

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1068	Press
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	22-23	
Dated	7-8-	19/5/8

Not to be folded or roughly handled

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Fort St. George, Judicial Consultation, 10th August 1858.

No. 22. Read the following letter from J. W. B. DYKES, Esq., Madras Civil Service; to T. PYCROFT, Esq., Chief Secretary to Government, dated Rajahmundry, 16th July 1858.

SIR,

In submitting the enclosed Memorial for transmission to the Home Authorities, I trust that I may be permitted to express the hope, that the explanations now afforded will also serve to place my character in a more favorable light, in the eyes of my immediate Superiors.

The Memorial of J. W. B. DYKES, of the Madras Civil Service, to the Chairman and Court of Directors of the Honorable the East India Company.

HUMBLY SHEWETH,

That your Memorialist has been removed from the appointment of Sub Collector and Joint Magistrate of Salem, on what your Memorialist would respectfully submit were insufficient grounds.

2. Your Memorialist has been removed from his appointment with reference to his conduct in a case, which came before him as a Justice of the Peace; and the following are the facts of the case, which has called forth this severe mark of the displeasure of Government.

3. On the 27th of last July, an information was laid before your Memorialist against 3 Engineers employed on the Madras Railway, for manslaughter. They were accused of having beaten a man so severely that he had died in consequence; and, warrants being issued in due course, they were brought up the next day.

4. The enquiry, commenced that same morning, ended in the release of the Engineers; and the annexed remarks, were recorded at the time.

5. "The information sets forth that the assault was committed on the Saturday before last; and that the deceased died on the following Tuesday; but the prosecutor admits that during these 3 days no charge was made to the authorities, and further that the deceased during these 3 days made no specific statement as to by whom he had been struck.

6. "That the deceased had been ill-treated is fully proved by the evidence, as well as by the Certificates furnished by the two Medical Officers. But there the evidence stops. The prosecutor states that he saw each of the accused severally assault the deceased; but the witnesses, whom he has called, have not corroborated his evidence in such a way as would justify the committal of the prisoners. They are therefore released."

7. The case had occurred in the Magistrate's Division of the District, of which your Memorialist was then in temporary charge; and, shortly afterwards, when Mr. Brett the Magistrate * 12th August 1857, of Salem resumed charge, he wrote,* it would appear, to Government expressing his dissatisfaction at the release of the Engineers, and in requesting orders for the re-apprehension, intimated that the Native Head of Police had been directed to look for further evidence.

8. The Government however did not consider it necessary, that the 3 Engineers should be re-arrested, till it was known whether further evidence was forthcoming; and your Memorialist was directed to make the requisite enquiries. It was also stated, that the records of the primary enquiry had been laid before the Honorable Company's Solicitor.

9. In forwarding the "Extract from Minutes of Consultation," which contained these † 24th August 1857, orders, Mr. Brett mentioned,† that additional witnesses had already been found by the Native Head of Police, and your Memorialist lost no time in ascertaining, what they knew, and would depose to, on the subject.

10. The additional witnesses were duly examined; and the result was reported to Mr. ‡ 27th August 1857 Brett for the information of Government in the following words:‡ "These witnesses corroborate the statement made by the prosecutor. There are of course discrepancies; but on the whole this evidence hangs well together; and if it could be taken without reference to what has gone before, would in my opinion justify the committal of the case."

11. According to the orders of Government, the Engineers were to be re-arrested if further evidence could be obtained in support of the charge. But your Memorialist proceeded to show,

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that the result of the primary enquiry, would greatly alter the value of the additional evidence now obtained; and, in his opinion, if the case were committed, it would inevitably break down. If, however, Mr. Brett should be of a different opinion, it was suggested, that the records of this second enquiry, also, should be submitted through Government for the consideration of the Honorable Company's Solicitor, who being thus in possession of all the evidence taken, could give a legal opinion, that would of course be final as to the expediency of further proceedings.

12. Some correspondence then ensued, as Mr. Brett was anxious, that the prisoners should be re-arrested at once. But your Memorialist adhered to the opinion already expressed; and the
* Minutes of Consultation, 22nd September 1857, Judicial Department, No. 1213.
reply was an Extract* from Minutes of Consultation removing your Memorialist from his appointment.

13. The subsequent history of the case, itself, can be given in a few lines. The three Engineers were committed by Mr. Brett to the Supreme Court. They were released on bail as soon as they reached Madras; and when the case came on for trial at the next assizes, against one of the Engineers the Grand Jury found "no bill;" and the other two being tried, were acquitted.

14. It would appear from para. 1 of the Minutes of Consultation, under which your Memorialist was thus summarily removed from his appointment, that Mr. Brett in his first letter to Government on this subject, had stated, that the result of the primary enquiry was such, as to create a feeling of "general scandal," and it might be inferred, that some weight had been attached by Government to this assertion of Mr. Brett's.

