From the Acting Magistrate's proceedings it appears that no report of this case, or of the steps taken for inquiring into it, was made by the Sub-Magistrate to the Deputy Magistrate until the 20th October. It then appeared that the Sub-Magistrate, who received the village magistrate's report, while the Taluk Magistrate, who had referred the inquiry to his Sheristadar, who had no jurisdiction, that the Sheristadar, while the inquiry was going on, absented himself without leave to pay his respects to the Deputy Collector in charge of the Division; and that the Sub-Magistrate allowed the witnesses connected with the case to remain unexamined during the Sheristadar's unauthorized absence. It was not until owing to this delay that the case, which was eventually withdrawn to the District Magistrate's Court, there broke down.

3. It is also recommended that Kuntcher Annassee now be added to the list of Taluk Magistrates, he not being in the 3rd Grade. The Acting Magistrate having this recommendation passed in view the fact that he is a Magistrate.

Proceedings of the Madras Government, Judicial Department,
26th March 1868.

borne by Kunchee Annajee Row. The Governor in Council is willing to admit the plea of former good service advanced on behalf of Kunchee Annajee, and cannot but suppose that he believed the Sheristadar to be competent to make the inquiry as would ordinarily be the case. His conduct, however, in referring the case at all, and in not obviating the delay which was allowed to occur in it, is undeserving of blame, and the Government will convey to him the grave disapproval of Government.

4. The Magistrate should take such notice as he deems necessary of the Sheristadar's conduct, which seems to indicate very inadequate appreciation of the responsibilities of a Magisterial Officer, or of the serious nature of the charge which was referred to him for inquiry. He was invested with Magisterial powers subsequent to the occurrence in question.

5. The attention of the Magistrate is drawn to the Opinion of the Advocate General above recorded, that a Sub-Magistrate cannot depute his Sheristadar (though a Magistrate) to act under Section 273 of the Code of Criminal Procedure.

(True Extract).

To the Acting Magistrate, Kistna District.
" Government Solicitor.
" Magistrate of

N^o 121.

Madras 3rd March 1868.

From

H. J. Brockman.

Govt. Solicitor, Madras

To

The Honble R. S. Ellis, Esq.

Chief Secretary to Government

Madras.

Sir,

Dated 21 July 1868.
N^o 800.

Judicial Department

I have the honor to acknowledge the
Proceedings of Government noted in the margin, -
requesting the Advocate General's Opinion as to the
legality of an officer in the position of a Sub-
Magistrate, referring a criminal case to his own
subordinate, the Sheristadar of his office, supposing
him to be invested with magisterial Powers.

2 I have submitted the matter for the
consideration of the Advocate General, and

3 I now forward a copy of his Opinion.

I have the honor to be

Sir,

Your most Obedt. Servant

H. J. Brockman

Government Solicitor

Opinion

I do not think that a Taluk magistrate can depute his Shrivastad (though a magistrate) to act under Sec. 273 of the Criminal Procedure Act. The High Court Proceedings of 29th February 1864 on Post-10 in the matter at Post. They will be found in the 'Hand Book on the Code of Criminal Procedure' by Mr. Ragavah Sengar pages 4.5.

2. The judges have ruled that the preference can only be made to a subordinate. The Taluk magistrates have no magistrates subordinate to them. Their Shrivastads are their subordinates in office, but not in magistracy.

Signed John Bruce Boston.
Adv. Genl.

2nd March 1868.

(True copy)

H. Brooker
Government Solicitor

14th 1868 14205-205

Sec. 273 of the Act.

Mr. J. Bruce Boston

The Chief Magistrate

Post 10

Post 10

Post 10

Post 10

demands copy of Mr. B's opinion as to the legality of an officer in the position of a sub-magistrate performing a criminal case to his own subordinate, the Shrivastad of his office, deputed him to be invested with magisterial powers.

in the presence of

14th 1868

Revised draft. as
 ordered in Council
 17 March 1868. L.F.

3
 Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter again letter

from the Magistrate of the Madras District of 22nd July
 No. 37, and recorded in Pres. off. of the 21st
 February 1868 No. 300

Read also the following letter
 from the Govt. Solicitor, Madras.

Recd. letter 3 March 1868 No. 121.

Order thereon 26 March 1868 No. 529.

1. In his letter above
 recorded the Acting Magistrate
 of the Madras District reports
 the negligent conduct of
 the Sub Magistrate of
 Palnad, Kancha Annajee
 Row, in connection with
 a case of suspected murder
 reported to him on the 11th
 September 1867.

