

Judicial (1895) Department.

ORDINARY PRINTED.

G.O., No. 2087

DATED 9th Oct 1895

INDEXED.

[Despatch Abstract.]

PROSECUTION OF CASES BEFORE MAGISTRATES' COURTS

Sanctioning the payment of a fee of Rs. 175 to the pleader who conducted the prosecution in Preliminary Register case No. 4 of 1895 on the file of the Stationary Magistrate of Negapatam ; and passing orders on the question of the employment by District Magistrates of Pleaders other than Public Prosecutors for the--- and the fees payable to such Pleaders.

BACK PAPERS.

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

FURTHER PAPERS.

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

No. 2087, JUDICIAL, 9TH OCTOBER 1895.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

From the Acting District Magistrate, Tanjore, dated 1st September 1895, Ref. on C. No. 976-Magl.

ABSTRACT.—Recommending payment of a fee to a pleader for conducting the prosecution in a certain case, and raising the question whether District Magistrates are empowered to appoint pleaders to conduct prosecutions in cases other than those committed to the Sessions Courts.

ORDER—No. 2087, Judicial, dated 9th October 1895.

The payment of the fee recommended by the District Magistrate—Rs. 175—is sanctioned.

2. Section 492 of the Criminal Procedure Code authorises a District Magistrate to appoint special Public Prosecutors for the purposes of cases committed for trial to the Court of Session, but there is apparently no provision of law under which the District Magistrate can legally appoint a Public Prosecutor in other cases. At the same time, section 495 allows the presiding Magistrate at any trial to permit the prosecution to be conducted by any person other than an officer of Police below a certain rank. If, therefore, the District Magistrate entrusts a pleader other than the Public Prosecutor of the district with the prosecution of a case which is being tried by a Magistrate, there is no likelihood of any obstacles being placed in the way of his conducting the prosecution thereof. A pleader so appointed will, however, not be a "Public Prosecutor" and the rules which Government has from time to time issued with regard to the payment of fees to Public Prosecutors will not apply in such a case. The Government, however, recognizes that it is occasionally necessary in the interests of justice to make such appointments and accordingly resolves to declare that it will in general pass fees to pleaders so employed at rates not exceeding those admissible to Public Prosecutors. It must, however, be clearly understood that special prosecuting agents of this class should not be appointed except when it is impossible for the Public Prosecutor or the prosecuting Police Inspector to attend at the hearing and the cases cannot be postponed for the purpose of enabling either of these officers to do so. Public Prosecutors should, of course, not be employed in cases before the magistracy when the prosecuting Police Inspector can attend and is competent to present the case for the prosecution in a proper manner.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To all District Magistrates.
„ the Accountant-General.

Exd. A. Raitt.

Govt. of {1895} Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., No. 2087, 9th October 1895.

OCTOBER.

Prosecution of Cases before
Magistrates' Courts.

Sanctioning the payment of a fee to the pleader who conducted the prosecution in a certain case; and passing orders on the question of the employment by District Magistrates of pleaders other than Public Prosecutors for the — and the fees payable to such pleaders.

CURRENT No. 4233

Tanjore, District Magistrate's Office,

CAMP,

1st September 1895.

Refon^C No. 976
mag

FROM

S. C. Rawson Esquire,

Ag: District Magistrate,

TANJORE.

To

The Chief Secretary to Government,
Judicial Department,
MADRAS.

SIR,

In Register Case No. 4 of 1895 on the file of the Stationary Second class magistrate of Negapatam, three persons, natives of Nagore were charged with having murdered six persons and severely wounded 12 others on the night of the 27th May last.

2. The Case was an important one and at the request of the sub-Divisional Magistrate, M. Rhy. V. Renga Row, a first grade pleader at Negapatam, was asked by the then District Magistrate to conduct

the prosecution during the preliminary enquiry, as the Public Prosecutor was then otherwise engaged on behalf of Government. The preliminary enquiry lasted 7 days, and involved the examination of 39 witnesses for the prosecution. It ended in all the three accused being committed to the Sessions, where two of them were sentenced to death in Cal: Case No. 40 of 1875 and the third was acquitted.