15. But, at the instance of friends, who did not share in this feeling of "general scandal,"
* 1st October 1857.
your Memorialist, soon after being removed, wrote* to Government, expressing his fear, from the severity with which he had been treated, that Government must consider him to have wilfully betrayed his trust, for men, one of whom he had never seen in his life before, and the other two not half a dozen times, at most.

16. And, as the Government, in reply to this disclaimer of any bias in favor of the Engineers, were pleased to observe* that their decision was based on the official acts of your Memorialist, it is not necessary for him to take any further notice of the alleged "general scandal," but endeavour to describe, as briefly and clearly as he can, the grounds, on which, again, those official acts were based.
* Judicial Department. No. 1341, Minutes of Consultation, 13th October 1857.

17. And, now that your Memorialist reads once more, after some months have gone by, the legal opinions, and the comments of Government on this case, he is glad that subsequent events have rendered it necessary for him to draw up this memorial. A due regard for his character requires that an explanation should be given.

18. At first your Memorialist determined to submit in silence. At any time he would be loth to question the justice of Government; whilst at that crisis of public affairs, he especially felt it incumbent on him to bow to authority. And your Memorialist also heard, shortly after being removed, that he would probably be soon re-employed again, in the new department for the settlement of the Land Revenue, to which subject he had paid much attention. It was generally supposed that one of these appointments would be given to your Memorialist; and he trusted that such an appointment would show, that he had not lost the confidence of Government, and there was nothing in the Salem case to affect his character.

19. But, when your Memorialist heard that these appointments had been given to two juniors, he felt that further silence on his part would expose him to suspicions, injurious alike to his own character, and the character of the Service to which he has the honor to belong. And
* 20th March 1858.
he wrote* that same day to Mr. Brett for copies of the correspondence in this case with a view to memorializing your Honorable Court.

20. Some delay has been occasioned since then, by his not having applied with sufficient distinctness for all the correspondence; and some, by his having been subsequently appointed to carry out the interesting enquiries, on which he is at present engaged in the Delta of the Godavary. A temporary appointment which your Memorialist took up with great pleasure. But which he must add, with reference to previous remarks, had been given in the first instance to a junior; whilst the salary is considerably below, what your Memorialist drew in his late confirmed appointment.

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21. Under these circumstances this memorial not only appears to him to be still necessary, but your Memorialist trusts, from the months, which have been passed in silent acquiescence to the orders of Government, will be seen to be no factious opposition, but the reluctant discharge, of what is believed to be a duty.

22. Your Memorialist gathers from the Minutes of Consultation,*
* 22nd September 1857, Judicial Department, No. 1213.
that he was removed from his appointment: First because, in the opinion of the Law Officer, the evidence originally adduced was sufficient for the immediate committal of the accused, and on a charge of murder;* Secondly because, whatever might have been the result of the primary enquiry, nothing could excuse your Memorialist, for not having taken further steps to ascertain what had caused the death of a man, stated to have died from the effects of violence committed upon him in open day, and in the presence of numerous spectators;† And thirdly because all the available witnesses had not been examined at the first enquiry, and there had been unnecessary delay‡ in making that enquiry.
† Para. 6.
‡ Para. 7.

23. The degree of evidence that would justify the committal of a case to the Supreme Court is also defined; and so viewed, your Memorialist will at once admit that the accused should have been committed at the primary enquiry.

24. In para. 8, the Government have laid down, as the law on this point, that when "a crime has been committed, and a primâ facie case made out against the accused, it is the duty of the Magistrate to commit him, in order that his guilt or innocence may be declared in the manner which the law has provided for the purpose." But on the other hand it has been distinctly laid down by the Foujdaree Udalut,* that "a prisoner should never be committed for trial, unless there are reasonable grounds to believe that the evidence, forthcoming, will be found sufficient for his conviction."
* Circular Order, Foujdaree Udalut, 20th July 1829

25. It is true that this Circular Order refers to the committal of cases to the Courts of Circuits by the Criminal Judge, and is opposed to the letter of Regulation IX of 1816.* But your Memorialist believes that it is the universal practice, of the Magistracy up-country, to follow strictly the spirit of this Circular Order, and commit no case, unless the evidence will apparently come up to the standard prescribed for the Criminal Judge's guidance.
* Regulations for the Presidency of Fort St. George, Zillah Magistrates.

26. The rules for the committal of a case to the Supreme Court, are therefore, diametrically opposed to the rules and practice for the committal of cases to the Company's Courts; and your Memorialist has now to explain, that he viewed the evidence in this case, both at the primary, and subsequent enquiry, with reference to the latter rules only. Taking "a primâ facie case" as the criterion, the prisoners should undoubtedly have been committed; but according to these latter rules, in neither instance was the evidence such, as would justify this step in the opinion of your Memorialist.

