

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	759	Press
		Mis.
3-4		
Dated	9-6-1958	

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 15th June 1858.

No. 3. Read the following letter from T. W. GOODWYN, Esq., Session Judge of Salem; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 18th May 1858, No. 6.

SIR,

1. As required by the orders of Government, dated the 6th Instant, I have the honor to submit a report on the enclosed petitions.

2. The prisoner Thunny Thandun was sent up to the Sub Court [on the 20th September 1857,] as the 18th prisoner in Criminal case 122, on the charge of "gang robbery by open violence with wounding," perpetrated on 19th June 1857, and further with having, knowing it to have been robbed, had in his possession on the 18th July 1857, a gold necklace &c., valued at Rupees 200.

3. The prisoner was committed by the Acting Sub Judge on the 1st October 1857, to take his trial before the Sessions Court.

4. Mr. Cherry, the Acting Session Judge and Commissioner, applied to the Magistrate to have this prisoner's case transferred to the Commissioner's Court; to this the Magistrate did not object, though he observed that the course was of questionable legality as the offence was committed 1st August 1857, before the publication of Mr. Cherry's Commission.

5. Mr. Cherry then transferred the case to the Commissioner's file, tried, and convicted the prisoner Thunny Thandun. The record of the trial is before Government.

6. The prisoner was charged with both dacoity and knowingly receiving property obtained by dacoity, both which crimes are declared to be heinous offences by Section II, Act XVI of 1857, and as such punishable by a Commissioner. Vide the following Section, and Section VII Act XIV of 1857.

7. The Extract Minutes Consultation of Government under date 9th December 1857, declared an Acting Session Judge's transferring a Session case to the Commission file to be unauthorised and invalid.

8. The Extract Minutes Consultation, No. 937, 1st August, declare that "retrospective effect cannot be given to Act XIV of 1857 and the power of the Commissioners therefore apply only to the trial and punishment of offences committed in part at least after the publication of the order of Government announcing their Commissions." I am therefore of opinion that as the prisoner's offences do not date later than July 19th or 8 days before the Proclamation, No. 882, they could not for the above reason as well as that entered in the preceding para. be legally tried before a Commissioner's Court.

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

The humble petition of Tumetar Gounden, prisoner No. 14 in case No. 12 of 1857, before the Commissioner of the Salem District presented by his father and authorized Agent Kalapodia Gounden.

HUMBLY SHEWETH,

1. That your petitioner was (he believes) sent up with others to be tried at the Sessions Court of Salem on the 1st October 1857, on a charge of robbery alleged by the prosecutor to have been committed on the 19th June 1857, and on the 24th October 1857 was sentenced to 14 years hard labor in irons for being found in possession of stolen property, against which proceedings, your petitioner appeals on the following grounds.

2. That your petitioner although without record, has reason to believe that he was not sent up to the Commissioner's Court for trial but on the contrary was sent to the Sessions Court for trial.

3. That his trial therefore before a Commission was without warrant or authority and defective in procedure.

4. That the alleged offence was stated to have been committed at a period which places it beyond the jurisdiction of a Commission appointed under Act XIV of 1857.

Fort St. George, Judicial Consultation, 15th June 1858.

5. That the possession of stolen goods is not a heinous crime against person or property as provided in Section VII of the above Act.

6. That as your petitioner has been accused of one offence and convicted of another, the proceedings are clearly illegal, for although no forms are prescribed to the Commission, it is clearly intended that a prisoner should be convicted only of the offence for which he was tried and not one of which he has not been accused.

7. That your petitioner has reason to believe the employment of the powers given under this Act are arbitrary and severe beyond example in as much as your petitioners have been unable to ascertain under what law they are living, no publicity either by Istayer, tom-tom or other and usual means of publicity having been (as far as they can learn) had recourse to in their District to announce the powers of this Commission.

For the above reasons your humble petitioner prays that his case may be enquired into with reference to the exceptions taken above, and that an order may be issued for his release.

Mark of KALAPODIA GOUNDEN.

இங்குமி காலப்படியாகவுண்டன் கைண்டு.

Madras, 14th April 1858.

The address of Kalapodia Gounden is No. 45 Brodie's Road, care of the Venkata Sastry.

No. 994 of 1858.

Referred to the Session Judge of Salem for report.

