

FILE NO. $\frac{IC}{59}$ J. of 1909.

1909.
GOVERNMENT.
OF
EASTERN BENGAL & ASSAM.

JUDICIAL DEPARTMENT.

JUDICIAL - A.

JULY 1909.

No. 8.

Submission of Police Diaries to the High Court with the
records of all capital sentence cases.

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REFERENCES TO FORMER CASES.

Department, date, and Nos., or File No. and year.	Brief Title of File.
Nil.	

REFERENCES TO LATER CASES.

Department, date, and Nos.	Brief Title of File.

(To be continued on back, if necessary.)

PAPERS OTHER THAN PROCEEDINGS.

I.—Printed.

Notes and orders.

II.—Not printed.

Nil.

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ENTRANCES TO LATER CASES—continued

Department, date, and No.	Bridal Title of File.

NOTES.

JUDICIAL—A, JULY 1909.

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[No. 8 AND ENCLOSURE A.] MEMORANDUM FROM THE REGISTRAR, HIGH COURT, DATED THE 21ST MAY 1909.

The accused will certainly have access to the papers now! But the Sessions Court will apparently have to issue a specific order in each case. See note to 172, Criminal Procedure Code, Prinsep's. Is the Book Circular referred to still in force?

26th May 1909.

R. B. HUGHES-BULLER.

Secretary,

We have not got in our library or Record Department the Punjab Book Circular referred to. In the fourteenth edition, Criminal Procedure Code, Prinsep's, mention is made of Punjab Chief Court Circular X of 21st May 1869, which seems to be still in force, but no mention is made of the Punjab Book Circular, directing that police diaries should not be shown to accused persons, etc., as in the former editions (e.g., 12th). It cannot be said with certainty whether or not the Book Circular is still in force.

4th June 1909.

H. K. BRISCOE.

Legal Remembrancer, unofficially,

In view of the unanimous decision arrived at by the Allahabad High Court at page 415 of the I. L. R., Allahabad, Volume XIX, will you kindly advise whether this order is legal.

If you find it to be illegal, will you kindly advise us how to proceed to point this out to the Hon'ble Judges. (It will no doubt be advisable to consult the Advocate General before coming to a final decision).

21st June 1909.

R. B. HUGHES-BULLER.

Secretary,

What difference is there in the result, if the High Court say they wish to see the police diaries in every case referred to them under 374, Criminal Procedure Code, or if they issue a printed letter in each case, saying the diaries should be sent? If the Court has the power to call for the diaries "to aid it" then the mode in which the diary is called for is merely a matter of form to which I do not think objection need be taken. We are not to suppose that Judges will make a misuse of the diary in the manner stated by Edge, C J., in his judgment. In Bengal I have not seen even junior Magistrates misuse the diary in the way mentioned. (Page 393.)

22nd June 1909.

E. G. DRAKE-BROCKMAN.

Legal Remembrancer,

The point is whether the order is *legal*. I shall be obliged if you will advise on this point before I take His Honour's orders.

29th June 1909.

R. B. HUGHES-BULLER.

Secretary,

I do not consider the order illegal though the form in which it is issued may be irregular.

1st July 1909.

E. G. DRAKE-BROCKMAN.

Inspector General of Police,

This matter is somewhat technical, but it involves, I venture to think, an important point of principle and it will be necessary to consider whether we should let it pass.

You will observe that the Legal Remembrancer, Eastern Bengal and Assam, and the Hon'ble Judges of the Allahabad High Court are in conflict and it may be necessary to take the Advocate General's opinion, with His Honour's permission.

Meanwhile, perhaps you would ascertain if any general orders have reached the police in consequence of the circular from District and Sessions Judges.

8th July 1909.

R. B. HUGHES-BULLER.

Secretary,

I will have enquiry made as to whether the order had reached the police.

In regard to the point at issue, whether the High Court can direct the Sessions Judge to send the special diaries in all cases in which sentence of death is passed.

I hardly think the point is worth contesting, because in each particular case the Sessions Judge may call for the diaries, and I think it probable that they will act in this way.

The Sessions Judge can hardly issue a general order to the District Magistrate or Superintendent of Police to send the diaries in all cases in which death sentence is passed, because they cannot tell beforehand in what cases such a sentence will be passed.

If, however, any Sessions Judge does issue any general order the question as to his right to do so might be raised.

But as a matter of fact, I think Judges ought to see the special diaries and study them. If they did, they would avoid many pit-falls. I have recently seen two if not three judgments of the High Court, which contain errors which could not possibly have been made had the diaries been seen.

10th July 1909.

N. BONHAY-CARTER.

We may await further developments.

22nd July 1909.

R. B. HUGHES-BULLER.

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JUDICIAL DEPARTMENT.

JUDICIAL—A.

JULY 1909.

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No. 8.

Dated Calcutta, the 21st May 1909.

Memo. by—The Assistant Registrar, High Court, Calcutta.

Two copies of general letter No. 2 (Criminal), dated the 14th May 1909, are forwarded to Chief Secretary to the Government of Eastern Bengal and Assam, to complete file.

A—Enclosure (1) to Proceeding No. 8.

No. 2, dated Calcutta, the 14th May 1909.

From—A. W. WATSON, Esq., Offg. Registrar, High Court, Calcutta,

To—The Sessions Judge of

The Court consider it desirable that in all capital sentence cases the Police Diaries should be forwarded with the record so that they may be referred to by the Judges, if necessity arises. I am accordingly directed to request that, when submitting, under Section 374 of the Code of Criminal Procedure, the record of a case in which sentence of death has been passed, you will be so good as to forward simultaneously all the police Diaries.