2. From the Magistrate's
 Proceedings it appears that

P.
 The legality of an officer, in the
 position of a Sub Magistrate,
 performing a criminal case, is the
 only subordinate, the district
 of his office, requiring that
 officer to be invested with
 Magisterial power.

Recd. letter 26 March 1868 No. 377.

Copy to Mr. General's office
 Recd. 1/6/68
 No. 532 Enborem.
 As letter from Mr. Solicitor
 referred dated 3 March 1868 No. 121.

W.D. N.
 I might have
 seen 32 papers
 I thought was
 against to an
 who is by

no report of this occurrence
or of the steps taken for
inquiring into it was
made by the Sub Magistrate
to the Deputy Magistrate
until the 30th October.
It then appears that
the Sub Magistrate who
received the Village
Magistrate's report when
in the Taluk away
from the Musab, had
referred the inquiry to
his Sheristadar, who had
no magisterial powers,
that the Sheristadar while
the inquiry was going on
absented himself without
leave to pay his respects
to the Deputy Collector
in charge of the Division,
and that the Sub Magt.
allowed the witnesses con-
nected with the case to
remain

remain unexamined
during the Sheristadar's
unauthorized absence.
It was not improbably
owing to this delay that
the case which was eventually
withdrawn to the Divisional
Magistrate's Court, there
broke down.

3. Mr. Wilson recommends
that Kuncher Amgije
now he reduced to the
lowest grade of Tahsildar,
he now being in the 3rd grade.
The Acting Magistrate
in making this recom-
mendation has had in
view the excellent previous
character done by Kuncher
Amgije. The Government
in Council is willing
to admit the plea of
former good service advanced
on

on behalf of Muncher
Amaze Rao, and can-
not but suppose that he
behind the Shenshadar
to be competent to make
the inquiry as would
ordinarily be the case.
His conduct, however, in
referring the case at all
and in not abating the
delay which was allowed
to occur in it is not un-
derstanding of blame, and
the Magistrate will convey
to him the expression of
the grave disapproval of
Government.

The Magistrate
should take such notice
as he deems necessary
of the Shenshadar's conduct,
which seems to indicate
very inadequate appreciation
of

of the responsibility of a
Magistral Officer, or of
the serious nature of the
charge which was referred
was instructed to inquire into
subsequent to the same. It is deemed that
in question.

I would submit
this by
W. L. A.

He probably
did not know
by

of the responsibility of a
Magistral Officer, or of
the serious nature of the
charge which was referred
was instructed to inquire into
subsequent to the same. It is deemed that
in question.
V. V. Montachellum, the
late Deputy Magistrate,
although he considered
the Sub Magistrate for
the delay that had occurred
in the case reported, and
withheld the Shenshadar
salaries for absence without
leave, failed to note the
irregularity, which had
been committed by the
Sub Magistrate in trans-
ferring a criminal
inquiry to an Officer
who had no magistral
powers. He allowed the
Shenshadar to conclude
the

the enquiry, and it was not until the 8 December, after an interval of more than two months, that his successor, Mr Plunkett, who had meanwhile taken charge and been invested with jurisdiction, called up the case to his own Court when it was finally thrown out.

6. In their Order of the 20th December 1887, the Government had occasion to censure V Venkatarathnam for negligence in the performance of his magisterial duties. In the present case he has failed either from ignorance of the Law, or from the inefficient control exercised over his official subordinates to secure the proper administration of

Amitt
Wm

I would omit this.

Wm

5/1/96
of justice. He is at present employed in the Income Commission, but the propriety of permitting him to revert to the regular grade will be matter for consideration when he is no longer required for this special work. The Magistrate will furnish him with a copy of this Order.

7. The attention of the Magistrate is drawn to the opinion of the Advocate General also recorded that a Sub Magistrate cannot deputise his Sheristadar/though a Magistrate/ is not under Section 273 of the Code of Criminal Procedure.

8. Ordered that the Advocate General's opinion be published in the Gazette for general information.

LB

To the Magistrate, District Court, Bangalore
Government Secretariat
Bangalore
Magistrate, Bangalore

234.230.

Dated 23 March 1868.

PROCEEDINGS OF GOVERNMENT.

No. 529.

Letter 1868. Department.

C12 March
R24 "

23/10
Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter again letter
from the ^{Acting} Magistrate of the
Kistna District dated 22nd January
1868 and recorded in Proceedings
of Government of the 21st February
1868 No. 200.

Read also the following
letter from the Government of
Madras.
(See enclosure No. 1 to this)

Order thereon

[Handwritten signature]

In his letter above
recorded, the Acting Magis-
trate of the Kistna District
reports the ~~gross~~ ^{gross} negligence of
the Sub Magistrate of
Palnad Kanchei Amma
Poz, in connection with
a case of ^{murder} ~~murder~~ reported
to him on the 16 September
1867.

