

(1) பக்கங்களின் எண்ணிக்கை 22

(2) புதுக்கித் திருப்பிய நாள்

(3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம்

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

[JUDICIAL]

33

துறை

அரசாணை எண். மு. கோப்புத் தாள் எண். (141-144)	25-85	அச்சகம் பலவகை
நாள் :	14.1.144	21.12.1876

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மடிக்கவோ கண்டபடி கையாளவோ கூடாது

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

21st December 1878, No. 2585.

Code of Criminal Procedure.

Read the following papers:—

No. 141. *From W. S. FOSTER, Esq., Magistrate of the Godavari District, to the Acting Chief Secretary to Government, dated Cocanada, 12th November 1878, No. 532.*

I have lately had two instances before me which have led me to think that it would be well if some instructions were issued about Section 466 of the Code of Criminal Procedure.

2. Under that section a complaint cannot be entertained by a Magistrate, if it is made against certain public servants, without the sanction of Government. The question is, how is this sanction to be obtained. Should a Magistrate refuse the complaint altogether, and leave the complainant to apply to Government himself for the sanction? or should the Magistrate take steps to get the orders of Government on the subject?

3. As the object of the section is to protect public officers against proceedings being taken hastily against them, I suppose Government would not generally sanction prosecution without some inquiry as to the truth of the complaint: if then the complainant were simply told to get the previous sanction of Government, he would have to apply to Government, who would refer the complaint to some one in the district and then much time would be wasted. So, I think, it would be better for the Magistrate himself to lay the matter before Government in a proper form. Now it would be very difficult to bring it before Government without expressing an opinion on the merits of the case, and still more so without forming one; it is as well that a Magistrate who is to try, or hold a preliminary inquiry into, a case, should have said and heard as little as possible about it; so that it would be advisable that the Magistrate who lays the case before Government should not try the case himself. This would very often prevent the proceedings being held before the Magistrate of the district, and sometimes before another Magistrate also.

4. I think, therefore, that if such a complaint is made to a Magistrate, he should (if he be in charge of a division) take the necessary steps to lay the case fully before Government without exercising any magisterial powers; and I would ask that he might be allowed to send the report on direct to Government or other authority empowered to pass orders under Section 466 without the intervention of the Magistrate of the district.

5. But I would not propose that Magistrates should do this in the case of complaints made against officers who belong to other departments and have official superiors in the district. I would propose, with reference to complaints of this kind, that a Magistrate receiving such a complaint should send it to the official superior, who should be bound to inquire and report on it either to Government or any one else duly authorized to give or refuse the required sanction.

6. I may mention that in one of the cases the party accused does not belong to the same department that I do. I do not see any grounds for going on with the case, and I have told the complainant that I shall not interfere.

No. 142.

No. 2468. 7-12-78 *Am.*

ORDER.—Referred to the Advocate-General, who is requested to advise on the exact force of "shall not be entertained" in Section 466, Code of Criminal Procedure. Does

it mean only that no process shall issue and no direction for a "previous inquiry" be made on such complaint? If it is equivalent to "shall not be received," the complainant probably could not even be examined (Section 144) on his petition; nor could the complaint be dismissed under Section 147 however idle and groundless it appeared.

2. If "entertaining" is equivalent to "receiving"—is there, notwithstanding, any legal objection to the Magistrate (in lieu of summarily rejecting the complaint for want of jurisdiction) referring the petition to the officer complained of, in view to his furnishing his explanation thereon. On receipt of which, according as the reply was insufficient or otherwise, the Magistrate would take steps to report the case for the orders of Government, or refer complainant to Government, remarking that the complaint appeared to be undeserving of notice.

(Signed) C. G. MASTER,
Acting Chief Secretary.

7th December 1878.

✓ No. 143. From E. BARCLAY, Esq., Government Solicitor, Madras, to the Acting Chief Secretary to Government, dated 10th December 1878, No. 489, forwarding the following Opinion of the Advocate-General:—

OPINION. ✓

It appears to me that under Section 466 of the Code of Criminal Procedure the complaint cannot be "entertained," that is, received or acted upon in any way, without the sanction of Government. "The sanction must be given before the commencement of the proceedings," and the proceedings include the examination of the complainant under Section 144.