3. The vakil now claims a fee of Rs 350 for having conducted the prosecution in the preliminary enquiry. Considering the importance of the case, and the work done by the vakil in bringing it to a satisfactory termination, I think he is entitled to a fee of Rs 175 (at Rs 25 a day) and I recommend that Government will be pleased to sanction this amount for being paid to him.

4. In this connection, I beg to state that it appears to have been the practice in this

unlike cases
to send for
papers.

will

District (and also in others with which I am acquainted) for District Magistrates to appoint pleaders to conduct prosecutions in cases other than those committed to the Sessions Court. There appears to be no authority for the District magistrate to do so, and the practice is contrary to Government Order No. 1375 of 11th June 1879.

This Government order appears, however, to have been lost sight of, and I may point out that in several instances, Government has sanctioned the payment of fees in such cases.

E.g. G.O. dated 8-3-92 No. 449 J
G.O. dated 30-11-92 No. 2208 J
G.O. dated 21-10-93 No. 2198 J
G.O. dated 26-1-94 No. 206 J
etc. etc.

5. As Police Prosecuting Inspectors have now been appointed, Vide Government Order dated 26th July 1895, No. 1573 J, the difficulty will probably not often arise in future and exceptional cases can be referred for sanction of Government as provided in Government Order No. 1375 dated 11th June 1879 already quoted.

I have the honor to be,
Sir,
your most obedient servant,
Munhu San
For As. Dist. Mag.

re Lm

CURRENT No. 4233

Department.

FROM

The District Magistrate of
TANJORE.

To

The Chief Secretary
to Government,
Judicial Department,
MADRAS.

Dated

Despatched

Received

1st
September 1895

Ref. No. 176
5 SEP 1895
ENCLOSURE
GOVERNMENT OF MADRAS
Subject.

Recommending a fee
of Rs 175 to M. R. R. V.
Renga Row First Grade
Pleader Negapatnam
for the Conduct of
the prosecution in
Preliminary Register
Case No 4 of 1895 on
the file of the Sub.
Magistrate, Negapatnam.

1873d 16.7.95
206d 26.1.94 Mins
498 d 21.10.93 Mins
208d 30.10.92 "
449d 8.3.92 "
1452d 15.12.92 R
+ R.O. papers

Judicial Dept.

C.No. 4233.

FOR ORDERS

In para 4 of the fore-
going letter Mr. Rawson brings to notice
that Dt. Magtes. not infrequently appoint
pleaders to conduct prosecutions in cases
other than those committed to the Session
and that this practice is unauthorized
and contrary to G.O. dated 11th June 1879,
No. 1375. In this order it was pointed
out that there was no provision in the
Cr.P. Code of 1872 empowering Dt. Magtes.
to appoint Public Prosecutors for cases
before Magte's courts and that the pro-
secution in such cases should be con-
ducted by the Police or the complain-
ants according as the offences were cog-
nizable or non-cognizable. This ruling
appears to hold good even under the
present Code of Cr. Pro., sec. 492 of
which runs.-

" x x x In any case committed for
trial to the Court of Session, the Dt.
Magte., or, subject to the control of
the Dt. Magte., the Sub-Divisional

Magte

"Magte., may, in the absence of the
 "Public Prosecutor, or where no Public
 "Prosecutor has been appointed, appoint
 "any other person x x x to be Public
 "Prosecutor for the purpose of such case."

It would appear that this point is
 generally lost sight of and Dt. Magtes.

do frequently employ pleaders to conduct
 prosecutions in Magtes' Courts. The

necessity for such employment will not
 arise in future as often as heretofore,

inasmuch as Police Public Prosecutors
 have recently been appointed in all

the districts of the Presy. (except
 Nilgiris) to conduct Police cases. But

as it will not be possible for Police
 Prosecutors to appear in all important

cases coming before Magtes' Courts, it

seems desirable that Dt. Magtes. should

be ^{generally} authorized to engage the services

of pleaders in any case in which such

a course is necessary in the interests

of justice. Sec. 495 of the Cr.P.C.

allows the presiding Magte. to permit

the prosecution being conducted by any

person other than officer of Police

below a certain rank. It is true that

this section does not impose an obliga-

tion on the presiding Magte. to hear

the

Yes - "May" - But in practice
 Govt. does not throw over officers
 who assume responsibility for
 what they at the time think to be
 for the public good. It could never
 do so; and officers know this.