1857.

2 From the Sub Magis-
trates Letter it is shown
 that no report of this
 occurrence or the steps
 taken in enquiring into
 it was made by the
 Sub Magistrate to the
 Deputy Magistrate until
 the 2nd November. It then
 appeared that the Sub
 Magistrate had left the
 enquiry into the gun charge
 to his Prisadar, who
 had no magistral powers
 that the Prisadar while
 the enquiry was going on
 absented himself without
 leave to pay his respects
 to the Deputy Collector in charge of the District
 and that the Sub Magis-
 trate allowed the witnesses
 concerned in the case to
 remain during the Prisadar's
 unauthorized absence without
 examining

shown in the Village
 Magistrate's
 Letter
 dated 2nd Nov.
 from the Sub Magis.

examining them himself, and
 that it is probably owing to
 the delay that the case which
 was eventually withdrawn to
 the Divisional Court there
 broke down.

3 Mr Wilson is recommended
 that Kanche Arunaji Row
 be reduced to the lowest
 grade of Tahsildar, he
 now being in the 2nd grade.
 The District Magistrate
 in making this recommendation
 has had in view the
 excellent previous character
 borne by Kanche Arunaji
 Row. The Governor in Council
 is willing to admit the
 plea of former good service
 advanced on behalf of
 Kanche Arunaji Row,
 and in accordance with
 the recommendation of
 the District Magistrate
 directs that he be reduced
 to the 5th Class of Tahsildar.

It is recommended that
 he be reduced to the 5th grade
 in the Tahsildar's
 scale. The Governor in
 Council is willing to admit
 the plea of former good
 service advanced on behalf
 of Kanche Arunaji Row,
 and in accordance with
 the recommendation of
 the District Magistrate
 directs that he be reduced
 to the 5th Class of Tahsildar.

4 It is observed that V. Venkatachellum, the late Deputy Magistrate, although he censured the Sub-Magistrate for the delay that had occurred in the case reports, and withheld the Sheristadar's salary for absence without leave, ~~but in notice of the~~ ^{first} irregularity which had been committed by the Sub-Magistrate in transferring so important a criminal enquiry to an Officer who had no magisterial powers. He allowed the Sheristadar to conclude the enquiry and it was not until the 8th December, after an interval of more than two months, that the Deputy Magistrate called up the case to his own Court where it was finally thrown out.

5 In their Order of the 20th December 1874 the Government

considered that the delay was due to the Sub-Magistrate's inaction. The Government also considered that the Deputy Magistrate's interference was not justified. The Government also considered that the Sheristadar's salary should not be withheld for absence without leave. The Government also considered that the Sub-Magistrate should not have transferred the case to an Officer who had no magisterial powers. The Government also considered that the Sheristadar should not have concluded the enquiry. The Government also considered that the case should have been called up to the Deputy Magistrate's Court earlier. The Government also considered that the case should not have been thrown out.

A

Government had occasion to censure the Deputy Magistrate for negligence in the performance of his magisterial duties. In the present case V. Venkatachellum has failed either from ignorance of the Law or from the inefficient control exercised over his official subordinates, to secure the proper administration of justice and it would not be in the opinion of the Government in Council, to the advantage of the public service that he should continue in the service of the full powers of a Magistrate.

I do not agree in this. It seems more probable that V. Venkatachellum will therefore report the arrangement which he is not to be continued with the full powers of a Magistrate, in view of the Division of which only be retained in V. Venkatachellum has his appl. as Deputy Magistrate which will now be withdrawn.

withdrawn from him.

7. The attention of the
Magistrate is drawn to
the opinion of the Advocate
General above recorded,
that a Sub Magistrate
cannot deputise his Sher-
kadar (though a Magistrate)
to act under section 273
of the Code of Criminal
Procedure.

8. Ordered that the
Advocate General's opinion
be published in the Gazette
for general information.

of his being considered
fit for the charge of
a Munsif and
it being possible
to place him in
charge of one. This
point should be
considered by the
Revenue Secretary
and if he can place
V. Venkata Subbarao
in charge of a Munsif
an order to that
effect may be
issued. A.

by G

To the Honorable District
Judge, Coimbatore
- Gazette -

Ed. Eyabent

No.

PROCEEDINGS OF GOVERNMENT T.

Dated

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Comme

to enquire into the
conduct of the
or reduce

Keep an

attest to the

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of hand
Rm
cm