

BACK PAPERS.

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

FURTHER PAPERS.

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

507-20-6-94.

Judicial DEPARTMENT.

CURRENT No. 211

Judicial { 189 } Department.

No.

FROM

THE REGISTRAR OF THE HIGH COURT
OF JUDICATURE AT MADRAS,
APPELLATE SIDE.

Dated 11 January
Received 19th } 1895.



No. 815. Judl.
Enc one of Ch. 5882 ret.

Pointing out that the correct way of moving the High Court for a decision in the case under reference is by motion in Court, stating that High Court is not accustomed to take action in judicial matters upon correspondence and returning the enclosures.

Subd
Pl. in the High Court
Pls. attached to Ch. 148

No 115 Inst.

211

High Court of Judicature,

Madras, 11th January 1895.

From

H. W. Foster Esquire,

Registrar, High Court,

Appellate side, Madras.

To

The Honourable E. Gibson,

Ag. Chief Secretary to

Government.

Fort. St. George.

Honourable Sir,

With reference to the Proceedings
of Government No 3035 dated 10th
December 1894, I am directed
to point out that the correct way
of moving the High Court for a
decision upon the propriety
of the Presidency Magistrate
proceedings in the case in
reference is by motion in C.

W

examined
and
signed

under the provisions of the Criminal
Procedure Code. The High Court
is not accustomed to take action
upon correspondence in judicial
matters regarding which it can
be moved judicially.

2. The enclosures of the proceedings
are returned herewith.

I have the honor to be,
Sir,

Your most obedient servant,

H. D. D. D.
Registrar,
Appellate Side.

[G.]
25.
100-21-12-94.

DEPARTMENT.

No. 211

From

The High Court.

Dated 11 January 1895.

FOR ORDERS.

The thing is that we
don't want to appeal
or to have any judicial ac-
tion taken, but we don't want
the H.C. (if it agrees with us)
to ~~be~~ point out
his mistake to the Magistrate - I
don't see how we are to do
this done by moving the Ct.
in open Court - As we do
understand that there is
noway, other than a judicial
proceeding, of causing the
censure of the H.C. to fall on
a judge or Magistrate who mis-
conducts himself? I should
be inclined to write to the
H.C. again & point out our
difficulty.

Circ

BS

24/1/95

We draw the attention of
the High Court to the case in
order that it might tell the Mag.
he should not have allowed the case
to be brought on. The High Court
is empowered to do so.

10/1/95
examined &
signed

The High Court has power under S439
of the Criminal Procedure Code to
take judicial notice of the Presidency
Magistrate's decision, in whatever way
the proceedings may have come to its
knowledge & it is submitted that this
reply to Foot is unnecessarily discom-
modate as regards the "correct way of moving
the High Court", it may be observed
that the Criminal Procedure Code does
not appear to provide for the making
of any motion on behalf of Foot in
cases of this description. In fact it
appears there is no locus standi
except in appeals against an acquittal
under S417. It is therefore perfectly
open for the High Court to refuse to
hear the Foot Reader if he is directly
bringing the matter to notice in Court.
If he is asked what is the provision
of the Code under which he appears,
will have no reply.

2. Perhaps the best way of replying
to the High Court would be to con-
sult of its own mouth by asking
reference to its remark that

procedure is by "motion in Court under the Criminal Procedure Code" that the Court will be good enough to specify the particular provision of the Code under which such a motion could be made. - The objection to the course however is that the rejoinder will be "It is not the place of the High Court to advise Govt. which should consult its own law officers." It is submitted therefore that it would be better to take the Advocate General's opinion as to whether it is customary or possible to depate the Govt. Pleader to make a motion in open Court on such a subject as this. If he replies, as he probably will, that there is no express provision in the Code for such procedure, Govt. will be in a position to put the question proposed, with an adequate answer for the rejoinder. I understand from Mr. Battenworth that the High Court has taken action "on correspondence" in cases somewhat similar to this; though & there will be looked up. In the meantime the reference to the Advocate General may perhaps be made.

