Pension (1896) Department.

ORDINARY MS.

G.O., No. 301

DATED 30th April

[Despatch Abstract.]

Prosecution in Presidency Magistrate's Court.

Recording G.O. (Judicial) stating that, in serious charges against the police and in cases where the facts or issues are complicated or difficult, the Commissioner of Police and the Presidency Magistrate should move Government to employ the services of the Crown Prosecutor, and reminding Heads of Departments that the assistance of this Officer in important cases undertaken under their orders will be available on requisition to Government.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

No. 621, JUDICIAL, 26TH MARCH 1896.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers:—

From J. G. KERNAN, Esq., Clerk of the Crown, to the Chief Secretary to Government, dated Madras, 6th January 1896, No. 1.

I am directed by the Chief Justice to draw the attention of His Excellency the Governor in Council to a case against certain police officers of the Madras City police which was tried before himself and a special jury at the last sessions held in November. There were originally four accused, but the fourth, a Sub-Inspector, was discharged by the magistrate. The accused, three in number—two head constables and a station-house officer—were charged under sections 330 and 348 of the Indian Penal Code. The offences were alleged to have been committed on May 12th and 13th, 1895, and after a departmental investigation, the case was brought before the magistrate at the Black Town Police Court on the 12th July. In cases in which the police are accused of torture, it is well known that it is absolutely necessary for the purposes of justice that the witnesses should be examined as soon as practicable and that, if there is a case against the accused they should without delay be committed for trial. The Chief Justice is of opinion that the case in question could have been heard by the magistrate in three or four days and should have been committed to the August sessions. The magistrate, however, granted nineteen adjournments. The first hearing commenced on July 12th and the three accused were committed for trial on September 23rd. The result was what might have been anticipated—the principal Pariah witnesses had been tampered with, some of them declaring that the police had compelled them to give a false account before the magistrate, whilst others said that the accused had since the committal persuaded them to say at the trial that their depositions were untrue. The jury were unable to rely upon such evidence and rightly acquitted the accused.

2. The Chief Justice called on Mr. C. G. Kuppuswami Aiyar, the committing magistrate, for an explanation of the delay in committing the accused, and his answer is sent herewith and the dates of the examination and cross-examination of the several witnesses is given. The Chief Justice suggests that the Chief Presidency Magistrate should have made special arrangements in a case of so much importance and have ordered it to be dealt with without delay.

3. The Chief Justice also desires to call the attention of His Excellency the Governor in Council to the great disadvantages the prosecution in heavy cases labour under; no professional assistance for the prosecution is forthcoming before the Presidency Magistrates, whilst the prisoner is generally represented, the witnesses are usually examined by the magistrate himself from the charge sheet prepared by the Police authorities. There appears to be no blame to be attached to the police, who do their duty extremely well, but guilty persons escape owing to the witnesses not being fully examined before the magistrate and all the facts brought out.

4. The Chief Justice suggests that the Government Solicitor in heavy cases of murder, charges against the police and cases in which a department of Government is concerned, should appear and prosecute, after personally examining such of the principal witnesses as appear to him to be necessary. The usual defence of prisoners is that the police have concocted the case against them; the examination by the

Government Solicitor of the witnesses would to a great extent prevent these charges being made against the police if such charges are untrue. The cases in which the Government Solicitor would be required to intervene are not many but some of them are extremely important.

5. The High Court Sessions in 1895 occupied thirty-seven days. Some of the principal cases had to be retried on account of the jury being divided in opinion and the judge not agreeing with the verdict of the majority. The Chief Justice thinks that if the session cases were more carefully conducted before the magistrates, a saving of time would be effected at the sessions and miscarriages of justice be prevented.

From O. R. JONES, Esq., Chief Presidency Magistrate, Madras, to the Chief Secretary to Government, dated Egmore, 8th February 1896, No. 42.

I have the honour to submit the return called for by memorandum, No. 233, Judicial Department, dated 30th January 1896. Of the fourteen cases in which professional men appeared for the prosecution, nine were cases instituted by private individuals, and of the remaining five, four were Post Office cases in which the Crown Prosecutor appeared and one was a case of fraud at the General Hospital in which the Government Solicitor conducted the prosecution in the Magistrate's Court.

Enclosure.

Number of Sessions cases dealt with by the Presidency Magistrates, Madras, during the years 1893, 1894 and 1895.

Nature of cases.	Prosecution conducted by professional men.	Prosecution not conducted by professional men.	Total number of cases.
Murder*	..	24	24
Cases in which Department of Government was concerned ..	5	17	22
Cases against Police officers ..	..	3	3
Other cases (theft after previous convictions, &c.)	9	101	110
Total ..	14	145	159

Number of Sessions cases committed to the High Court Sessions by the Presidency Magistrates during the years 1893, 1894 and 1895.

Nature of cases.	Prosecution conducted by professional men.	Prosecution not conducted by professional men.	Total number of cases.
Murder*	..	21	21
Cases in which Department of Government was concerned ..	5	17	22
Cases against Police officers ..	..	3	3
Other cases (theft after previous convictions, &c.)	4	87	91
Total ..	9	128	137

* Includes abetment.

Order—No. 621, Judicial, dated 26th March 1896.

The Crown Prosecutor is at present required, as part of his ordinary duty, to conduct the prosecution before the Presidency Magistrates of all cases in which the prosecution is instituted or carried on by, or under the orders or with the sanction of, Government, and in such cases it is the duty of the Government Solicitor to instruct him. This system embraces a certain number of the cases referred to in the letter from the Clerk of the Crown read above.

2. In heavy cases of murder, serious charges against the police, and grave cases in which the facts or issues are complicated or difficult, the Presidency Magistrates and the Commissioner of Police should move the Government to employ the services of the Crown Prosecutor whenever the available prosecuting agency is clearly inadequate or unsuitable. Heads of Departments will similarly be reminded that the assistance of this officer in important cases instituted by them or under their orders will be available on requisition to Government.

3. At the same time the Government is disposed to think that a considerable proportion of the miscarriages of justice which have taken place under the present system are due as much to the great delays which are occasionally permitted to occur in the hearing of cases in the Presidency Magistrates' Courts as to defects in the prosecuting agency, and that reform in that direction is desirable.

4. The Commissioner of Police will be requested to report whether he has any suggestions to offer for rendering more efficient the police prosecuting agency in ordinary cases in the Presidency Magistrates' Courts.

(True Extract.)

Francis

for *Chief Secretary.*

To the Hon'ble the Chief Justice, with C.L
„ the Chief Presidency Magistrate.
„ the Commissioner of Police.
„ the Crown Prosecutor.
„ other Heads of Departments under the Judicial Department.
„ all other Departments of the Secretariat.

Exd. A. Raitt.

Pension Department

Govt. of {1896} Madras.

JUDICIAL.

Current Number 333

List

Order 30 April 1896 No. 301.

Recorded.

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Issued 331

Recd. 30-4-96 *Encl.*

W.J. 22/4

G.O., No. 621, 26th March 1896.

MARCH.

Prosecution in Presidency Magistrates' Courts.

Stating that, in serious charges against the police and in cases where the facts or issues are complicated or difficult, the Commissioner of Police and the Presidency Magistrate should move Government to employ the services of the Crown Prosecutor, and reminding Heads of Departments that the assistance of this officer in important cases instituted under their orders will be available on requisition to Government.

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READ AGAIN G.O., No. , DATED
189

CURRENT NO.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A	
LETTER OF GOVERNMENT.								
STATEMENT WITH DITTO.								
PAPERS NOT FILED BY, BEING MEANT FOR DESPATCH IN ORIGINAL.								

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