

Judicial Department.

Gr. O No. 1273 origl.

Dated 26-6-1891

Judson Department.

Co. No. 1273 origl.

Dated 26-6-1891

129
26TH JUNE 1891, No. 1273, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

ORDER—dated 26th June 1891, No. 1273, Judicial.

The following notification will be published in the *Fort St. George Gazette*:—

NOTIFICATION.

In supersession of all previous notifications relating to Benches of Magistrates, His Excellency the Governor in Council is pleased to make the following order under section 15 of the Code of Criminal Procedure regulating the powers of benches appointed under that section:—

1. One or more special Magistrates appointed for any local area may sit as a Bench, together with any salaried Magistrate whom the District Magistrate shall from time to time nominate for that purpose. The salaried Magistrate shall be the Chairman of the Bench so constituted and the Bench is hereby invested with the powers of a Magistrate of the third class—

(1) to try summarily offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341 and 352;

(2) to try summarily offences against Municipal Acts and the conservancy clauses of Police Acts, punishable only with fine or with imprisonment for a term not exceeding one month;

(3) to try, in accordance with Chapter XX of the Code of Criminal Procedure, offences against section 5 of the Towns Nuisances Act, 1889 (Madras).

Provided that, with the approval of the District Magistrate, any three or more special Magistrates, of whom one is a pensioned Magistrate of experience or specially designated by the District Magistrate may sit together as a Bench and shall exercise the powers of a Magistrate of the third class in respect of the offences specified in clauses (2) and (3) above, and with the sanction of Government in respect of the offences specified in clause (1).

The pensioned Magistrate or person specially designated as aforesaid shall, if no salaried Magistrate is present, be Chairman of such Bench.

2. All existing rules made by District Magistrates for the guidance of Benches in their several districts as to the times and places of sitting shall continue in force until modified or withdrawn.

3. Differences of opinion shall be settled by the votes of the majority of the Magistrates present, the Chairman having the casting vote.

4. If any person charged with any of the offences specified above is arrested without warrant and has not been released on bail, he shall be produced for trial before the ordinary Magistrate having jurisdiction. If such person has been released on bail or if process to compel his appearance is issued by the ordinary Magistrate having jurisdiction, the bail-bond or the process shall require him to appear in accordance with its terms before the Bench of Magistrates having jurisdiction. The District Magistrate or the Sub-Divisional Magistrate shall exercise the same powers in regard to withdrawal or reference of cases from Benches as he possesses in the case of Magistrates under section 528 of the Code of Criminal Procedure.

5. Under section 265 of the Code of Criminal Procedure, every Bench of Magistrates is authorized to prepare the record and judgment of the Bench by means of any clerk of the regular establishment deputed by the District Magistrate for this purpose.

6. Nothing herein contained shall affect the operation of the second clause of section 15 of the Criminal Procedure Code, 1882.

7. Under section 260 of the said Code every Bench of Magistrates exercising first-class powers is invested with power to try summarily any or all of the offences specified in that section.

(True Extract)

J. F. PRICE,
Chief Secretary.

To all District Magistrates.
„ the Government Pleader.
Gazette.

Exd. S. J. Pereira.

Gobt. of {1891} Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., 26th June 1891, No. 1273.

JUNE.

Powers of Bench Magistrates.

Directing publication in the Fort St. George
Gazette of notification regarding — in superses-
sion of all previous notifications.

13 9 28 NWJ
L. DEPARTMENT.

Dated

189

ORDERS.

introduction of Act III of 1889
no business) has rendered
necessary to amend the
relating to Powers of
Magistrates.
of the form in which a
Magistrate is at present
vested with powers is found
will be seen that it refers
to four notifications under
which powers are exercised.
Advantage has therefore been
taken to consolidate these 4
notifications & issue in place
of all previous notific-
on the subject a new set of
rules.

The first notify — referred to in
the old form was issued under
No. 5 of 5 Apr. 1889 and 626 of 1889. The
amendations which were made
in it by subsequent notify —
are shown in the draft in
black ink; the amendations
which have become necessary
in consequence of the introduction
of Act III of 1889 are shown in
red ink.

