

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 108

DATED 18th Jan. 1895.

INDEXED.

[Despatch Abstract.]

APPLICATIONS FOR TRANSFER OF CASES

Communicating to the District Magistrate, Salem, with an expression of concurrence, views of the Government Pleader, Madras, that he can see no reason for any alteration in the present practice of disposing of transfer applications made to the High Court.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

1,000-28-10-93.

Judicial Department.

To. Stokes Esq.
From the Collector

and District Magistrate,

Salem.

To

The Chief Secretary
to Government.

Madras.

Dated 12.12.24

Recd 13/12/24
Ref 14/12/24

Ref No. 225

Enclosure.

Subject.

Requesting that the Court
pleader Madras be instructed
always to move the High Court to grant
him time to refer to the District
Magistrate in all applications for
transfer.

6649 Go 44: 16.1.90 mis

Recd 2565 Apr 22-12-91

Order

Referred to the
Government Pleader
for ^{remarks} ~~favorable~~ opinion.
21.11

To
The Govt. Pleader ^{with} ~~current~~ (Pto) ^{22/12}
The D.M. Salem (Pto) ^{22/12/24}

1 No. G.O. in P.O.
Please see
10.12/24

Please see
10.12/24

Salem Collector's Office,

12th December 1894.Ref No. $\frac{2125}{M.R.}$

From

G. STOKES Esq.,

Collector & Dist. Magte. of Salem.

To

Chief
The Secretary to Government,

Judicial Department,

MADRAS.

SIR,

I have the honor to seek the
 order of Government on a matter connected
 with the administration of public justice
 2 of late years not only in the
 District but in many others owing to a
 more systematic examination of the
 disposal of cases by such Magistrates
 as Government and delay have been
 greatly prevented and Magistrates
 will not now delay cases with out

very good reason. In consequence
when for the tampering with evidence
or for any other reason it is necessary
to be allowed to create delay - resort
is had to applications for transfer. I
am not now concerned with those
cases, where application is made to
the District or Sub Divisional Magistrate
but of late in this District in almost
every case of importance, application
has been made under Section 526
to the High Court.

3 The practice in this event is
then stated by the Government Pleader
under order of Government I am
directed to use my discretion

"whether to oppose the application or
not. In some cases where on the
face of the application I am satis-
fied, that there are no grounds
for making it, I oppose it at
once. In others where the statements
in the affidavit are strong enough
to induce the Court to make the
transfer I apply for a week or a
fortnight's time to communicate
with the District Magistrate and
ascertain from him whether the
allegations in the affidavit are
true and whether he wishes me
to oppose the application."

Thus it will be seen, that Government

have left it to the discretion of the
Government whether to detain
further or not as he
pleases.

In the vast majority of cases
the grounds set out in the application
for transfer contain the vilest aspersions
on the Court in regard to which it is
made and every one connected with
it. I have now before me such
an application - the last but one
from this Bench in which such
insinuations are made against
myself and the Sub Magistrate.
Such applications are always
full of innuendo and suppression
of facts. This perhaps perhaps is
perfectly safe for no Court will or

can of its own motion take cognizance
of such statements. The result is
that the High Court has no material
before it except a lying affidavit
on which to proceed. And the Govern-
ment Pleader is in no better
case. On the other side is a
sharp valued probably himself,
the writer of the affidavit. Now suppose
such an application is successful.
It goes out into the domain, that
an application was made to the
High Court for transfer on the
ground of the immorality of the
Court let me say and that the
High Court granted the application
let me then be anything more

lowering to the dignity of a court
than this? or is there anything
more likely to shake the confidence
of the ignorant in its impartiality
to one of course is interested to
deny the imputation or defend
the court and such an imputation
is not likely in this country to
lose in the spreading

5 I would propose therefore that
the Government Pleader be insisted
always to move the High Court
to grant him time to refer to the
District Officer in all such applications
or transfers in order that he may
have at least some materials
on which to go, should it be

necessary to oppose such transfer and
that for the protection of the courts
below he should move the High
Court to proceed on perjury against
the maker of the affidavit when such a
course seems desirable and also to
deal suitably with the Legal
Practitioner presenting it.

I have the honor
to be, Sir,

Your most obedient servant

J. H. M.
District Magistrate

Justice

48
Judl Dept.

1844: 11. 90.
App^l for transfer of
Cases

To
The Government Pleader,
Madras.

Dated 8th 3 January 1895.
Received 8
Recd 9

1/4 1

Encls: C. 126849

CHIEF SECRETARY
GOVERNMENT OF MADRAS
3 JAN. 1895

Stating that he could see no reason
for any alteration in the present practice
of disposing of transfer applications
made to the High Court.

Forwarded
Order 18-1-95
no 108 The Govt Pleaders letter
will be communicated
to the Hon. Judge of
Salem, with reference to
his letter no 2125 of 12/12/94,
with the remark
that Govt concurs in the
views expressed by the
Govt Pleaders.

The Dist Magr. Salem. (no)
The Govt Pleader (8 to)
10/1

12/1

TO BE RETURNED
WITH REPLY.

Government Pleader's Office,

High Court,

No. /

MADRAS, 2nd January 1895.

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras.

To

THE Chief Secretary To Govt.,
Fort St. George.

SIR,

+ Enclosure returned

With reference to your Memorandum N^o. 2565 of the 22nd ultimo, I have the honor to state that I have read the letter of the District Magistrate and can see no reason for any alteration in the present practice.

As stated in my letter to Government N^o. 1236 dated 21st December 1889 when an application for transfer is made to the High Court two courses are open to me either to oppose it at once or to ask for time to communicate with the District Magistrate and obtain his instructions. In the latter case the High Court must order proceedings to be stayed pending my receiving instructions. Such a stay of proceedings in the middle of a case might cause great inconvenience and loss of public time.

3. The District Magistrate himself admits that adjournments and delays are prejudicial to the interests of truth and justice and yet the effect of carrying out his suggestion would be to cause such delay.

4. Under the present system that delay is to a great extent prevented because in the majority of cases I get the transfer application rejected in limine without any reference to the District Magistrate. It is only when the Judges think there is anything in the affidavit to call for an answer that I ask for time to get instructions from the District Magistrate.

5. As regards the latter part of para: 5 of the District Magistrate's letter I have to state that whenever any serious allegations are made against the Magistracy I invariably forward the affidavit to the Magistrate of the District and if he finds the allegations are without foundation he has only to instruct me to move the High Court for sanction to prosecute the maker for perjury.

6. There is no doubt considerable difficulty in proving the falsehood of a statement in an affidavit because the makers are too cautious to commit themselves. They prefer dealing largely in the suppressio veri and suggestio falsi and when they do make a distinctly false statement it is generally coupled with the words "to the best of my information and belief."

7. I do not understand in what way the District Magistrate proposes to deal with legal practitioners presenting such applications. He surely does not suggest that they should be held responsible for the contents of the affidavits made by their clients. If I remember rightly the particular application to which the District Magistrate refers was presented by Mr. Wedderburn. When a client comes to a legal practitioner with all sorts of allegations against the Magistrate trying a case he (the legal practitioner) can do no more than ^{insist} ~~insist~~ on the allegations being embodied in an affidavit.

I have the honor to be,

Sir,

Your most obedient servant,

W. Town

Government Pleader.

When given for copying _____
 When copied _____
 When examined _____
 When signed _____

189 .

READ AGAIN G.O., No. _____ DATED
 189 ,

CURRENT No.

ENCLOSURES to O. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
 IN ORIGINAL.

N.B.—

A = Copy in full.
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