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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No.	1416	Press.
B.P. No.	(1-2)	Mis.
Dated	1-8-1874	198

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Not to be folded or roughly handled.

JUDICIAL DEPARTMENT.

No. 1416.

FROM

THE HON. D. F. CARMICHAEL,
Acting Chief Secretary to the Government of Fort St. George.

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT.

SIR,

I am directed by the Governor in Council to reply to your No. 255 of 18th April last on the Presidency Police Magistrate's Bill.

2. The High Court received a copy of your letter and its annexures. The Honorable the Judges have stated that they have no remarks to offer.

3. Referring to paragraph 2 of your letter, the Governor in Council observes that, under Sections 13 and 14 of the Madras Police Act, which the Bill does not propose to repeal, the extent of the Police Magistrate's jurisdiction at Madras considerably exceeds that of the corresponding Courts at Calcutta and Bombay.

4. This jurisdiction, however, falls greatly below that of a Magistrate of first-class powers in the Mofussil, the Police Magistrate being competent to exercise *those powers only with the consent of the accused*, who must otherwise be committed to the next Session of the High Court. The Police Magistrates are carefully selected for the post, and the only objection to vesting them with the full powers of a Magistrate under the Code of Criminal Procedure is the absence at the Presidency town of an appellate authority like the Session Judge in the Mofussil; and, secondly, the absence from the High Court of that *Revisional* authority which it holds over every other tribunal in the country.

5. It could easily be arranged that the Junior Puisne Judge, or each Puisne Judge in his turn, should undertake the appellate duties referred to; and the inclusion in the Bill of Chapter XXII. of the Code of Criminal Procedure (which,

indeed, has already been suggested* by this Government irrespectively of the question of any higher powers for the Magistrates) would secure the second object. Any additional duties thrown on the High Court by these measures would be compensated by the relief afforded to the learned Judges at the Sessions, where they would henceforth have to deal with crimes of the gravest description only.

6. Should His Excellency the Governor-General in Council think proper to extend the jurisdiction of the Police Magistrates with the checks above suggested, it will then be desirable to include Section 272, Code of Criminal Procedure, in the Bill, which provides for an appeal to the High Court from an acquittal, when directed by the Government.

7. It will, lastly, greatly tend to the efficiency of the Bench if each of these functionaries was empowered to try summarily all or any of the petty offences

6th March 1874, No. 305.

coming within the enactments specified in Section 225, Code of Criminal Procedure.

This has already been proposed by this Government.

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S. That portion of Chapter XXV. (Evidence how taken), which requires a Magistrate to make a memorandum of the substance of the evidence in all cases, except summary trials, should by all means be included in the Bill. It is a guarantee of the Magistrate's attention to the case before him which cannot be dispensed with.

I have the honor to be,

Sir,

Your most obedient servant,

OOTACAMUND,
1st August 1874.

Acting Chief Secretary.

STATEMENT OF OBJECTS AND REASONS.

The Select Committee to which the Bill to regulate the Procedure of the High Courts in the exercise of their Original Criminal Jurisdiction, and for other purposes was referred, have already reported on so much of that Bill as relates to the Criminal Procedure of the High Courts. In that report the Committee explained that the course of discussion had led them to think it undesirable to deal in the same measure with two subjects so unconnected as the Criminal Procedure of the four High Courts and the Chief Court of the Panjáb, and the Procedure of the Presidency Police Magistrates, and that the Bill had therefore been divided into two. The present Bill represents so much of the original Bill as related to the Police and to the procedure of the Police Magistrates in the Presidency towns.

2. The original Bill as introduced applied to the Police of the Presidency towns several chapters and sections of the Code of Criminal Procedure and, in particular, it proposed that Police Magistrates should exercise the miscellaneous powers conferred on a Magistrate of the District by section 39 of the Code. The Madras Government, however, has recently represented that these provisions would materially affect the constitution of the Police, and otherwise involve violent and undesirable changes in the relations at present existing between the Police and the Magistracy. In consequence of this opinion the present Bill omits from the list of chapters and sections of the Code appended to clause 49 of the Bill as introduced those that have reference to the Police, namely, chapters IX and X and sections 143, 176—181, 279—387, 415, 416, 417. The present Bill merely proposes to assimilate the judicial procedure of the Police Magistrates to that prescribed for Magistrates in the Mofussil.