The following points call for
remarks: —

(a) When the High Court has
been seen 48 of the High Court

Act, 1859, was not a "conservancy clause" within the meaning of Sec. 261(b).
C.C.P. it became necessary to empower benches to try offences under Sec. 48 of the Police Act as ordinary Summary Cases under Chap. III C.C.P. This was done in the bill published under No. 5 of 1859 as 626 D.C.

But when the above Bill was passed by a Bill it became desirable omit the clause added under the above No. 5 was done.

It now becomes necessary to re-insert the provisions, although the provisions 3-7 of Act of 1859 may be regarded as "conservancy clauses" of a Police Act; power to try all of them Summary cannot be given to the Bench inasmuch as the penalties prescribed in Sec. 5 & 6 of the Act do not fulfill the condition of not exceeding one month's imprisonment or fine.

Therefore, so far as regards offences under Sec. 5 & 6 of the Act, power has been given in the draft to try them as ordinary Summary cases under Chap. III C.C.P.

In the case of offences under Sec. 7 of the Act calls for particular notice.

The penalty in this case is of such a nature that the Bench can be empowered under Sec. 261(b) to try it

I think that it will be better to reserve Cases under Sec. 6 & 7 of the Town Nuisance Act which relate to passing to the Magistrate machinery Benches may however try cases under Sec. 5, cruelty to animals

W.S.

This would do. You cannot manage the expression "conservancy clauses of Police Act" - the only clauses of the Town Nuisance Act which form part of a Police Act are Sections 3 & 4. (N.B. Sec. 11). The rest of the Act is not a Police Act.

1660

numerically & provision has been made in the draft for trying it by substituting the words "Town Nuisance Act, 1859, (hereafter)" for the words "conservancy clauses of Police Act" in Rule 1(2). But it is questionable whether it would not be better to merely empower the Bench to try it as an ordinary Summary Case under Chap. III C.C.P. than for these reasons -

- (i) Because the offence referred to in Sec. 7 does not appear in Sec. 48 of the Police Act, 1859;
- (ii) Because the offence in Sec. 7 is closely connected with that in Sec. 6 & this latter is not triable summarily;
- (iii) Because in Sec. 11 of the Act of 1859 it is laid down that Sections 3 & 4 only of Act III of 1859 shall be regarded as forming part of Sec. 48 of the Police Act, 1859, & from this it may be inferred that the framers of the Act intended that Benches should receive Summary powers over the offences specified in these two sections only.

Certainly

Of the view that offences under Sec. 7 ought not to be triable summarily be accepted then the words "conservancy clauses of Police Act" in Rule 1(2) should be changed for they will be understood to refer only to Sec. 3 & 4 of Act III of 1859 & Sec. 7 can be added to the sections mentioned in the proposed new clause 1(2).

Act. 1059, was not a new
clause. It was
the

(3). The third point is this -
under the proviso to Rule 1 a
containing his stipendiary
may under certain circumstances
try the offences specified in Rule
1 (2) & with the sanction of the
the offences in Rule 1 (1) also.
A new clause (3) has now been added
to Rule 1 & the question arises "is
the Bench & the Magistrate to try
offences under Rule 1 (3) or is it
only to have power to do so with
the sanction of the Magistrate?"

On the whole it seems better to restrict
the power of trial of offences under
Rule 1 (3) to Benchers that have
received the special sanction
of the Magistrate for the offences specified
in this new clause are much
more akin in respect of the
punishment awardable to those
mentioned in Rule 1 (1) than to those
appearing in Rule 1 (2).

If this view be accepted the
red ink amendments made in
the draft will have to be altered.

3. The punishments prescribed
under Act III of 1854 correspond
as under with those awarded
under sec. 45 of the Police Act,
1859. —

Punishments awardable
under

Offences specified in	Punishment under Act III of 1854	Punishment under Police Act 1859
1. Breach of Act III of 1854.	R. 50 or 8 days.	R. 50 or 8 days.
2. " 4 " "	R. 50 or one month.	R. 50 or 8 days.
3. " 5 " "	R. 50 or one month or both.	R. 50 or 8 days.
4. " 6 " "	R. 500 or 3 months or both.	
5. " 7 " "	R. 200 or one month.	

FOR ORDERS.

When cl. 3 is confined to sec 5 Act III of
1854, Benchers may try such cases under
the proviso to Rule 1. The words "clauses
2 & 3" may therefore stand.