2. The Government may give their sanction upon the application of the complainant or upon the representation of the Magistrate that, in his opinion, it is a fit case for sanction, or may refuse the sanction if the Magistrate is of a contrary opinion, or may direct that the nature of the complaint shall be communicated to the officer complained of for the purpose of explanation, if he desires to make one.

3. I agree with Mr. Foster that it is desirable that the trying Magistrate should not be the Magistrate who has advised the Government to sanction the prosecution.

MADRAS, (Signed) P. O'SULLIVAN,
9th December 1878. Advocate-General.

✓ No. 144. ORDER THEREON, 21st December 1878, No. 2585.

Communicated to the District Magistrate.

2. In regard to paragraph 4 of Mr. Foster's letter, it is desirable, as a matter of convenience, that communications to Government from Subordinate Magistrates should reach them through the District Magistrate.

3. The course suggested in paragraph 5 of the same letter should be discretionary; no strict rule can be laid down.

(True Extract.)

C. G. MASTER,
Acting Chief Secretary.

To the Magistrate of the Godavari District.
" the Government Solicitor.
" all other District Magistrates.

Encl. T. O'Connor.

Godavari District

No. 532

Godavari District
Magistrate's Office
Cananda
12th of November 1878
Despatch 13-11-78

From

W. S. Foster Esquire
Magistrate

To

C. G. Master Esquire
Acting Chief Secretary to
Government

Fort Saint-George

Sir,

I have lately had two instances
before me which have led me to think
that it would be well if some instructions
were issued about Section 466 of the
Code of Criminal Procedure.

Under that Section, a Complaint cannot
be entertained by a Magistrate, if it is
made against certain public servants,
without the sanction of Government. The
question is, how is this sanction to be
obtained. Should a Magistrate refuse
the Complaint altogether, and leave the
Complainant to apply to Government
himself for the sanction? or should the
Magistrate take steps to get the orders
of Government on the subject?

Yours faithfully
W. S. Foster

Govt. of M.S. District

JUDICIAL.

75

THE MAGISTRATE OF THE
GODAVARI DISTRICT,

CC,

NO.

81

Despatch 21st

Level

Post,

Post.

G.O. 21st December 1878, No. 2083.

DECEMBER.
Nos. 141-144.

Code of Criminal Procedure.—The Advocate
General's opinion as to the meaning of Section 466
of the Code, under which a Magistrate cannot
entertain a complaint against certain public ser-
vants without the sanction of Government, is
communicated to the District Magistrate, Godavari,
with remarks on his suggestions for meeting the
case.

3. The object of the Section is to protect public officers against proceedings being taken hastily against them. I suppose Government would not generally sanction prosecution without some inquiry as to the truth of the complaint: if then the Complainant were simply told to get the previous sanction of Government, he would have to apply to Government, who would refer the complaint to some one in the District and then much time would be wasted. So I think it would be better for the Magistrate himself to lay the matter before Government in a proper form. I fear it would be very difficult to bring it before Government without expressing an opinion on the merits of the case, and still more so without forming one. It is as well that a Magistrate who is to try, or hold a preliminary inquiry into a case, should have said and heard as little as possible about it: so that it would be advisable that the Magistrate who lays the case before

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before Government, should not try the case himself. This would very often prevent the Proceedings being held before the Magistrate of the District, and sometimes before another Magistrate also.

4. I think therefore that if such a Complaint is made to a Magistrate, he should (if he be in charge of a Division) take the necessary steps to lay the case fully before Government without exercising any Magisterial powers, and I would ask that he might be allowed to send the report on direct to Government or other Authority empowered to pass orders under Section 666 without the intervention of the Magistrate of the District.

5. But I would not propose that Magistrates should do this in the case of Complaints made against Officers who belong to other Departments and have Official Superiors in the District. I would propose with reference to

Complaints

Complaints of this kind, that a Magistrate
receiving such a Complaint, should
send it to the Official Superior,
who should be bound to enquire and
report on it either to Government
or any one else duly authorized to
give or refuse the required sanction.

