

1890

Department of Judicial

OFFICE

STATION

G. O. No. 454

Original.

Dated

11.3.1890.

Pages in the file

(SUBJECT.)

1. Number
2. Date
3. Initials
M.R.O. 1-82,000-16-10-29.

14
14-8-27
16-8-31

MADRAS RECORD OFFICE.

READ—the following

From H. M. V.
Chief Secy.
No. 2453-M.

Government of Madras.

I have the honor to

2. A man charged

His immovable property
the Head Assistant Magi
ernment" under the oper
property without reference
property was subject to spec
sale would benefit the owner.
Magistrate for a certificate of

3. I desire orders on two

(1) Has a magistrate
under section

(2) What form of doc
to show his titl

4. On the first question,
case necessary to validate
magistracy to dispose of the
the magistracy have ever b
Procedure Code, prohibits a
Government" by operation c
Government in that behalf
the Penal Code, the word "
to be mere surplusage.

Schedule III (1) (4) g
third class, the "power to
section 88," but this may be
is perishable, or in which th

5. As regards the seco
but it is manifestly necess
some document to establish
as in the case of Revenue a

454	Press Mis.
1-3-	18-90

Olded or roughly handled

From H. M. WINT

No. 401-M.

In obedience to reference on No. 4364 of 1889, dated 8th ultimo, I have the honor to forward herewith a copy of the Head Assistant Magistrate's letter, dated 6th instant, No. 268 M., giving further particulars regarding his action, together with a schedule describing the property sold and showing the dates of attachment and sale.

11TH MARCH 1890, No. 454, JUDICIAL.

ENCLOSURE.

From G. W. DANCE, Esq., Head Assistant Magistrate, Malabar, to the District Magistrate, Calicut, dated Palghat, 6th February 1890, No. 283-M.

With reference to your endorsement, No. 51-M., dated the 10th January, on copy of Government reference, Judicial Department, No. 4364, dated 8th idem, I have the honor to submit the following particulars.

2. On the 7th November 1888, a charge under section 409, Indian Penal Code, was laid before the Tahsildar Magistrate of Palghat, against one Viswanatha Pattar, a shroff, of the Palghat Municipality. The Tahsildar Magistrate thereupon issued a warrant for the arrest of the accused. As it was reported to the Tahsildar Magistrate the same day—namely, the 7th—that the accused had absconded to evade arrest, a proclamation for his appearance under section 87, Criminal Procedure Code, and an order for the attachment of his movable and immovable property under section 88, Criminal Procedure Code, were also issued by the Tahsildar Magistrate immediately. The proclamation was duly published, and on the 16th idem, the movable property and a house belonging to the accused were attached. As the accused did not appear within the time specified in the proclamation—viz., 30 days—the property, under the last paragraph of

* Consisting of sundry brass vessels, &c., was sold for Rs. 1-8-0.

section 88, Criminal Procedure Code, became at the disposal of Government. The movable property* was sold on the 11th August 1889, and the immovable property on the 22nd idem, six months having elapsed since the date of the attachment. Section 88, Criminal Procedure Code, provides that property attached under it shall not be sold for six months, except for certain reasons. I took this to mean that there was no objection to selling it on the expiry of six months, even though it was not subject to speedy and natural decay, and the sale was not for the benefit of the owner.

3. The records connected with the matter are submitted.

4. This delay in reporting was for obtaining the records from the Deputy Magistrate, Calicut, to whom they had been forwarded for reference in the trial of the case against the accused, who was sentenced to three years' rigorous imprisonment at the last Sessions.

ORDER—dated 11th March 1890, No. 454, Judicial.

As regards the first question asked by the District Magistrate in his letter, No. 2453 M., dated 22nd November 1889, the Government agrees with the opinion expressed by Mr. Winterbotham that no magistrate can sell property under attachment under section 88, Criminal Procedure Code, without a reference to Government, except in the two cases specified in the section. His Excellency the Governor in Council is accordingly pleased to accord his sanction to the sale on the 11th and 22nd August 1889 by the Head Assistant Magistrate, Malabar, of the property of Viswanatha Pattar, which had been attached by the Tahsildar Magistrate of Palghat on the 7th November 1888.

2. In reply to the second question asked by the District Magistrate, the Government observes that, as pointed out by him, the Code of Criminal Procedure prescribes no form of sale certificate, but in the case of immovable property, the Government sees no objection to the magistrate granting a document of the same nature as is described in section 316 of the Code of Civil Procedure. No sale certificate appears to be necessary in the case of movable property, the receipt for the purchase money being sufficient evidence of the sale (Criminal Procedure Code, section 297).

