M.R.O. 1—32,000—16-10-39.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 193 Press ~~Mis.~~

42-43

Dated 9—2—~~19~~ 1943

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 9th February 1858.

No. 42. Read the following letter from H. D. PHILLIPS, Esq., Acting Magistrate of Tanjore; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Vellum, 5th February 1858, No. 71.

SIR,

Enclosed, I have the honor to transmit a copy of an Extract from certain proceedings held by the Sessions Judge at Combaconum in a case of gang robbery, in which two prisoners had been committed for trial in the ordinary course of law.

The Government will observe that, in conformity with the effect of the intimation issued in paragraph 8 of the proceedings of the Session Court, it becomes imperative on the Magistracy to take up and themselves commit to the Commissioner, under Act XIV of 1857, each case of gang robbery that may occur in the province of Tanjore.

Adverting, however, to the wording of the Government Circular, dated the 25th August last, No. 1091, I have been under the impression that although an exception is made in the instance of dacoity or gang robbery by open violence, still that a discretion is vested in the Magistracy of sending cases of that description to the Commissioner for trial and it is in this respect that I now beg to be favored with the instructions of the Government.

These, at the present time, seem to be especially necessary as symptoms are not wanting of much probable disorganization among the lower and needy classes, who find extreme difficulty in procuring food at the unusually high rates at which grain is sold, even now when the Sumbapishanum crops are being harvested. It is not likely that these rates will fall for some months: on the contrary they will doubtless rise and if under the view of the Session Judge cases of gang robbery are to be committed to the Commissioner alone, thus casting on the Magistracy only the duty of the original investigation, I am disposed to believe that much delay will occasionally occur in sending prisoners up for trial and that other inconveniences will arise. I submit that the Magistracy should exercise that discretion which the Government order of the 25th August last would seem to contemplate.

(Signed) H. D. PHILLIPS,
Acting Magistrate.

Session case, No. 1 of 1858.
Cosa Comarandy.
Versus
Ponnan. 1
Mooroogun. 2
Gang Robbery.

1. It is proved that the prosecutor's hut was forcibly entered by 4 persons; that his wife's and daughter-in-law's jewels were forcibly taken from them whilst the prosecutor was held down, that the two vessels before the Court were also taken and that another hut was also attacked at the same time.

2. It is proved also that the 1st witness, a Taliary, was aroused by the noise and ran towards the prosecutor's house; that he struck from behind and grappled with one of the robbers who was slinging stones, upon which the 1st prisoner came to the rescue and struck him with the vessels now before the Court on the head, and that then the 1st witness let the other person go and grappled with and by the aid of the 2nd witness, who had been aroused by the prosecutor's son, secured the 1st prisoner.

3. The 1st prisoner confessed before the Police and the Sub Court that he had made one of a gang of 10 who had attacked the huts in question, and he pleaded guilty when arraigned before the Session Court. This plea however he retracted when put on his defence, alleging that he was casually halting in the village for the night, and that his confession had been extorted from him.

4. The evidence against the 2nd prisoner consists of his alleged identification by the 1st and 2nd witnesses, as the person who was first seized, and by the 6th witness, who states that he was one of the party whom the person stated by the 1st prisoner to have been the leader of the

gang brought to her house to eat on the evening of the robbery. The 1st witness died before the case reached the Session Court, and his general statements before the Police as confirmed on oath before the Sub Court, could not be tested, whilst the test applied to those of the 2nd witness, satisfied me that he had very little opportunity for identifying the 2nd prisoner. The 6th witness had only seen the 2nd prisoner once before on the road, and was ignorant of his name, and all the opportunity she had of identifying him on this occasion was whilst she was passing and re-passing through the hall in which the party was eating at twilight.

5. The 2nd prisoner has throughout denied the charge.

6. I concur in the finding of the Assessors and sentence the 1st prisoner to 14 years' imprisonment with hard labor in irons, under Clause 3rd, Section IV, Regulation XV of 1803, but in consideration of his youth, he seems not more than 20, recommend a mitigation to 7 years, under Clause 5th, Section IV, Regulation XV of 1803.

7. The 2nd prisoner is to be released.

8. It is to be pointed out to the Magistrate and Joint Magistrate that this case should, under the orders of Government, dated 25th August 1857, No. 1081, have been committed to the Commissioner.

9. The 1st witness, the Taliary is proved to have acted with great boldness on this occasion. He has died of cholera, and the Session Judge resolves to request sanction for the payment of 30 Rupees to his widow.

27th January 1858.

(True Copy.)

(Signed) G. T. BEAUCHAMP,
Session Judge.

To the Acting Magistrate of Tanjore, for information and for communication to the Joint Magistrate.

(True Copy.)

(Signed) H. D. PHILLIPS,
Acting Magistrate.

No. 43. ORDER THEREON, No. 193; dated 9th February 1858.

The Acting Magistrate is quite correct in the opinion expressed at the conclusion of para. 3 of the above letter.

It was not intended by the order of 25th August last, that all cases of dacoity or gang robbery by open violence should be tried by the Commissioner, under Act XIV, 1857, but such only as the Magistrate or his Covenanted Assistants should deem proper to be disposed of under that enactment. It is for the Magistracy to exercise a discretion in this respect, and all cases which may not be specially sent up by them after personal inquiry to the Commissioner under the Act, will be dealt with by the Sessions Court under the ordinary law.

(Signed) T. PYCROFT,
Chief Secretary.

Extd. F. Cartledge.

Dispd-10th

No 193.

The Acting Magistrate is quite correct in his opinion expressed at the conclusion of para 3 of the above letter—

It was not intended by the order of 25 August last that all cases of Dacoity or gang Robbery by open violence should be tried by the Commissioner under Act XIV 1857 but such only as the Magistrate or his Covenanted Assistants should deem proper to be disposed of under that enactment—It is for the Magistracy to exercise a discretion in this respect and all cases which may not be specially sent up by them after personal inquiry to the Commissioner under the Act will be dealt with by the Session Court under the ordinary law

SP

Copy of Proceedings of the Sessions Court of Tanjore in the case of Vellaya Servai and 2 others charged with Dacoity and Robbery.

Dated 5th February 1857.

Rec'd 8th February 1858.

No 51

Enclosure 1

No 228.

Read 10th Dispd

Referring to the Sessions Court a petition of Vellaya Servai and 2 others convicted of certain crimes & the Commissioner under Act XIV of 1857 & praying to be released by the Commissioner under Act XIV of 1857 & praying to be released by the Commissioner under Act XIV of 1857 & praying to be released by

will arise. I submit that the Magistracy shall
[illegible] that discretion which the Government
[illegible] order of the 25th August last would seem to
contemplate.—

I have the honor &c

Sir

Your most obedient Servant

W. D. Liddle

Acting Magistrate