

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1290	Press
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S3. 54		
Dated	6 to	19 1887

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 6th October 1857.

No. 53. Read the following Petition.

To the Right Honorable LORD HARRIS, &c., &c., &c.

HONORED SIR,

With due deference and submission, I beg to intrude on your Lordship's valuable time, by submitting a petition in a charge brought against my husband.

I herewith sent a copy of a petition submitted to your Lordship in Council. The injustice done to your petitioner's husband is insufferable to a man born in a respectable family. The receipt of which he was charged of forgery, was never seen by my husband at any time, and the Sub-Court Sheristadar's head writer has given his evidence that there is no alteration made in the receipt, and this part of the case has never been regarded at any seat of justice. While it is so, Mr. Cotton being seduced by some men, has inflicted a severe punishment on my husband. I beg therefore that your Lordship will call up the records of the case, and give a free pardon to my husband, as he is a member of a respectable family. For which act of kindness, shall ever pray.

I remain, honored Sir,

Your Lordship's obedient and humble servant.

10th September 1857.

| This mark LUTCHMAMAH.

To the Right Honorable the Governor in Council, Fort Saint George.

The humble petition of Rednum Dhurmaroydoo, prisoner in Calendar case No. 28 of 1856, on the file of the Sessions Court of Rajahmundry, presented by his wife, Lutchmee Ummall.

SHREWETH,

That your petitioner being aggrieved by the sentence of the late Session Judge of Rajahmundry, passed in the above case, and the judgment of the Court of Foujdary Udalut, dated the 31st March 1857, a copy of which is now submitted, begs leave to appeal to His Lordship in Council, under Act XVIII of 1855, for the reversal of the sentence passed against your petitioner's husband.

2. From the original record, and the judgment of the Court of Foujdary Udalut, it will be seen, that the prisoner was charged on the 3 counts of the Indictment preferred against him. 1st, with having forged a certain receipt for Rupees 3700, granted to him by G. H. Faulkner, Esq., on the 31st of September 1853, by fraudulently changing the date from the 4th of July to the 24th of July. 2nd, With having caused the said forgery to be committed. 3rd, With having uttered the said forged receipt, knowing it to be forged.

3. The alleged forgery consisted in the alteration of the date, on which a certain sum of money was admitted by Mr. Faulkner to have been received on account of Abkarry kist. This document is as follows; "received Rupees 3700 from Rednum Durmaroydoo, on account of Abkarry kist, on the 24th July 1853," and the figure 2 preceding the 4 in the date, is charged to have been interpolated.

4. This receipt was dated the 13th of September 1853, and signed by Mr. Faulkner, who was the first witness in support of the prosecution, and who was then Agent to Messrs. Arbuthnot and Co., in the affairs connected with their Sugar manufactory at Rajahmundry.

5. In the civil suit brought against the prisoner by Mr. Faulkner, he alleged that he had received no money from the prisoner, and that the receipt in question was not given for cash, but for certain promissory notes then in the hands of the Collector, and that the date of the document, as he wrote it, was the 4th, not the 24th of July.

6. The essence of the alleged forgery consisted, therefore, in the alteration of the date, with a view to deprive Mr. Faulkner, as alleged, of the power of shewing by his books the real character of the receipt, viz., that it was a receipt not for cash, as it is on the face of it, but for promissory notes. Hence the material issue raised was whether the above receipt was a legal discharge for money actually paid, or for some other purpose.

7. It is clear that if it was to be held, that the receipt purporting to be for cash, was in fact given for promissory notes, the burden of proof lay upon Mr. Faulkner in the civil suit, or the prosecutor at the criminal trial. But no such proof was adduced. It was necessary to

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establish by evidence that an alteration had in fact been made, and that its effect was to defraud.

8. First, as to the alteration on looking at the receipt, it does certainly appear, that the figures 24th, the date on which the money was alleged to have been paid, are written in native ink, which is different from the ink in which the body of the receipt is drawn out; but there is no evidence to prove that these figures were not put in by the drawer of the receipt, with a different pen. Those who testified as to the identity of Mr. Faulkner's numerical writing, and yet when questioned as to how they knew his writing of this character from the writing of others, and how, while both figures were written in the same ink and dried in the same manner, they could tell one figure as drawn by Mr. Faulkner, and the other not his, were unable to give any satisfactory explanation. Hence the only conclusion that would be arrived at by such evidence was simply this, that the figures 24 were written with the same ink, but different from that in the body of the receipt; but who wrote those figures it is impossible to say.

