

- (1) Number of pages 18
(2) Date of repair 6. 9. 49
(3) Initials of the Referencer _____

MADRAS RECORD OFFICE

Government of Madras

Judicial

DEPARTMENT

G.O. No. 2323
B.P. No. _____

Press
~~Mis.~~

Original

Dated 2nd Sept

1885.

Not to be folded or roughly handled

2ND SEPTEMBER 1885, No. 2323, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ again—

G.O., dated 24th July 1885, Mis. No. 1927, Judicial.

Read—the following letter from H. LEFANU, Esq., Acting Sessions Judge, Kistna, to the District Magistrate, Kistna, dated Masulipatam, 25th June 1885, No. 46.

With reference to G.O., dated 17th December 1884, No. 3273 (Judicial), directing that in all murder cases where the prisoner is not in a position to employ counsel, the court shall appoint a vakil to undertake the defence, I have the honor to inform you that the second-class Magistrate of Sattapalle taluk has committed a case of murder for trial at the June Sessions, and reported that the family of the accused, consisting of himself, a brother, and a mother, possessed joint family property worth Rs. 200, and that the accused has not sufficient means to engage a vakil to undertake the defence.

2. According to the provisions of the Civil Procedure Code (section 401) a person is considered to be a pauper when he is not entitled to property worth Rs. 100, but in criminal cases no such definition exists, the matter being left to the discretion of the Magistracy. As the exercise of this discretion involves cost to Government, I would suggest that you should issue some instructions to your subordinates in this matter. In the present case I have acted on the recommendation of the committing Magistrate and paid Rs. 15 to the counsel for the defence.

No. 378.

Submitted to the Chief Secretary to Government for orders as to whether instructions may be issued to the Magistrates of this district that, in deciding whether an accused person committed on a charge of murder has or has not sufficient means to engage professional assistance at his trial, they should in general go by the provisions of section 401 of the Civil Procedure Code which lays down that a person is to be considered a pauper when he is not entitled to property worth Rs. 100.

MASULIPATAM,
3rd July 1885.

(Signed) M. R. WELD,
Ag. District Magistrate.

Order—dated 24th July 1885, Mis. No. 1927, Judicial.

Communicated to the Honorable the Judges of the High Court with the request that they will favor the Government with their opinion on the proposal of the District Magistrate.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Honorable the Judges of the High Court, with C.L.
Copy to the District Magistrate, Kistna.

READ—also the following paper:—

From R. S. BENSON, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 18th August 1885, No. 2315.

Adverting to G.O., No. 1927, dated 27th ultimo, asking for the opinion of the High Court on the proposal that Magistrates, in deciding whether an accused person, committed on a charge of murder, has or has not sufficient means to engage professional assistance at his trial, should, in general, be guided by the provisions of section 401, Civil Procedure Code, which lays down that a person is to be considered a pauper when he is not entitled to property worth Rs. 100, I am to say that the Honorable the Judges are unanimously opposed to the adoption of the proposed criterion. They consider that no hard and fast rule is necessary or desirable; and that it should be left to the Judge, who has to try the case, to decide, on the information before him and having regard to the nature of the evidence in the particular case, whether or not he should retain a vakil at the cost of Government to defend the accused person.

2. It may be doubted whether the wording of G.O., No. 3273, dated 17th December 1884, allows a Sessions Judge to appoint an Advocate or Vakil when the Magistrate does not think that the accused person is without sufficient means to engage professional assistance at his trial. I am to say that, in the opinion of the High Court, it is desirable that the Sessions Judge should have discretion to appoint an Advocate or Vakil to undertake the defence in a trial for murder whenever, at the commencement of the Sessions, he finds that any person accused of such offence is undefended, and that it should not be incumbent on him to depend solely on the report or recommendation of the committing Magistrate.

ORDER—dated 2nd September 1885, No. 2323, Judicial.

The Governor in Council agrees in the opinion of the Honorable the Judges of the High Court that the adoption of a hard and fast line, such as the definition of a pauper in section 401 of the Code of Civil Procedure, as a guide whether counsel for the defence should be provided at the public expense in trials for murder, is inexpedient. The District Magistrate will be informed accordingly.

2. The suggestion made by the Honorable the Judges in paragraph 2 of their Registrar's letter is approved, and the Governor in Council directs that it shall be adopted in modification of the orders issued in the Proceedings of Government of the 17th December 1884, No. 3273.

(True Extract.)

Chief Secretary.

To the Honorable the Judges of the High Court, with C.L.

„ all Sessions Judges.
„ all District Magistrates.
„ the Accountant-General.
Editors' Table.

{ Exd. T. O'Connor.

Govt. of 1885 Madras.

JUDICIAL.

Issued

Recd.

Encl.