3. It will be pointed out to the District Magistrate that under clause (3), paragraph 5, of the notification, which was approved in G.O., 31st December 1872, No. 1705, and published at page 598 of the *Port St. George Gazette* of the 25th March 1873, Part I, all magistrates of the first class have been empowered to sell property under section 524 of the Code of Criminal Procedure.

(True Extract.)

J. GROSE,
Ag. Chief Secretary.

To the District Magistrate, Malabar.
„ all other District Magistrates.

Edw. A. Raitt.

Govt. of {1890} Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., 11th March 1890, No. 454.

MARCH.

Sale of Property Attached.

Passing orders on the questions asked by the District Magistrate of Malabar whether a Magistrate can sell property under attachment under section 88, Criminal Procedure Code, without reference to Government, and what form of sale certificate should be granted.

Malabar District Magistrate's Office
Calicut dated 22nd November 1889.

From,

H. M. Winterbotham Esquire,
District Magistrate of Malabar

To,

The Honorable J. F. Price
Chief Secretary to Government
Judicial Department
Madras

Sir,

I have the honor to solicit the instruction of Government in the following matter.

2. A man charged with criminal breach of trust as a public servant absconded. His immovable property was attached under Section 88 C. P. Code by the Head Assistant Magistrate, and in due course became "at the disposal of Government" under the operation of that section. The Magistrate proceeded to sell the property without reference to Government, the sale being ordered neither because the property was subject to speedy and natural decay, nor from a consideration that the sale would benefit the owner. The purchaser has now applied to the Head Assistant Magistrate for a certificate of sale to enable him to show his title to the property sold.

3. I desire orders on two questions:-

First

First. Has a Magistrate power to sell, or to dispose of property at the disposal of Government "under section 88 b P. C." without reference to Government, except in the two cases expressly mentioned in the Section?

Second. What form of document should be granted to a purchaser to enable him to show his title under the sale?

4. On the first question my opinion is that a reference to Government is in every case necessary to validate a sale, unless Government think fit to empower the Magistracy to dispose of the property at such a reference. I cannot find that the Magistracy have ever been expressly so empowered - in 524 b P. C. prohibits a Magistrate from selling "or to dispose of" property "at the disposal of Government" by operation of that section, unless specially empowered by the Local Government in that behalf. Having regard to the definition of Government in the Penal Code the word "Local" in Section 524 b P. C. appears to be mere surplusage.

Schedule III 1.(4) gives, amongst the ordinary powers of a Magistrate of the Third Class, the "power to attach and sell property in cases judicially referred to him, Section 88." but this may be understood to refer to the two cases in which the property is perishable, or in which the sale would benefit the owner.

5. As regards the second question the Criminal Procedure Code is entirely silent, but it is manifestly necessary that the purchaser

should be protected by receiving some document to establish his position, and I think a Sale Certificate should be issued as in the case of Revenue and B. & B. Court Sales.

I have the honor to be

Sir

Your most obedient Servant

H. M. M. M. M.

District Magistrate

Judicial Department.

S. 1. 5. 13. 2018 078 1/2
24-10-89. 18/10 min

To
The District Magistrate
Malabar

To
The Chief Secretary to
Government
Madras

Dated 24th November 1889

Reedg
24 NOV 1889
No. 2453
m

Enclosure - nil

Subject

Soliciting instructions as to
whether magistrates have
power to sell without re-
-ference to Government the
attached property of absconding
offenders and as to the form
of document to be granted
to purchasers of such property

[25]

Jud. Department.



PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following paper:—

Fr. St. Magt. Malabar. No. 2453 M. dated
22nd November 1889.

Power to the District
Magistrate to sell movable
property.

Order

I don't agree with this draft.

The fact that Sec 88 Cr.P.C. does not
expressly say that the Magt. may
sell is in conclusion. In any case property attached there under cannot
the section implies that he may not.
The property is at the disposal of Govt. he sold without the sanction of Govt.
not of the Court, and this must mean
that it is not to be disposed of except
as Govt. may direct. The same words
are used in Sec 529 regarding movable
property, and there provision is made for
a ~~proper~~ direction by Govt. empowering
the District Magistrate to sell. The above
of any thing of the sort in Sec. 88. which
covers immovable as well as movable
property seems to me to indicate, not
freedom to the magistrate to
dispose of the property as he pleases,
but Govt.