9. But even if there was clearly an alteration, that alteration ought to have the necessary effect of defrauding. But supposing the real date were the 4th as alleged by Mr. Faulkner, the effect of the receipt would be precisely the same; viz., an acknowledgment for cash received.

10. Your petitioner submits that the evidence that has been adduced, no way establishes the fact that a forgery has been committed, or in other words, that the necessary effect of the alteration is to defraud.

11. The evidence consist, 1st, of Mr. Faulkner's own testimony and account book. As to his accounts, even allowing them every weight, yet they prove nothing. In fact, the proof that he has offered is opposed to the fact, and is inconsistent with itself.

12. From this evidence it would appear that, the receipt granted was for promissory notes transferred to him, whereas the notes were never in fact transferred at all, on the very date on which he says that the notes became his, and he gave your petitioner's husband credit, he received a letter from the prisoner to the Collector, in which the prisoner requested the return of the said notes to him after the object for which they were deposited, had been effected.

In Mr. Faulkner's accounts the credits of the promissory notes are made on three several dates, the 4th, 10th, and the 31st, the two last dates being Sundays; thus doing away with the objection that Mr. Faulkner, never did business on Sundays.

But besides this, if the receipt had been for promissory notes and not for cash, how came it that while such promissory notes were of the market value at that time, with interest of about 4000 Rupees, the prisoner agreed to accept a receipt for Rupees 3700. This seems wholly incredible, and the proof altogether insufficient.

13. As to the charge on the 3rd count, viz., that of uttering, your petitioner submits that there was even less proof of the prisoner's guilty knowledge. In the civil suit brought by Mr. Faulkner, against your petitioner's husband, he directed his Agent or Gomastah to be in communication with his Vakeel, in the case, and furnish him with the necessary proofs of the payments made to Mr. Faulkner, on account of Abkarry kist. The Agent handed over to the Vakeel 10 receipts which he put in at the proper times. Amongst these papers the receipt with the alleged alteration was found. Because your petitioner's husband was defendant in the suit, and your petitioner's husband's agent put in the papers, therefore he was, it is said, guilty of uttering the forgery with guilty knowledge. Although indeed the agent himself at the risk of being himself responsible for the alleged alteration, be passed, that the receipts in question had never been seen by your petitioner's husband, and stated they had never left his possession, the presumption raised against your petitioner's husband was that it was not the interest of any other person to make any alteration, but may it not have been equally the interest of others to throw discredit on the receipt especially as from the evidence the receipt in question had been in very insecure and improper custody during the trial of the suit, and might easily have been tampered with.

14. It was upon such insufficient evidence that the Session Judge has sentenced your petitioner's husband to seven years' imprisonment with hard labour and irons, and 39 lashes. The lashes were afterwards taken away by the Foujdaree Udalut, and your petitioner's husband is now a convict in the Rajahmundry Jail. Your petitioner would, in conclusion, beg of your Lordship in Council to compassionate the case of her husband. He was not a common person, he was wealthy, and needed not to resort to forgeries to obtain his wealth, but unfortunately

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exercised a little independence of spirit, he was disliked especially by the European at Rajahmundry and it was his misfortune to have incurred the enmity of a person like Mr. Faulkner.

The whole prosecution was conducted in the most illegal and irregular way, and before the subsequent conduct with regard to your petitioner and the prisoner, shews that this matter could hardly have been held before him. Thus the Jury were allowed to have the conversation of any party during the progress of the trial; one of them it is during the whole trial, a guest of the presiding Judge, and on the Saturday when concluded, the Jurors were allowed to separate without coming to any verdict, which record till the following Monday, and then without the Judge's summoning up, all contrary to the rules and spirit of the criminal law, and tended to deprive your petitioner of an unbiassed trial.

Your petitioner therefore would now most humbly pray for the exercise of that prerogative mercifully vested in your Lordship in Council, and beg that your Lordship will peruse the records of the case, and either give the prisoner a fresh trial or a free pardon from the necessity of sufficient and legal proof of the charges brought against him. In this act of mercy and justice, your petitioner

SHALL EVER PRAY.

October 1857.

ORDER THEREON, No. 1290; dated 6th October 1857.

The Government decline to interfere on Petitioner's behalf.

(Signed) E. MALTBY,
Acting Chief Secretary.

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No 1290
The Government decline to
interfere on petitioner's behalf.

By J. S. K. K. K. K.
6th October, 1857

J. K.

To Lutchmahar Ummal Dispt 10th 1857