Fort St. George, }
6th May 1858. }

By order,
(Signed) D. F. CARMICHAEL,
Dy. Secretary to Govt.

To the Right Honorable the Governor in Council at For Saint George.

The humble Memorial of Kalapadya Gounden, father and authorised agent of Tunnetaden, the 14th prisoner in Commission case No. 12 of 1857, in the district of Salem.

MOST RESPECTFULLY SHEWETH,

1st. That your Lordship's memorialist humbly begs to state that the said prisoner was on the 14th October 1857, sentenced to 14 years' imprisonment with hard labour in irons, under the powers invested by the Act No. XI of 1857, in consequence of certain stolen property (articles marked 1 and 2 in the above case) being found in the prisoner's house; and to state the following among other grounds shewing that the provisions of the said Act have been misconstrued and that this case is not to be treated as such.

2nd. That in this case a complaint was preferred to the Police authorities by the prosecutor that a plunder had taken place on the 19th June 1857, upon which they having prepared there three separate calendars for three cases, committed all prisoners to the Criminal Court which having released some of the prisoners, committed all the said three cases Nos. 120, 121 and 123 respectively to the Sessions Court on the 1st October 1857, where the Acting Session Judge Mr. Cherry having filed two of the said three cases in Sessions calendars Nos. 49, 50, and as well as this case in 51 of 1857, conducted the trial up to the 6th October 1857 with the Law Officers as jury in the Sessions side, but the 7th day that functionary assuming to himself the unauthorised power of a Commissioner in this case, sentenced the prisoners in all the three above cases, making them all as one case in the Commission side on a speedy oral examination of the matter without the check of the Law Officer in him. This mode of punishment would at once shew that no more injustice as this is ever to be met within the whole world.

3rd. That on a remark being made by the Commissioner to the Magistrate of the district stating that these three cases should have been considered under the Commission head and not under the Session side. The answer from the said Magistrate is that since the crimes of the cases referred to, were perpetrated previous to the publications of the Commission Act they are treated under the Session's side. On reference to the above record it will be made clear that Mr. Cherry

Fort St. George, Judicial Consultation, 15th June 1858.

has unjustly taken to himself the powers of a Commissioner in this case, which does not all concern to Commission power.

4th. That had this case actually belonged to Commission power, there would not have been any necessity for the Police authorities to commit these three cases to the Criminal Court, and that Court to release some of the prisoners and commit the rest to the Sessions Court after their trial there, and that the Sessions Court with the Mahomedan Law officer partly examined this case in writing but the Session Judge after concealing all these facts, brought this case under the provisions of the Commission Act notwithstanding the date of its publication being subsequent to the date of this complaint. The reason of his having thus dubiously designated this case to have been a plunder, and therewith artfully ventured to sentence the prisoners under the said Act, is that it might enable him to dispose of the matter as he thinks, and very easily subject others to the purpose of injustice without the requisite opinion of the law officers or the clear proof of detailed records.

5th. That neither the prosecutor nor his witnesses state that my son, the said prisoner was seen and recognized at the time of the plunder. The said prisoner was not even undergone any sort of sentence before this. Now the only charge brought against him is, that certain articles Nos. 4, 2, 23, and 24 of the stolen property were found in his house, but they are satisfactorily proved by witnesses in defence, belong to me and to have been mortgaged to others by me under a deed, ere this complaint arose. The said prisoner also proved to be honest in his character.

6th. Your Lordship's memorialist therefore prays for unconditional release of the prisoner or for re-investigation of the case in the Session side, after considering this petition and the records, as well as the extracts herewith submitted, bearing marks A, B, and C.

Your Lordship's memorialist shall remain ever as in duty bound.

12th April 1858.

(Marked) KALAPADYA GOUNDEN.

No. 1005 of 1858.

Referred to the Session Judge of Salem for report.

Fort St. George, }
6th May 1858. }

By Order
(Signed) D. F. CARMICHAEL,
Deputy Secretary to Govt.

No 4. ORDER THEREON, No. 759; dated 9th June 1858.

1. One *Thunney Tauden* was sentenced in Commission case (*Salem*) No. 12 of 1857, to 14 years' imprisonment with hard labor in irons by Mr. Commissioner *Cherry*, on conviction of a charge of "Gang Robbery by open violence, with wounding," and complaint is now made that the proceedings in the case were unauthorized.

