

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1426

Dated 9th July 1895

INDEXED.

[Despatch Abstract.]

RE-TRIAL OF A CRIMINAL REVISION CASE.

• Drawing the attention of the District Magistrate of Bellary to G.O. dated 8th February 1886, No. 341, Judicial, which shows that he is himself competent to instruct the Government Pleader to appear before, and ask the High Court for the constitution of a full bench for the re-trial of Criminal Revision case No. 30 of 1895, and stating that his recommendation for the amendment of the Criminal Procedure Code has been noted.

BACK PAPERS.

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

FURTHER PAPERS.

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

Judicial Dept
CURRENT NO. 3117
MAGISTERIAL DEPARTMENT.

FROM

THE DISTRICT MAGISTRATE OF
BELLARY.

TO

THE Chief Secretary
to Government
Judicial Department
Madras

Ref No. 357

CHIEF SECRETARY
1-JUL. 1895

Dated

Despatched

Received

29th June 1895.
Enclosures. 2
Abstract.

Requesting to instruct
the Government Pleader
to ask the High Court
to dispose of the Revision
Case (Copy enclosed)
by full Bench.

Ref
Please put up a copy of
as Law Officer
2 a copy of the Bench
copy 13/11/95
4/7/95

Ref 504 8-2-16 No 341
Details dated 22-7-94, No 1302
504-12-77, 9-1-95

CS

under 9th July 1895. No 1426

His

The attention of the D. Magis-
trate will be drawn to G.O.
of 8. Feb. 96, No 341. Just from
which he will see that
he is himself competent to
instruct the Govt Pleader
to appear in the case.

2 The recommendation in
para 5 of the letter has been
noted.

8/7/95
8/7/95
13/7/95

To the D. Magistrate, Bellary
with encl. under (202)
Copy returned.

Note for H.C.

Please issue the order from
here & send the paper to
me in view to its being
handed over to the Officer
on special duty.

5/7/95.
H. G. H. G.
13/7/95

Ref

No. $\frac{335}{6/6/95}$ Dated 6th June 1895.

FROM

H. Treuenhagen Esquire
DISTRICT MAGISTRATE OF
BELLARY.

To

THE Registrar, High Court
Appellate side
Madras.

SIR,

I have the honor to submit for the orders of the High Court Case No 2425 of 94, on the file of the Bellary Town Bench in which one N. Jagan Nadha Row was prosecuted under Section 222 District Municipalities Act (IV of 1884) for allowing offensive liquid matter to run down and stagnate inside the drain from his house.

2. The case came on for trial on the 6th September, 12 days after the alleged Commission of the offence. So far as appears from the record, no witness was examined for the prosecution but the accused denied that the matter had been offensive. Thereupon two of the Bench Magistrates made a local inspection. 3

13th of the Court under commission
P.T.

On the 17th September, the case coming on before a Bench differently constituted, one of the Magistrates represented to the Bench that at the inspection he had found the matter not offensive. Immediately thereupon, the accused was acquitted.

4. I beg to report my opinion that the acquittal was illegal for the following reasons, that the trial should be ordered; viz

(i) the record does not show that the witness for the Prosecution was absent and he must be taken to have been present and therefore should have been examined as a condition precedent to acquittal;

(ii) The inspection being 12 days after the alleged date of offence was illegal;

(iii) It is doubtful whether in section 222 the adjective "offensive" qualifies the noun water.

(iv) Though the ruling in Criminal Revision Case 30 of 1895 has not yet been reported, it has been communicated to me; and I am bound to bring to the notice of the High Court that the trial (if such it can be called) was commenced before one of the Bench Magistrates and concluded before another.

I have &c
(Signed) H. Tremenhue
District Magistrate

1895
J. D. 1
Enclos. No. 1
To
No. 3117

District Magistrate

CURRENT NO.
BELLARY DT. MAGISTRATE'S OFFICE,

Dated 29th June 1895.

FROM

H. Tremenhue Esquire

DISTRICT MAGISTRATE OF

BELLARY.

TO

THE Chief Secretary to Government
Judicial Department
Madras.

SIR,

I have the honor to call the attention of Government to the enclosed Revision Proceedings No 30 of 1895 of the High Court in which the High Court following Indian Law Report XX Calcutta page 870 have held that an Honorary Magistrate may not give judgment and pass sentence in a case unless he has been a member of the Bench during the whole of the hearing of the case.

2. There can be no doubt that this ruling will cause a great deal of inconvenience especially in the case of a town like Bellary whose Bench court tries upwards of 5000 cases in a year, yet seldom

3. I can arrange to have the same Magistrates sitting on two consecutive Benches.

3. In my humble opinion, the ruling of the Calcutta High Court is open to objection as overlooking Criminal Procedure Code section 15 which constitutes the Bench as a court apart from the individuality of the Magistrates who sit upon it.

4. I therefore beg to suggest that the enclosed case partly heard by one set of Magistrates and partly by another having been sent up by me to the High Court for revision, the Government Pleader may be directed to appear and to ask the High Court for the Constitution of a full Bench for the disposal of the reference.

5. I would also recommend that the point be provided for in the amendment of the Criminal Procedure Code now in progress.

I have the honor to be
Sir
Your most obedt Servt

A. Tremendous
District Magistrate

G. J.

Note

Mr Tremendous brings to notice a case in which the Madras High Court, following the decision of the Calcutta High Court in I.D.R. xx Cal. 170, have held that an Hon. Magistrate may not give judgment and pass sentence in a case unless he has been a member of the Bench during the whole of the hearing of the case and says that this ruling will cause considerable inconvenience in practice as it is very difficult, if not impossible, to arrange for the same Magistrate sitting on two consecutive Benches. He further considers that the Calcutta ruling is open to the objection as overlooking the provisions of section 15 of the Code which const.

As the Bench as a court
 apart from the individuality
 of the Magistrates who
 compose it. We therefore
 recommend that the
 matter be ~~provisionally~~
~~provisionally~~ provided for
 in the amendment of
 the C.C.P. now in progress.

13/7/95

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

189

READ AGAIN G.O., No.
 189

DATED

CURRENT No.

ENCLOSURE TO G. 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.
 B = Not to be copied.
 P = Copy abstract only.
 Q = Copy heading only.