27. And although your Memorialist may be blamed for not considering that the committing Officer in the above quoted Circular Order of the Foujdaree Udalut, was performing the duty of a Grand Jury also; and, that the prisoners should be committed in this instance as soon as a primâ facie case was made out against them; still this was the first time, that he had been called on to consider the committal of a case as a Justice of the Peace; and, to the best of his belief, there is not a single order of Government that even hints at this radical difference in the duties of a committing Officer. He therefore trusts that such ignorance is not very blameable, and that he may be permitted to consider, since the whole case as regards himself turns on this point, why this difference of practice has arisen, and how far a mere primâ facie test is applicable to any Court in this country.

28. In England, with Englishmen for witnesses, it is doubtless desirable, when a primâ facie case has been made out, that the accused should be invariably committed. But is it equally desirable, equally expedient, with Hindoos as witnesses? Being the law, your Memorialist failed in his duty, in not committing the accused. But is the justice, and expediency of committing every man, so soon as a primâ facie case is made out against him, on Indian evidence, so obvious, that your Memorialist has no excuse for his ignorance? Your Memorialist was removed from his appointment "to show," in the words of Government,*
* Minutes of Consultation, Judicial Department, 22nd September 1857, para. 9.
"that it does not sanction any obstruction to the course of justice." But the Supreme Court is above 200 miles from Salem; and your

* Foujdaree Udalut, 20th July 1829, Circular Order.

30. With reference to the primary enquiry, the Law Officers have further advised the Government, that the indictment should have been laid for murder.* It was laid for manslaughter after considering the nature of the alleged assault, in which no malice was alleged, and no lethal weapon had been used, and, whilst your Memorialist must of course bow to a professional opinion, he would beg to state in self defence, that the case was subsequently committed, as manslaughter, and tried, as manslaughter ; and further, no remarks were made by the presiding Judge to show, that, in his opinion, the indictment had been wrongly laid.

32. The Engineers were accused by a Native in their employ, who admitted that no charge was made for 3 days after the alleged assault ; not in fact till after the death of the man, who could have given the best evidence, and who himself had made no charge, though in full possession of his senses. The witnesses, who were brought forward by this Native, as having seen the deceased beaten by his employers, swore that they did not see him beaten. And any additional evidence, that could possibly be forthcoming, would be simply another set of Natives to swear that they did see him beaten. In the face too of a statement made by the prosecutor, that there was "no one else who knew of what had taken place ;" or, in other words, that there was no one else who had seen the deceased beaten.

34. The correctness of this conclusion, so far as it relates to the value that would be given by a Jury in India, to any additional direct evidence, was borne out by the acquittal of the

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55. But as regards the crime having been committed in the presence of "numerous spectators," to which the Government have specially referred, your Memorialist would respectfully state that although this is shown by the subsequent enquiry, the fact of there having been any other spectators, than the witnesses examined, was directly negatived on oath by the prosecutor himself. This statement of the prosecutor's has already been referred to ; and the exact position of affairs at the close of that enquiry, may be given in a few words. From the turn that the case had then taken, it had become, in the opinion of your Memorialist, unsatisfactory to a Jury, that the 3 Engineers were implicated in the death of the deceased. While at the same time, he himself, felt equally convinced that no body else was concerned. And on that ground the prisoners were released unconditionally, and no further steps taken in the matter.

rt being received of this case, the Tahsildar was directed to send in
nesses. Owing to the accused being Europeans, no enquiry had been
d on the arrival of the prosecutor, your Memorialist proceeded to ex-
taking it up direct. The prosecutor was called on to name his witnesses.
es were entered in his deposition ; and those witnesses were all ex-
nose witnesses broke down, the prosecutor as stated in para. 32, told
ny words, that there were no other witnesses. And then the prosecutor
n oath, it never occurred to your Memorialist to consult the Tahsil-
erbal statement might have been made by him to the Tahsildar on this
eally were other witnesses in Salem, or not, your Memorialist cannot
n knowledge till referred to by Mr. Brett, your Memorialist had en-
tinesses, who accompanied the prosecutor, were named in the Tahsil-
oint he can only add, that when he closed the enquiry, he had no
here were any other witnesses.

government observe on this *point that it was for the accused to take legal adviser if they wanted to employ one, and "any cross examination taken place afterwards." But the accused had taken steps. They the only European Vakeel in the station : and it was on his being called away that your Memorialist had to decide, whether the accused should be

your Memorialist knew was unavoidable ; as he was engaged in a murder Jury in the Sessions Court ; and the case was then before the Court ; and. Yet, even under these circumstances, a remand would have been following up the hot traces of some ordinary crime : as it was, it case then stood, *at the commencement of the enquiry*, it appeared that made by a Native, against his European employers under circumstances a whole charge, and have been already described. This charge was to be workmen ; and whilst it was obvious that a cross examination "next day" given their evidence, would be very different, from a cross examination adviser, as each witness came forward, it was equally clear that the

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prisoners themselves, from ignorance of the language &c., were perfectly unequal to supply in any degree, the presence of a practised Vakeel. Your Memorialist therefore granted the remand and would submit respectfully, that this delay was not unnecessary, and so far, he cannot be blamed for the turn that the case took at the primary enquiry.