The argument from Art 4. Cl. I. Sch.
III is equally inconclusive. So far as
Sec 88 is concerned, this ~~section~~ covers
the power to sell perishable articles
nothing more.

I should therefore answer the first ques-
tion in the negative. The draft is right
enough as regards the second question.
The terms of an order of Govt. in the
particulars can be put right
by a Govt. satisfying the 1st H. H.

There is no provision in sec. 81
of the Crim. Procedure Code that
property attached there under cannot
be sold without the sanction of Govt.
and it is clear from art. (4), Cl. I of
Schedule III that power to attach
sell property in cases judicially
before him is one of the ordinary
powers of a Magistrate of the 3rd
Class. The first question asked by
the St. Magt is therefore answered
in the affirmative, that it is
obvious that except in the two cases
specified in the section six months
must lapse before the date of
the sale. Section
524 Code refers to property
held under quite other circumstances viz. those

described in sec. 523, but it will be pointed out to the St. Magt that under clause (3), ~~section~~ para. 5 of the Notification wh^{ch} was approved in G.O. 31st Dec: 1872, V. 1705, and pub^ld at page 598 of the Fort St George Gazette of the 25th ^{March} ~~January~~ 1873. Part I all Magistrates of the First Class have been empowered to sell property under sec. 524.

2. As regards the second question asked by the St. Magt. the Govt observed that, as pointed out by him, the Code of Criminal Procedure prescribes no form of sale certificate, but in the case of immovable property, the Govt. sees no objection to the Court granting a document of the same nature as is described in sec. 316 of the Code of Civil Procedure. No sale certificate appears to be necessary in regard to movable property, the receipt for the purchase money being suff^{ic} evidence of the sale (see 297 of Act XIV of 1882).

proceedings but before such a Go is issued we must have full particulars including information as to the dates of attachment & sale. These should be obtained.

11/11/90
9/11/90
10/11/90
11/11/90



PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following paper

Ref. d/8-1-90

With reference to his letter, No. 2453 m. dated 22nd Nov. 1889, the St. Magt of Malabar is requested to report further particulars regarding the Head Asst Magt's action referred to, including date of attachment & sale, in order to enable a ratifying order to be passed.

Al R. 23 Dec
S. 23 Dec

To the St. Magt Malabar

Al R. 5 Dec
S. 7 Dec

C. 7/12 | C. 10/12

Statement showing particulars of property belonging to Viswanatha Pattar, Late Sheriff
Municipal Office, Palghat, which was attached and sold under sections 87 and 88 C.C.P.

Particulars of property	Extent	Date of proclamation	Date of sale	Amount for which sold	Name of purchaser	Boundaries			Remarks
						North	East	South	West
A tiled house, the paramba on which it stands and improvements including a well & in Kallipatti, Pattar - Ansam, Palghat Taluk.	4 1/2 East to North West to South	30 Nov 1890	22? 1890	Rs 25/-	Samana the son of Puthukottu grāmam, Ansa- kama Pattar of Kannanur Patti Ansam, Palghat Taluk.	Village street.	Amnikara Kali Pattar paramba	Devaswami Land Pattar paramba	

Malabar District Magistrate's Office
Calicut 13th February 1890

Paul Sulekha
District Magistrate

E.O. 268
m

Malabar Head Assistant Magistrate's Office

Calicut 6th February 1890.

Encls

48/2

H. M. Winterbottom Esq.

District Magistrate,

Calicut

Sir,

With reference to your endorsement n^o 257
dated the 10th January, on copy of Government
reference, Judicial Department, n^o 4364 dated
8th Idem, I have the honor to submit the
following particulars.

2. On the 7th November 1888, a charge
under section 489 I. P. C. was laid before the
Tahsildar Magistrate of Calicut against
one Viswanatha Pattar, a shroff of the
Calicut Municipality. The Tahsildar Magistrate
thereupon issued a warrant for the arrest of
the accused. So it was reported to the Tahsildar
Magistrate the same day, namely the 7th, that
the accused had absconded to evade arrest,
a proclamation for his appearance under section
87 C. P. C., and an order for the attachment
of his moveable and immoveable property under
section 88 C. P. C., were also issued by the Tahsildar
Magistrate immediately. The proclamation was

See Case 61689
2

27 Feb 1890

24 Feb 1890

sessions.

