

(1) Number of pages 22(2) Date of repair 16-11-43(3) Initials of the Referencer [Signature]

MADRAS RECORD OFFICE.

Government of Madras.

Police DEPARTMENT.

G.O. No.	<u>2899</u>	Press -Misc
Dated	<u>30. 12. 1883.</u>	

Not to be folded or roughly handled

16

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

READ—the following papers :—

From J. F. PRICE, Esq., Magistrate of the Chingleput district, to the Acting Chief Secretary to Government, dated Saidápet, 28th September 1883, No. 534.

I have the honor to bring to the notice of Government what appears to me to be a difficulty in working the existing law as regards appeals to the sessions court against convictions by first-class magistrates.

2. Section 423 of the code provides that the appellate court shall hear the "public prosecutor if he appears." But there is no public prosecutor, as Government have refused to allow such appointments to be made. The law does not, as in the instance of cases committed, allow the district or sub-divisional magistrates to, in the absence of a public prosecutor, appoint another person to appear, and the consequence is that where it is deemed desirable that a conviction should be supported, there is no one who can do this on behalf of the crown, and every thing, therefore, has to go *ex parte* as far as the prosecution is concerned.

OPINION.

According to the Criminal Procedure Code, section 423, the only person whom the appellate court is bound to hear in support of the conviction is the public prosecutor, but the appellate court is no where precluded from hearing a pleader appointed by the District Magistrate, or by the complainant, in support of the conviction. I think the Government may authorize the District Magistrate to appoint a pleader to appear before the appellate court in support of the conviction in cases in which the District Magistrate deems it expedient to do so; but it will of course rest with the appellate court, subject to reference to the High Court, if necessary, to determine whether the pleader is to be heard. As a rule, the pleader ought to be the pleader who acts as public prosecutor in cases before the court of session.

22nd October 1883.

P. O'SULLIVAN,
Advocate-General.

ORDER—dated 30th October 1883, No. 2899, Judicial.

Communicated to the District Magistrate, Chingleput.

(True Extract.)

To all District Magistrates.
„ the Chief Presidency Magistrate.

Exd. J. Wright.

Chief Secretary.

Gobt. of (1883) Madras

JUDICIAL.

Issued

Recd.

Encl.

G.O., 30th October 1883, No. 2899.

Appeals.

Communicating to the District Magistrate, Chingleput, opinion of the Advocate-General on the question whether it is admissible to direct the District Magistrate, in any case of appeal where he may think expedient to do so, to employ a pleader to appear in support of the conviction appealed against.

No. 534

Chingleput District,
Magistrate's
COLLECTOR'S OFFICE,

SAIDAPET, 28 September 1883.

seapd 2^d Oct

FROM

J. H. Price, Esq.,
Magistrate
COLLECTOR OF THE

CHINGLEPUT DISTRICT.

TO

The Honorable E. F. Hobbes,
Ag. Chief SECRETARY TO THE BOARD OF REVENUE,
Judicial Department, MADRAS.

SIR,

I have the honor to bring to the notice of Government what appears to me to be a difficulty in working the existing law as regards appeals to the Sessions Court against convictions by 1st Class Magistrates.

2. Section 423 of the Code provides that the Appellate Court shall hear the "Public Prosecutor if he appears". There is no Public Prosecutor in Government have refused to allow appointments to be made. does not, as in the instance of

a public prosecutor specially

committed, allow the District or Sub Division
Magistrate to, in the absence of a Public
Prosecutor, appoint another person to appear
and the consequence is that where it is
deemed desirable that a conviction should
be supported, there is no one who can do
this on behalf of the crown, and every
thing, therefore, has to go ex parte as far
as the prosecution is concerned.

I have the honour to be,

Sirs

Your Most Obedient Servant
Redmond

District Magistrate.

Bringing to notice the difficulty in making the law as regards appeals to the Sessions Court against convictions by J.D. Magistrate.

+ From. Dist. Magistrate Chingleput.
 No. 534. 28 Sept 83

to say his kind words. In order
to make him a person
to say, to say, to say, to say
to say, to say, to say, to say
to say, to say, to say, to say
to say, to say, to say, to say.

The difficulty appears only to occur in appeals to Superior Courts. In trials the District Judge is under § 492 empowered to apprehend persons.

§ 280.
(x. 72)

The difficulty seems a genuine one.