It must be made clear that rates not exceeding those admissible
 special prosecuting agents should not be appointed except when the Prosecuting
 P.O. Insp. cannot attend & the
 case cannot be postponed & sent
 him to do so. Such cases should not
 occur frequently.

In the present case pass
 the fee proposed by the D.M.

3/10/95

the pleader deputed by the Dt. Magte.

in this behalf, but it is not likely that

any Magte. will disallow the prosecution

being conducted by a pleader deputed by

the Dt. Magte. for the purpose. ~~If neces-~~

~~sary, Dt. Magtes. may be asked to issue~~

~~general orders on this subject.~~

The fee recommended in the

present case is within the sanctioned

scale and may therefore be passed.

The difficulty is that when a District
 Magte. appoints a pleader to prosecute

a case other than a Sessions Case

he does so at his own risk &

26/9/95 Govt. may refuse to sanction

the payment of any fees. All that

seems to be required is to issue a

general order briefly stating the

law & stating that Govt. has no

objection to the employment of pleaders

in cases where skilled aid in the

prosecution is required in the interests

of justice & that it will pass fees

to pleaders so employed at

rates not exceeding those admissible

to public prosecutors. If H.M.

accepts this view, the draft will

be submitted to him for approval

11/9/95

26.8.95

H. J. Thompson

C. No. 4233

The payment of the fee recommended by the Dt. Magte., Rs. 175, is sanctioned.

Public Prosecutors for the purposes of cases committed for trial to the Court of Session, but there is apparently no

in other cases. At the same time sec. 495
allows ^{to} presiding Magte. at any trial

Police below certain rank. If therefore
the Dt. Magte. entrusts a pleader other

than the Public Prosecutor of the district
with the prosecution of a case which is

being tried by a Magte., there is no likelihood of any obstacles being placed in

the way of his conducting the prosecution thereof. A pleader so appointed will

however not be a "Public Prosecutor" and
the rules which Govt. has framed

time issued with regard to the payment
of fees to Public Prosecutors.

apply

apply in such a case. The Govt. however recognizes that it is occasionally necessary in the interests of justice to make such appointments and accordingly resolves to declare that it will in general pass fees to pleaders so employed at rates not exceeding those admissible to Public Prosecutors. It must however be clearly understood that special prosecuting agents of this class should not be appointed except when it is impossible for the Public Prosecutor or the prosecuting Police Inspector to attend at the hearing and the cases cannot be postponed for the purpose of enabling either of these officers to do so.

(From orders)

5/10/95.

To

All Dt. Magtes. 172

The Accountant-General

Re. prosecution of cases before
Magistrates' Courts.

H.M.

(FROM ORDERS)

DESPATCH

Public Prosecutors should, of course, not be employed in cases before the Magistrate when the prosecuting Police Insp. can attend & is competent to present the case for the prosecution in a proper manner.

dispo
20/10/95

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JUDICIAL DEPARTMENT.

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(True Extract.)

Chief Secretary.

To all District Magistrates.
„ the Accountant-General.

Exd. A. Raitt.

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Just 46-2087 dt 9 October 95.

Done
26/10/95

The Collectors of
The District Magistrates of

Anantapur.	8
North Arcot, Chittoor.	8
South Arcot, Cuddalore.	8
Bellary.	8
South Canara, Mangalore.	8
Chingleput, Saidapet.	8
Coimbatore.	8
Cuddapah.	8
Ganjam, Chatrapur.	8
Godavari, Cocanada.	8
Kistna, Masulipatam.	8
Kurnool.	8
Madras (when necessary).	
Madura.	8
Malabar, Calicut.	12
Nilgiris, Ootacamund.	8
Nellore.	8
Salem.	8
Tanjore.	9
Tinnevely.	8
Trichinopoly.	8
Vizagapatam.	8

A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.