I have

by A.W. Damer
Head Assistant Magistrate

(Enclosed)

Obtained from
by the District Magistrate

* consisting of money
transferred was sold
for Rs. 1-8-0

duly published, and on the 16th I deem the
moveable property and a house belonging to the
accused were attached. As the accused did
not appear within the time specified in the
proclamation, viz 30 days, the property under
the last para of section 88 C.P.C., became at the
disposal of Government. The moveable property
was sold on the 11th August 1889, and the
immovable property on the 22nd I deem, six
months having elapsed since the date of
the attachment. Section 88 C.P.C. provides that
property attached under it shall not be sold
for six months, except for certain reasons. I
took this to mean that there was objection
to selling it on the expiry of six months, even
though it was not subject to speedy and
natural decay, and the sale was not for the
benefit of the owner.

3. The records connected with the matter
were submitted.

4. This delay in reporting was for ob-
taining the records from the Deputy Magistrate
Colonist, to whom they had been forwarded
for reference in the trial of the case against
accused who was sentenced to three years
and imprisonment at the C. and

per
all

Just C-20 616 3P

Malabar District Magistrate's Office

Dated 13th February 1890.

No.

From

H. M. Winterbotham Esquire,

District Magistrate

of Malabar

To,

The Honorable J. Gase,

Chief Secretary to Government,

Judicial Department,

Madras.

Sir,

In obedience to Reference on N^o 4364 of 1889 dated 8th ultimo, I have the honor to forward herewith a copy of the Head Assistant Magistrate's letter dated 6th instant, N^o 268^{rn}, giving further particulars regarding his action, together with a Schedule describing the property sold and showing the dates of attachment and sale.

I have the honor to be,

Sir,

Your most obedient servant

H. M. Winterbotham

District Magistrate

Just C-20 616 3P

27 Feb 1890

27 Feb

27 Feb

CO 1. 8. 23: 2008 osh
24. 10. 25. 1810 min
Refra Cur 4264/89

From,
The District Magistrate
of Malabar
to the Chief Secretary
to Government,
Madras

Date 13th February 1890.
Exp^d
Rec^d - 15th - Lth No 401
Encl^{es} 2

Submits His Assistant's report
giving further particulars re.
garding his action in the
attachment and sale of the
property belonging to Vignamatta
Patton Lake Shroff Municipality
Office -

(6) ^{Page} Cl. 4. ^{Section} 1 of Schedule III defines a
3^d Cl. in 11 of 18th C. bond is attachable
property the property of the 18th C. bond that
since he can assign without the necessity
of 18th C. in cases where the property is sold
if it was not at once sold. This shows
that in the other cases he must wait
for the assignment of 18th C. well. He has
power to assign it, even if sold.

[illegible]

intention is not -
Power to sell is not the same thing
as power to decide whether property
shall be sold or not. The contin-
ued absolute power to sell claimed
for the M^{ch} by U.S. is quite in con-
sistent with the words of the disposal
of fortⁿ.

He cannot restore it. He can only
review & decide upon the circumstances
of the non appearance. If he finds
that ~~with~~ it was not due to the
suffered cause, he says so. If ^{proved} not
then ^{disproves}. If he had the power
of disposal intended for, he would
be in the position of a judge in his own
case.

This is not put up, but I find the case summarised in Woodman. There was no reason why the point should be raised, as the question was between a purchaser & the manager & not an attachor under a decree against the previous owner.

CN⁰⁰-4364/89 + 616/90.

A draft from HMs' orders is submitted; as the question is rather an important one, the following considerations against the view taken by HMs are brought to notice: —

(1) It is observed that "power to the Magt.
to sell w^ll. need express words" -
submitted that this power is expressly
& unconditionally given by act. (4) part I
of Schedule III. Any limitation of this
power w^ll. need express ^{in the act} words, but
not the power itself. w^h under sec. 36 is
an ordinary power of a 3rd cl. magt.

(2) ~~If~~ under sec. 89 - any Magt: can
restone attached property.
So that, while it needs an order of Court
(according to HX's view) to sell, ~~thereby~~
the order of Court can be put aside by a ~~single~~
Magt: the sale proceeds refunded.

(3) I have searched for a ruling on the point but can find nothing conclusive. ~~Attache~~ Attention is, however, invited to the case on pp. 861-863 of TX Cal. 2R. It will be observed that - in that judgment, nothing is said about a reference to Govt, & it is apparently assumed that the property being at the disposal of Govt, the Govt could transfer it. The judgment is not conclusive, but the absence of all reference to any such condition precedent to sale as the sanction of Govt - is noticeable.