6 I may mention that in one of
the cases the party accused does
not belong to the same Department
that I do: I do not see ^{any} grounds
for going on with the case, and I
have told the Complainant that I
shall not interfere.

Have the honor to be.

Sir
Your most obedient servant

W. S. Foster
Magistrate.

Comp. B. G.

Feb 13

From

Dated

13 - 11 - 78.

FOR ORDERS.

Christina

600. 7th March 1860

Referred to the Attorney General, who is requested to advise on the exact force of "shall not be entertained" in §. 666. Code of Crim. /20.

Does it mean that no process shall
and no direction from previous authority shall
shall, or such complaint - If given
- sent to "shall not be received", he

Complément de l'inst. examiné
(S. 164) ou l'inst. en; non exam.
~~pour la dernière fois, sous le~~
-quelque, c. le complément le
honnête & agréable à l'appeler,
disposé sous S. 167.

2. If 'entertainment' is equivalent to 'receiving' - as here, notwithstanding any legal objection to referring the petition ~~of~~ ~~to~~ to the officer complained of, in view of his furnishing his explanation hereon; who might be able to show at once that ~~in~~ ~~as~~ ~~a~~ ~~part~~ ~~of~~ ~~the~~ ~~grounds~~ ~~of~~ ~~the~~ ~~charges~~, and ~~that~~ ~~he~~ ~~is~~ ~~not~~ ~~liable~~

in view of the necessity
of effecting the complaints
for want of jurisdiction.

To the Good Shepherd
with my love
to his wife

as the reply was insufficient for the reason, the Judge took data steps to
report the case for the order of Govt, or refer comp. to Govt demanding that the company
attend to the ^{business} ~~business~~ of any nature. ~~St. B. Sean 4/10~~ 211

[illegible]

June 1878 Debar
C. Cori de Cunt
from Harrison

Provisional
The President

Adelmann, Dr.

28
The Chief Secretary

13/2
17/2

40.532

3050

Wm. L. G. Jones

Wm. L. Brown

under No. 466

CC

11/11/19

N^o 489.

Madras, 10th December 1878.

From Ernest Barclay
Government Solicitor
Madras

To
144.

The Government may give their sanction upon the application of the Complainant or upon the representation of the Magistrate that in his opinion it is a fit case for sanction, or may refuse the sanction if the Magistrate is of a contrary opinion or may direct that the nature of the complaint shall be communicated to the Officer complained of for the purpose of explanation if he desires to make one.

I agree with Mr. Foster that it is desirable that the trying Magistrate should not be the Magistrate who has advised the Government to sanction the prosecution.

(Signed) P. O'Sullivan,
Advocate General.

Madras 9th December 1878.

/ True Copy /

Ernest Barclay

Government Solicitor.

50

O. J. Indole, Capt.
R. F. L. L.

Sir,

James L. ...

•

Dir.

Lucy Harlow

Government Solicitor.

Dear Sir,
 I have the honor to acknowledge
 the receipt of your letter of the
 11th inst. in relation to the
 above mentioned matter.
 I am, Sir, very respectfully,
 Yours,
 J. B. Thompson

Dr. Charles C.

[illegible]

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Comm to the St. Mage.

2-12-13

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2. In regard para 4 of Mr Foster's letter, it is desirable, as a matter of convenience that communication to govt from subordinates may be made through the St. Mage.

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3. The course suggested in para 5 of the same letter is discretionary; no strict rule can be laid down.

I don't think it is to go to the St. Mage for all communications in St. Mage. Dec 16/13

Maj. Goddard
Govt. Solicitor.
All other St. Magtes

Dec 17/13

Gold. of 1873 23.00

Indicant
✓

1873 21 1874 21 1875 21 25.85

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Gold of 1873 23.00

The above Gold

is in the money

See 416 p. 100

in the book

cannot be taken

any place of

the book

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with remarks on the
regulations for the
reference.