U.S.O.
23 June

Dr. J. 1270-26. 6. 4/

Co.
Order 26th June 91 No. 1273.
The following copy will be published
in the 2nd of June Gazette. —
[As to draft copy as amended
in blue pencil].

(From orders)
25 June.

To the
Magistrate
Jagath.

Office note
Issue sharp & strike off at
once new forms of inventory
with powers referring to this.

July 4th No. 1273

26th June 1891.

The Collectors of
The District Magistrates of

Dec 1/91

- Anantapur. 8
- North Arcot, Chittoor. 8
- South Arcot, Cuddalore. 8
- Bellary. 8
- South Canara, Mangalore. 8
- Chingleput, Saidapet. 8
- Coimbatore. 8
- Cuddapah. 8
- Ganjam, Chatrapur. 8
- Godavari, Cocanada. 8
- Kistna, Masulipatam. 8
- Kurnool. 8
- Madras (when necessary).
- Madura. 8
- Malabar, Calicut. 8
- Nilgiris, Ootacamund. 8
- Nellore. 8
- Salem. 8
- Tanjore. 8
- Tinnevely. 8
- Trichinopoly. 8
- Vizagapatam. 8

Act 1059, was not a correct
name clause within

(2) The third point is this -
Under the proviso to Rule 1 a Bench
containing his stipendiary, shall
may under certain circumstances
try the offences specified in Rule
1 (2) & with the sanction of the
the offences in Rule 1 (1) also.
A new clause (3) has now been added

6-11 " H. 500 a 3
7-11 " H. 200 a 2
19 June

Office letter
Issued
once in
with for

109

Judicial

26 June 1911 No 1273

NOTIFICATION.

In supersession of notification dated 16th February 1875 and of all subsequent notifications (except G.O., 21st August 1886, No. 2229) relating to Benches of Magistrates, His Excellency the Governor, in Council is pleased to make the following order under section 15 of the Code of Criminal Procedure regulating the powers of benches appointed under that section :-

1. One or more special Magistrates appointed for any local area may sit as a Bench, together with any Salaried Magistrate whom the District Magistrate shall from time to time nominate for that purpose. The Salaried Magistrate shall be the Chairman of the Bench so constituted and the Bench is hereby invested with the powers of a Magistrate of the third class -

(1) to try summarily offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341 and 352;

(2) to try summarily offences against Municipal Acts and the conservancy-clauses of Police Acts, punishable only with fine or with imprisonment for a term not exceeding one month;

(3) to try in accordance with Chapter XX of the Code of Criminal Procedure other offences against section 43 of the Police Act XXIV of 1858.

Provided that with the approval of the District Magistrate any two or more special Magistrates, of whom one is a pensioned Magistrate of experience, may sit together as a Bench and shall exercise the powers of a Magistrate of the third class in respect of the offences specified in clause (3) above.

2. The pensioned Magistrate, shall, if no salaried Magistrate is present, be Chairman of such Bench.

3. All existing rules made by District Magistrates for the guidance of Benches in their several districts as to the times and places of sitting shall continue in force until modified or withdrawn.

4. Differences of opinion shall be settled by the votes of the majority of the Magistrates present; the Chairman having the casting vote.

5. If any person charged with any of the offences specified above is arrested without warrant and has not been released on bail, he shall be produced for trial before the ordinary Magistrate having jurisdiction. If such person has been released on bail or if process to compel his appearance is issued by the ordinary Magistrate having jurisdiction, the bailbond or the process shall require him to appear in accordance with its terms before the Bench of Magistrates having jurisdiction. The District Magistrate or the Sub-Divisional Magistrate shall exercise the same powers in regard to withdrawal or reference of cases from Benches as he possesses in the case of Magistrates under section 43 of the Code of Criminal Procedure.

6. Under section 265 of the Code of Criminal Procedure, every Bench of Magistrates is authorized to prepare the record and judgment of the Bench by means of any clerk of the regular establishment deputed by the District Magistrate for this purpose.

7. Nothing herein contained shall affect the operation of the second clause of section 15 of the Criminal Procedure Code, 1882.

8. Under section 260 of the said Code every Bench of Magistrates exercising first-class powers is invested with power to try summarily any or all of the offences specified in that section.

is specially designated by the District Magistrate and with the sanction of District Magistrate in respect of the offences specified in clause (3)

or person, specially designated or person, as aforesaid

Gen 1059

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