3. The Bill proposes to repeal certain sections of the Police Acts, now in force in the Presidency towns, which sections will be superseded by the extension of sections 141, 142, 143, 149, 157, 308 and chapters XXVIII and XLI of the Code of Criminal Procedure.

4. The Bill omits, as unnecessary, the following parts of the Code: sections 175 and 201, the penultimate clause of section 308, the last proviso in section 328, the last sentence of clause 2 of section 262, section 390, the penultimate paragraph of section 398, sections 419 and 420, and the last two clauses of section 489.

5. Chapter VII of the Code (as to European British subjects) has been omitted as introducing an unnecessary and invidious distinction between European and Native Magistrates.

6. Section 148 of the Code has been modified so as to enable a case to be heard by a Magistrate other than the Magistrate by whom the summons was issued.

7. Chapter XII of the Code, sections 152, 154, has been modified so as to relieve the Police Courts from the useless expense and labour of preparing in all cases copies of summonses.

8. Sections 159 to 174 of the Code will not apply so far as they relate to the issue of warrants to persons not being police officers.

9. In applying chapter XV, the last sentence of the first clause of section 198 and the second clause of section 202 have been omitted.

10. Chapter XXXVI (of the dispersion of unlawful assemblies) is omitted, as that chapter is to be expressly extended by the Bill to amend the Code of Criminal Procedure.

11. In the parts of the Code, which it is proposed to apply to the Presidency towns, the expressions "Magistrate," "Magistrate of a District," &c., will include a Magistrate of Police.

12. The High Court at Fort William has represented to the Government of India in the Police Department that the limits which now restrict the jurisdiction of the Police Magistrates in the matter of trying offences depend too much upon the artificial element of value; and the consequence is that a very large portion of the time of juries and High Court Judges at the Criminal Sessions is taken up in disposing of trivial cases which might have inexpensively, and most satisfactorily, been dealt with finally by the Magistrate himself at, perhaps, the first hearing. The Court thinks that this mischief ought to be removed by the proposed Act, and suggests that a good mode of doing so would be by defining the jurisdiction of the Police Magistrates after the method adopted for Magistrates in the Criminal Procedure Code.

13. The Government of India feel the force of this representation, and are inclined to adopt the suggestion so made for the removal of the evil complained of. But before doing so,

Presidency Police Magistrates Bill.—Certain remarks submitted to the Government of India regarding the provisions of this Bill with the intimation that the Judges of the Madras High Court have stated that they have no remarks to offer.

(2)

It is thought desirable that the Local Governments and the Presidency High Courts should be invited to define more precisely the mode in which and the limits to which relief may be given to the High Courts in this respect; and it is proposed that the present Bill together with the Statement should be sent to the Local Governments and High Courts concerned, with a view to obtaining the information above indicated.

The 5th July 1874.

A. HOBHOUSE.

A
BILL
TO

Extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency Towns.

For the purpose of extending certain parts of the Code of Criminal Procedure to the Courts of the Magistrates of Police in the Towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

1. This Act may be called "The Presidency Police Magistrates Act, 1874."

It extends to all places within the local limits of the ordinary original criminal jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay;

And it shall come into force at once.

2. The enactments specified in the second schedule hereto annexed shall be repealed to the extent mentioned in the third column of the same schedule.

3. The parts of the Code of Criminal Procedure mentioned in the first schedule hereto annexed shall apply (so far as they are applicable and subject to the modifications shewn in the second column of the same schedule) to the Courts of the Magistrates of Police in the towns of Calcutta, Madras and Bombay.

Nothing in this section shall be deemed to restrict any power conferred by any special or local law.

4. In the parts of the said Code so applied, the expressions 'Magistrate,' 'Magistrate of District,' 'Magistrate of a Division of a District,' 'Magistrate of the first class,' 'a competent Magistrate,' 'Magistrate having jurisdiction,' and every other expression applicable to a Magistrate of the District, shall be deemed to include a Magistrate of Police.

THE FIRST SCHEDULE.

(See section 2.)

Parts of the Code applied.

Modifications.