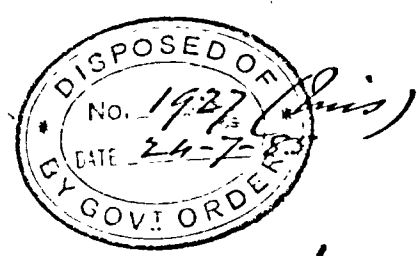
G.O., 2nd September 1885, No. 2323.

SEPTEMBER.

Murder Cases.

Agreeing in the High Court's opinion that a hard and fast rule, such as the definition of a pauper in section 401 of the Civil Procedure Code, to determine whether counsel for the defence should be provided at the public expense in — is inexpedient, and approving of the suggestion to allow Session Courts to appoint such counsel at their discretion.





Judicial Department

From
The Ag. District Magistrate
Kistna

The Chief Secretary
to Government,
Judicial Department,
Coimbatore.

Dated 3rd July 1885
Received

N^o 278

Enclosure (none)

Submitting copy of letter
N^o 46 Dated 25th June 1885
from the Sessions Judge,
Kistna Dist^y & requesting
instructions with reference to
G.O. N^o 3273 (Judicial) of
17th December 1884.

With an order

Order 24 July 1885 1927

Communicated to the
Honorable the Judges
of the High Court with
the request that they
will form the Government
with their opinion on the
proposal of the District
Magistrate.

SEP 21/7

To the Hon the Judges of the High Court
with C. L.
Copy to the Dist. Magistrate Kistna

24/7

Asst. Secy. to Govt.
Judicial Dept.
27/8

For orders

(1) The High Court disapproves of the
adoption of any hard & fast rule to
determine whether a person accused
of murder has or has not sufficient
means to engage counsel for his defence
& would not adopt
therefore the definition of a pauper
in section 401 Civil Proc. Code.
Submitted that an order may issue
to the D. M. Kistna in the sense
of the High Court's opinion.

(2) The High Court recommends that
G.O. no. 3273 dated 17 Dec 84, may be
modified so that the Sessions Judge have
discretion to appoint counsel for the
defence in a trial for murder whenever
at the commence ment of the
Sessions is found the accused undefended.
It is submitted that the Sessions Judge
is bound, under the G.O. of 17 Dec^r to
make an enquiry, & that such enquiry
is sufficient: & that to give the
Sessions Ct. "discretion" to appoint
counsel "whenever" a person accused of
murder is undefended, is going too
far. In acc^t of the

SEP 24/8
Suggested 11/11/85
W 25/8

Judicial { 1885. } Department

No.

FROM

THE REGISTRAR OF THE HIGH COURT
OF JUDICATURE AT MADRAS,
Appellate Side.

Dated 18 August 1885
Received

No. 2375

Conveying the
opinion of the Court
in the matter of deciding
the means of person
accused of murder
to engage professional
assistance.

From

Dist: M
July - 8
Jud. Cu.

many persons, who might be
found to possess Rs. 100 worth
of property, but who might
be quite unable to raise Rs.
15, 20, or 30 to fee a pleader.
(See Dist: Judge Kistna's letter,
quoted by D. May Kistna). Or

~~the other hand, the abuse of
the provisions of the G.O.
would be easily discovered
or could occur seldom.~~

SEP 14/7. I think the principle
should be applied to the
provisions of the G.O.
which are now in force.

11/17

Comm. of p. 11
C. 11/1/11
S. 11/1/11

61. Judicial Department.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

again
Read the following

G.O. 24 July 85 - no. 1927
read

Current No. 2993

P.S.

Order: 2 Sept/85 v. 2323

The Governor in Council agrees
in the opinion of the Hon. the
Judges of the High Court, that
the adoption of a hard and fast
line, such as the definition of
a pauper in section 401 of the
Code of Civil Procedure, as a
guide whether counsel for the
defence should be provided at
the public expense in trials for
murders, is inexpedient, and
The Dist. Magr will be informed
accordingly.

2. The suggestion made by
the Hon. the Judges of the High
Court in para. 2 of their letter
of 11/1/85

is approved, and the Gov.
in Council directs that it
shall be adopted in modifi-
cation of the orders issued
in the Proceedings of Government
of the 17th December 84 no. 3273.

22/11/9

Don the Judges, H. C. with C. S. & Sup.
all Sec Judges 15-3
all Brits 142
the acct Gent 18
Editors Table. 15/9

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The ...
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Document, dated 24-25
1927

2993

350

[11]

PRESS.

Judicial DEPARTMENT.

G.O. DATED 2nd Dec 1890

No. 2323

First copy sent to Press.

Returned for signature.

Despatched in print.



[Despatch Abstract.]

*Murder Cases - Agreeing in the High
Court's opinion that a hard & fast rule ^{may}
as the definition of a gangster in Section 40
determine whether counsel for the defence
should be provided at the public expense in
—, is in respect of the
suggestion to allow Sessions Courts to appoint
counsel at their discretion. —*