D
22.1

There is no doubt what the H.C. means viz that Govt. should if it wishes bring this case before the appeal. There is no doubt too I think that the H.C. can exercise its powers of revision in regard to cases.

Reference to High Court.

which we wanted) refuses. It is unlikely that the High Court will recall their refusal, so we shall gain nothing by addressing them again.

28/1

H. H. (for order)

I have been very doubtful all along as to the expediency of our taking any action in this matter, and it is evident that the H.C. won't help us. They refuse to take our hint - and in fact tell us to mind our own business - and that if we wish to interfere in the case, we must do it in the regular manner. What that manner is is doubtful - unless we prefer an appeal against the acquittal - but I understand the hon. Mr. B. does not want this. He wishes the H.C. to reprimand the Magistrate - & the H.C. virtually say that if the Magistrate ought to be reprimanded - that is their concern not that of the Govt.

I do not think that anything will be gained by taking this any further - but if it sh^d. appear that it is not an unusual thing to invite the H.C. to take action "on correspondence" - we might be in a position to approach them again without any loss of dignity.

W

Open E

In connection with current 211 just please institute a search for cases in which Govt. has by letter addressed the High Court with reference to the work done by a Magistrate or judge with a view to getting him censured by the High Court, by or in which Govt. has by letter asked the High Court to interfere in revision (C.P.C. 8437), if an order passed by itself, or any subord. magt. Court.

V D
2.2

Examine orders reviewing the civil & Criminal Justice reports;

D
22

1887-1894 have been examined

No. 211

Dated

189 ,

FOR ORDERS.

Resubmitted to H.H. for perusal of
remarks by H.R. Mr. Proce.
A search is being made for precedents
vide para 3 of note for orders - but is not
very likely to be successful

$\frac{D}{2-2}$ $\frac{LD}{4/2/95}$

Note for C.S.

The search for precedents
has been altogether unsuccessful
so the papers must be

50, rapid 195 no 667

Recorded

(from orders)

$\frac{D}{25-3-95}$ $\frac{LD}{28/3/95}$

Note for the Under Secy

I regret very much
the delay that has occurred
in replying to the W.S.'s
note attached hereto.
It required a great deal
of time to carry out the
W.S.'s instructions in this
matter and this I was
not able to do at my
usual working hours
in the office viz from 11 AM.
to 7 PM. and so I had
to do it as best as I could
without prejudice to the
current work which in
the case of a jud. Refr
is generally heavy.

Reviews of Crimi-
nal & civil justice
Reports for the years

1887-1894 have been
examined

procedure is by "motion in Court"

and the indexes for those years have been carefully gone through with the result that the nearest approach to the precedents required by the U.S. is to be found in the G.O. dated 28th April 87 N^o 916.

G.O. 7 Sep 1887 N^o 2046

26 Jan 1864 N^o 110

20 Aug 1862 N^o 1355

5 Aug 1862 N^o 1245

refer to the mode in which correspondence with the H.C. should be carried on.

G.O. 26th Sep 1894 N^o 2338/9

G.O. 15 Jan 1895 N^o 83.

refer to the case in which the Govt. called upon certain 51 judges &c to account for the state of work in their Courts. The latter G.O. is not now available as it has

under disposal.

I have found it rather hard to trace a precedent of the kind referred to by the U.S. in his note.

MS
22/3.

No. 211

Dated

189 ,

I suppose the matter must be dropped.

7/2/95

Resubmitted to H.H. for perusal of
remarks by H.S. Mr. Groce.
A search is being made for precedents
vide para 3 of note for orders - but is not
very likely to be successful

$\frac{D}{2:2}$ 22 4/2/55

Note for C.S.
The Search for precedents
has been altogether unsuccessful
so the papers must be

50, April 195 no 667

Recorded

(from orders)

25.3 95- 28/3/55

2 revision in regard to case
✓ 1, 1961 - L. P. A. included

Reference to High Court

H.M.

C

(from 12/11/19)

Transmitted

Search Office

Directed on

Separate slip

X
7/2

given for copying _____
copied _____
examined _____
signed _____

189

AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURE TO G. No.

ORDER OF GOVERNMENT

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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