1660
(31) 24 Dec 1660 27 Feb 1661

SEP 24 1964 - 257

property the Govt. sees no objection to
 the ^{Govt.} presenting a document of the
 same nature as is described in sec 311
 of the Code of Civil Procedure. No sale
 certificate appears to be necessary in
 the case of movable property, the receipt
 for the purchase money being suff.
 evidence of the sale (Civil P.C. sec 297)
 3. It will be pointed out to the Dist.
 Magt. that under clause (3), para. 5
 of the Notification which was approved in
 G.O. 315 Dec 1872, No. 1715, & published at
 page 578 of the Fort St. George Gazette
 of the 25 March 1873, Part I, all
 Magts of the First Class have been
 empowered to sell property under sec.
 224 of the Code of Civil Procedure.

24 Feb 73
 24 Feb 73

25 Feb 73

St. George's Gazette 10.
 No. 161 } Despatch 19/3/90.

Draft G.O.

Jud. G.O. 65-4

8/4/1873

The Collectors of
 The District Magistrates of

Despatch 19/3/90.

Anantapur.
 North Arcot, Chittoor.
 South Arcot, Cuddalore.
 Bellary.
 South Canara, Mangalore.
 Chingleput, Saidapet.
 Coimbatore.
 Cuddapah.
 Ganjam, Chatrapur.
 Godavari, Cocanada.
 Kistna, Masulipatam.
 Kurnool.
 Madras (when necessary).
 Madura.
 Malabar, Calicut.
 Nilgiris, Ootacamund.
 Nellore.
 Salem.
 Tanjore.
 Tinnevely.
 Trichinopoly.
 Vizagapatam.

7/3/50

Honble Mr. Garrison. C.S.D.

CONFIDENTIAL JRS IS
 Conf. I was looking up in the paper
 left me. Put it up again now.
 1000
 28 Feb

Quadr. 454
11-3-80

6.P.
Jud. Department. 23



PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following paper :—

F. S. Mag^t, Malabar, 12453 M, dated
22 Nov 1889 + 13 Feb 1890. 10401
M

Order 11th March/90. No. 454.

As regards the first question asked by the 3^d mag^t in his letter. n^o. 2453 M. dated 22 Nov. 1899, the Gov^t agrees with the opinion expressed by Mr. Winterbottom that no mag^t can sell property under attachment under sec. 87 Crim. P.C. without a reference to Gov^t except in the

two cases specified in the section. H.E.
the Govt. in Council is accordingly, pleased
to accord his sanction to the sale on
by the H. A. M. Malabar
the 1. & 22 August 1889 of the property
of Viswanatha Pattar, who had been
attached by the Tahs Magt of Palghat on
on the 7 November 1888.

2. In reply to the second question asked by the SE. Magt, the Govt. observes that, as pointed out by him, the Code of Criminal Procedure prescribes no form of sale certificate, but in the case of immovable

ICMAD 10 IN THE DEPT. OF GOVERNMENT, BANGALORE
100, No.

Back Paper No. 14108 of 90
4809 of 90
22790:1215

Enclosure

Current No.

Statement with Memo

Order, S.I., of Government - A.

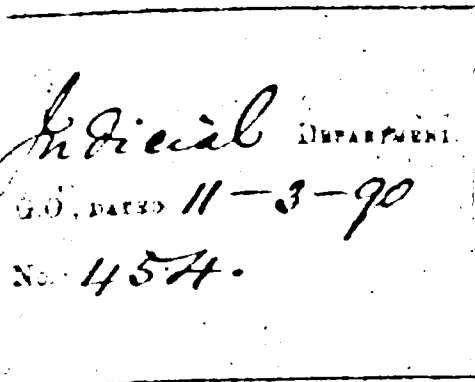
Papers kept out of file for despatch in original
(not pagel).

Number of copies
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 { Letter only.
 { Order complete with Letter.

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.

458794
852
26

ORDINARY. PRINTED.



First copy sent to Prins. 11/3.

Revised for signature.

Despatched to print.

Revised. Abstract.

Sale of Property attached

Passing orders on the question
asked by the Dist. Magistrate
of Malabar whether a Magistrate
can sell property under
attachment under Sec 88 Crim.
Proc. Code without reference
to Court and what form of sale
certificate ^{should} be granted.

23/2/03

23.9.04 ✓

23-1-15 ✓

16.5.14 ✓

9.8.29 ✓

✓