*Para. 4. Minutes Consultation 22nd September 1857.

41. But the Law Officer have further advised* the Government that "obstruction to the due course of justice has arisen from the most superficial, imperfect and unsatisfactory character" of the enquiry made by your Memorialist; and these remarks refer, in part, it would appear, to the evidence taken by your Memorialist at the primary, as well as the subsequent enquiry.

42. At the primary enquiry the prosecutor brought forward a set of witnesses who, he said saw the deceased beaten; and, when they, one and all, swore they did not see him beaten, their evidence was of course unsatisfactory. Whilst for reasons, already given, it then seemed of no use to push the enquiry further.

43. At the subsequent enquiry, your Memorialist before re-arresting the 3 Engineers, proceeded to ascertain, whether further evidence was procurable in support of the charge, by examining in their absence, the additional witnesses, whom the Tahsildar had produced; and, for certain reasons then shown, requested, that a legal opinion might be obtained, instead of at once re-arresting the Engineers, and completing this enquiry.

44. If the requested legal opinion, should be given for the re-arrest and committal of the accused, your Memorialist had intended to fill up the evidence as soon as the Engineers were present, to be severally identified. But in their absence, it was not advisable to go much into details; as the Native witnesses had considerable difficulty in speaking to names and for this reason the evidence taken at the subsequent enquiry was imperfect, and to a certain extent, superficial. But in pronouncing it on this account open to blame, the Law Officers probably lost sight of the circumstances, under which it had been necessarily taken, and your Memorialist would respectfully submit, that in the one instance, it was not possible, and in the other, it was not advisable to make the evidence otherwise than it stood recorded.

45. It may be however that the Law Officers refer to the Tahsildar having been directed to send in the prosecutor, instead of your Memorialist's proceeding at once to the spot himself, which clearly was his duty, under ordinary circumstances. But just then he happened to be in charge of the whole district; and due regard to his other duties prevented his leaving the station, and as no remark is made by Government, on this point, your Memorialist infers, that, so far, he is held by Government to have been justified in the course which he pursued.

46. And now to recapitulate briefly the explanations, that have been given. It is submitted, with all due respect, that in releasing the prisoners at the primary enquiry, and determining to take no further steps in the case, your Memorialist followed the orders of the Foujdary Udalut, and weighed the evidence to the best of his judgment. Whilst, as regards certain witnesses not having been examined, and the course of justice obstructed by an unnecessary delay, it has been shown that all the witnesses were examined, your Memorialist knew of; and if justice suffered by the remand and consequent delay, the remand was required in common justice to the accused, and your Memorialist therefore is not to blame for the consequences, and

47. Finally your Memorialist begs to submit for the decision of your Honorable Court. First, whether your Memorialist should not have been allowed an opportunity of offering the above explanations before being removed; and Secondly, whether his official acts with reference to the explanations now given, were so grossly erroneous and culpable, as to justify his being turned out of his appointment.

48. The Minutes of Consultation, which removed your Memorialist from his appointment, contain the first words of censure, that your Memorialist has received from Government, since the day he entered the Service in 1842. Most of this service has been passed in the District, from which he has been thus summarily removed, and in which he hoped ultimately to rise; and, if the explanation now given, be deemed satisfactory, your Memorialist trusts that such orders will be passed by your Honorable Court in his behalf, as may seem fair and equitable.

And as in duty bound, your Memorialist will ever pray.

Rajahmundry, }
16th July 1858. }

(Signed) J. W. B. DYKES,
Madras Civil Service.

Fort St. George, Judicial Consultation, 10th August 1858.

No. 23. ORDER THEREON, No. 1068; dated 7th August 1858.

Resolved that the Memorial received with the foregoing letter be transmitted to the Honorable the Court of Directors.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

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Resolved that the Memorial
received with the foregoing letter
be transmitted to the Honble the
Court of Directors.

To the Secy of the
7th August 1858.

J.P.

Copy to Mr. Dykes. Signed 11th 1858

Geographical Commission, 10th August 1858.

Order number, No. 1038; dated 7th August 1858.

of the Memorial received with the foregoing letter be transmitted to the Honble

(Signed) T. FROST,
Chief Secretary.