In Appeals under section 423
C.E.P. code Public Prosecutor
will be heard if he appears.
Under the old code, the Court was to
hear Public Prosecutor, Govt-Reader
or other officer empowered by the
Govt or by the Mayor or the
Justices - These words are omitted
under new code.

"Public Prosecutors" under the new code

Section 4
m.

Means any person appointed under
Section 492 of the Code - under that
Section such officers must be
appointed ~~either~~ by local Govt. for
a case, class of cases or generally.

Such appeals are not frequent
and special reference could be
made when necessary—

Probably it is seldom necessary
that any one should appeal in
appeal cases from Magistrates unless
the Dist Magt sees reason to suppose
the case important, in which case
he could ask Government to appoint
a public prosecutor especially.

To Mr. J. S. P. M.
Esq. P. M. S. S. S.
Attorney
From Mr. J. S. P. M.
Esq. P. M. S. S. S.

June 30th Oct 1883
Th. H. S. S. S.

Oct 11.4
Madras 22nd ~~Sept~~ 1883

My dear Hammick
I send you enclosed my
opinion upon the question you
asked

Yours sincerely
P. M. S. S. S.

M. Hammick Esq
A. S. S. S. S. S.
Blacumand

The [unclear]

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Opinion

According to the Criminal Procedure Code, Section 423, the only person whom the Appellate Court is bound to hear in support of the conviction is the Public Prosecutor, but the Appellate Court is no where precluded from hearing a Pleader appointed by the District Magistrate, or by the complainant, in support of the conviction. I think the Government may authorise the District Magistrate to appoint a Pleader to appear before the Appellate Court in support of the conviction in cases in which the District Magistrate deems it expedient to do so; but it will of course rest with the Appellate Court subject to reference to the High Court, if necessary, to determine whether the Pleader is to be heard. As a rule, the Pleader ought to be the Pleader who acts as Public Prosecutor in cases before the Court of Session.

W. Sullivan
Advocate General.

The 22nd October 1883.

Sub

24 OCT 83

D.O. No. 411

From

Honble. P. O. Sullivan

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By 22nd Oct 83 J. S.
By 24th Oct 83 J. S.

Opinion if D.
Magistrate may be authorised to appoint Pleader to appear before Appellate Court

197
Jud Ep No 2877
D^y 30 Oct/83

The Collectors of
The District Magistrates of
The Presidents, Municipal
Commissions,
The Presidents, Local Fund
Boards,

17A
Anantapur.
North Arcot, Chittoor.
South Arcot, Cuddalore.
Bellary.
South Canara, Mangalore.
Chingleput, Saidápet.
Coimbatore.
Cuddapah.
Ganjam, Chatrapur.
Godávari, Cocanada.
Kistna, Masulipatam.
Kurnool.
Madura.
Malabar, Calicut.
Nilgiris, Ootacamund.
Nellore.
Salem.
Tanjore.
Tinnevelly.
Trichinopoly.
Vizagapatam.

READ AGAIN Order of Government, dated

188 , No.

Miscellaneous.

FURTHER PAPER, No.

OF 188

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO.

ORDER, &c. OF GOVERNMENT—A.

APERS KEPT OUT OF FILE FOR DESPATCH IN ORIGINAL.
(not paged.)Order
Letter
Collection

N.B.—

A = Print in full.

B = Not to be printed.

P = Print abstract only.

Q = Print heading only.

R = Print, but not for monthly volume.

Order 30 October 1883. No. 2899.

Communicated to the Secy.
Chambers for the Secy.To all Departments } Despatch 8/11
in the morning 11/11For orders.Submitted that the District Mag.
might be authorized to employ
the Government Prosecutor to appear
when necessary in such cases.26/10 M
C.M.

Sent - with the above

No Price & Return - only

24-4-06 ✓
12-2-09 ✓
5-2-10 ✓
24-10-10 ✓
4-5-15 ✓
29-8-23 ✓
25-11-40 ✓
11-11-43 ✓

[1]

PRESS.

Judd DEPARTMENT.
G.O. DATED 30th Oct 83
No. 2899

First copy sent to Press. 2/11

Returned for signature.

Despatched in print. 8/11



[Despatch Abstract.]

Public ~~prosecution~~ appeals

Come to the District
Magistrate, Chingleput, opinion
of the Advocate General on
the question whether it is
admissible to direct the
District Magistrate, in any
case of appeal where he may
think expedient to do so, to
employ a pleader to appear
in support of the conviction
appealed against.