Chapter I, sections three (Pending cases) and four (Defaulters);

Chapter VI (The place of Inquiry and Trial), the first sentence of section sixty-three and sections sixty-five to seventy, both inclusive;

Chapter XI (Of Complaints to a Magistrate);

Chapter XII (Of the Summons);

Chapter XIII (Of the Warrant), sections one hundred and fifty-nine to one hundred and seventy-four, both inclusive;

Chapter XIV (Preliminary);

Chapter XV (Of Inquiry into Cases triable by the Court of Session or High Court);

Chapter XVI (Of the Trial of Summons Cases by Magistrates);

Chapter XXIII, sections three hundred and seven, three hundred and eight (except the penultimate clause), three hundred and nine, three hundred and eleven to three hundred and eighteen (both inclusive) and three hundred and twenty-two;

Chapter XXIV (Special Rules of Evidence in Criminal Cases);

Chapter XXV (Evidence how taken), sections three hundred and thirty-one, three hundred and forty, three hundred and forty-two to three hundred and forty-five (both inclusive), three hundred and forty-seven and three hundred and forty-nine;

Chapter XXVI (Of securing the Attendance of Witnesses);

Chapter XXVII (Of Search Warrants);

Omit the second clause of section one hundred and forty-four, and the whole of section one hundred and forty-five. In section one hundred and forty-eight, after the words "such Magistrate," insert the words "as may then be there."

In section one hundred and fifty-two, omit the words "in duplicate." In section one hundred and fifty-four, for the words "one of the copies" read "the original" and for the words "the other copy" read "a copy."

Except so far as they relate to the issue of warrants to persons other than Police officers.

Omit the last sentence of the first clause of section one hundred and ninety-eight.

Omit section two hundred and one and the second clause of section two hundred and two.

To be applicable to all cases (whether summons cases or warrant cases) tried and disposed of by the Courts of the Police Magistrates.

Omit in section two hundred and six the last fourteen words.

Omit in section two hundred and twelve the second clause.

Omit the last provision in section three hundred and twenty-eight.

Omit the last sentence of the second paragraph of section three hundred and sixty-two.

Omit section three hundred and seventy-nine to section three hundred and eighty-seven (both inclusive).

THE FIRST SCHEDULE—continued.

Parts of the Code applied.

Modifications.

Chapter XXVIII (Bail);

Omit section three hundred and ninety, and the last two paragraphs of section three hundred and ninety-eight.

Chapter XXX (Miscellaneous Provisions), sections four hundred and eighteen, four hundred and twenty-one and four hundred and twenty-two;

Chapter XXXI (Lunatics);

Chapter XXXII (Contempt of Court);

Chapter XXXIII (Of the Charge);

Chapter XXXIV (Of the Judgment, Order and Sentence), section four hundred and sixty-one;

Chapter XXXV (Prosecutions in certain Cases);

Chapter XXXVII (Of Security for keeping the Peace);

Omit section four hundred and fifty-one.

Chapter XXXVIII (Of Security for Good Behaviour);

Omit the two last clauses of section four hundred and eighty-nine.

Chapter XXXIX (Local Nuisances);

Chapter XLI (Of the Maintenance of Wives and Families);

Chapter XLII (Miscellaneous), section five hundred and thirty-nine.

THE SECOND SCHEDULE.

(See section 2.)

Acts.

No. and year.	Title or Subject.	Extent of repeal.
XIII of 1956 ...	Presidency Towns Police ...	Sections ninety-seven and ninety-eight.
XLVIII of 1960 ...	Amending Act XIII of 1956 ...	Sections six and ten.
XXI of 1964 ...	An Act for the extension of the jurisdiction of the Magistrates of Police in Calcutta. ...	Sections two and three.
Madras Act VIII of 1967.	Madras Town Police and Police Magistrates ...	Sections sixteen, twenty-one, sixty-one, sixty-two, seventy-one and seventy-two.
Bengal Act IV of 1966.	The Calcutta Police Act, 1966 ...	Sections twenty-eight, thirty, eighty-five, eighty-six, and ninety-six.

Government of India.

LEGISLATIVE DEPARTMENT.

A
BILL

TO

Extend certain parts of the Code of Criminal
Procedure to the Courts of the Police Magis-
trates in the Presidency Towns.

(Mr. Hobhouse.)

Government of India.
LEGISLATIVE DEPARTMENT.

Annexure
TO
Bill to extend certain parts of the Code
Criminal Procedure to the Courts of the Police
Magistrates in the Presidency Towns.

(Statement of Objects and Reasons).

(Printed by the Government of India.)

LEGISLATION, PART II—N. O. L. D.—1874—1875

No. 1196

1874

From

J. W. R. Esquire,
Acting Registrar of the High Court
of Judicature at Madras.

To

The Honorable D. F. Carmichael
Acting Chief Secretary
to Government.

Honorable Sir,

In acknowledging the re-
ceipt of your letter No. 850A dated
8th May 1874 forwarding for an
expression of opinion from the
High Court copy of the Presidency
Police Magistrates' Bill and of
your letter No. 1267 dated 10th July
1874 on the same subject I am
directed to state that the
Honorable the Judges have no

remarks to offer on the provisions of the Bill.

High Court of
Judicature, Madras,
20th July 1874.

I have the honor to be,
Honorable Sir,

Your most obed^t servant,

R. M.
Acting Registrar,
Appellate Side.

Ernie & Dorothy

2^d Aug. 1874

20.14.16.

And which

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Li.

I am directed by Genl. and Capt. of
by No. 255 of 16th April last, on the
Residency which Magistrate will.

2. The High L^{ts} received a copy of v. 1
along with its annexes. The Honble Mr
Justice have stated that they have no re-
marks to offer.

3. Referring to para 2 of your letter,
the G. Inf. Service Stat., under S. 13 & 16
of the Madras Police Act, which the
Bill does not propose to repeal, the
extent of the Police Service Introduction
at Madras considerably exceeds that of the
corresponding Act at Calcutta - Bombay.

2. His jurisdiction, however, falls greatly below that of a Magistrate of first class powers in the Mofussil, ~~and~~ the ~~Police~~ Police Magistrates being empowered to exercise those powers only with the consent of the accused, who must otherwise be committed to the next Session of the High Court.

The Police Magistrates are carefully selected for the post, and the only objection to vesting them with the full powers of a Magistrate under the Code of C. P. is the absence at the Presidency towns of an appellate authority like the Session Judge in the Mofussil, and, secondly, the absence from the High Courts of West

Revisional authority
which it holds over every
other tribunal in the country.

Mr. Gifford has expressed the view that it could easily be arranged that
all criminal cases with other than a junior puisne judge, or each puisne
judge in turn, should be referred to the appellate and reference to;

inclusion in the Bill of Chapter XXXI
of the Code of C. P. (which has already
been suggested by his Lordship) will secure
the desired object. Any additional duties
thrown on the High Court by these measures
will be compensated by the relief afforded
to the learned judges at the Sessions, where
they are of the greatest description only.

5. It is the C. P. Council think proper to
extend the jurisdiction of the Police Magis-
trates with the checks above suggested, it
will then be desirable to include S. 272
C. P. in the Bill, which provides for an
appeal to the High Court from an appeal,
when directed by the Govt.

6. It will, lastly, greatly tend to the efficiency
of the Bench, and result, probably, in the situation
of one of the four Police Magistrates, if each of
these functionaries was em-
powered to try summarily all or any of the
petty offences coming within the enactments
specified in S. 225 C. P. This has already
been proposed by his Lordship.

7. That portion of Chapter XXXI (Evidence law taken) will
require a change to make a measure of the duties of the
Magistrate in all cases except summary trials.

It is by all means to be included in
the Bill. It is a guarantee of the Magis-
trates in the case before him which can
not be dispensed with.

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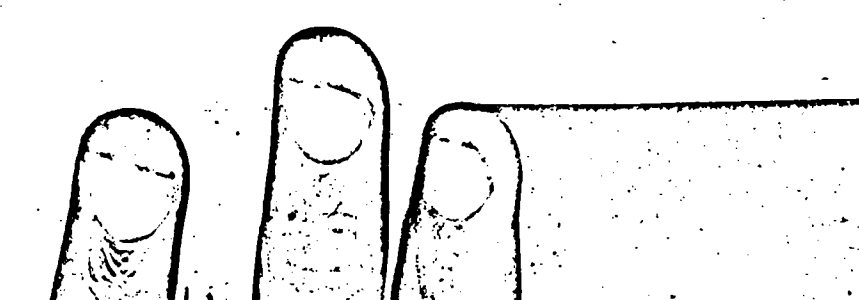
Robert Gifford
1st August 1874

63 March 76 to 303

Labors of India
Presidency Magistrates' Bills

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Presiding Judge

Bill Co. 101

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submitted to the Council
of India regarding the
provisions of the Bill
with the understanding
that the passage of the
measure will confer
status that they have
no power to confer