2. It appears that the robbery was perpetrated on the 19th June 1857, and committed by the Sub to the Sessions Court on the 1st October following.

3. *Mr. Cherry*, whose Commission was not published till the 1st August, transferred the case to his file as Commissioner, with the consent of the Magistrate, who, however, somewhat doubted the propriety of the measure.

4. Meanwhile the prisoner was tried and sentenced by the Commissioner who further did not rectify his proceedings on the receipt of the order of Government No. 1601, dated 19th December 1857, wherein the illegality of any such trial was distinctly pointed out for his information in particular. The C. O. in the Judicial Department, No. 937 of the 1st August last, would further have instructed him to the same effect, had he attended to it.

5. Besides prisoner *Thunney Tauden*, it would appear that four other prisoners were sentenced in the same case. The proceedings must in each case be set aside. It is out of the question at this distance of time to order the re-trial of the accused before the Sessions Court. The Government therefore resolve to remit the sentences under Act XVIII of 1855.

6. *Mr. Cherry's* procedure is viewed by Government with extreme dissatisfaction.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

2
Extract from the Proceedings of the Subordinate Court
of Salem under date the 28th January 1857. Thursday.
Present Mr. Justice received

a Vazalut Namah filed by the Court pleader Appaswamy
Pillay on behalf of Calappadaya Coudon father of
Shanner Thatten the prisoner in Commission Case No. 12 of 1857.

Read Petition presented by the above Pleader praying
for a Mooffthya Namah which he filed to be signed and
furnished by the said prisoner to his father Calappadaya Coudon
and thereby empowering him to prefer his appeal to
Government from a sentence passed against him.

Received also a Mooffthya Namah and a
stamp paper filed by the said pleader applying for
copy of a diary order.

Ordered that the jailor shall get the signature
of the said prisoner Shanner Thatten affixed to
the Mooffthya Namah.

The jailor immediately produced the Mooffthya
Namah after it has been duly marked by the
prisoner, and attested by 2 positive witnesses.

Ag. C. L.

Manar

திருமய	தெருவிக்கால் யுத்தம்	வெள்ளைக்கால் யுத்தம்
திருமய	வெள்ளைக்கால்	வெள்ளைக்கால்
திருமய	வெள்ளைக்கால்	வெள்ளைக்கால்
திருமய	வெள்ளைக்கால்	வெள்ளைக்கால்
திருமய	வெள்ளைக்கால்	வெள்ளைக்கால்
திருமய	வெள்ளைக்கால்	வெள்ளைக்கால்
திருமய	வெள்ளைக்கால்	வெள்ளைக்கால்
திருமய	வெள்ளைக்கால்	வெள்ளைக்கால்
திருமய	வெள்ளைக்கால்	வெள்ளைக்கால்
திருமய	வெள்ளைக்கால்	வெள்ளைக்கால்

திருமய

திருமய

திருமய

திருமய

திருமய

திருமய

திருமய

திருமய

திருமய

திருமய

திருமய

திருமய

திருமய

திருமய

Extract from the Proceedings of the Commissioners' Court in the
District of Salem under date the 9th October of 1857.

Prosecutors

Prisoners

Nullappa Gounden 1

Vady 1

Nullappa Gounden 2

Vagoreen 2

Vataroen 3

Chinna Rajen 4

Kalud 5

Chennavaren 6

Ranly 7

Vincaty 8

Carropper 9

S. Passamen 10

Masy 11

Coopper 12

Perromattak 13

* Tannu Taden 14

Soolbraya. Chetty 15

Charge

Plunder

The Nazir produced the above prisoners before the Court.

The Prisoners deny the charge brought against them.

Depositions on solemn affirmation, were taken from
each of the Prosecutors & the witnesses from 1st to 7th 10th

12th 16th & 18th. Named Vonna Gounden, Camen -

Gounden, Chinna Rajen, Annamalai, Perroma Gounden,

Cristana Leharay,

Arya Gounden,

W. H. Cook

12th March 58

Vencatappa Maikin, Naregan & Chokalinga Pillay.
The examination of 8th, 9th, 11th, 13th, 14th, 15th & 17th
Witnesses, is unnecessary.

Proceedings held on the 21st October 1857.

Depositions on solemn affirmation were taken from
the Witnesses 19 to 22 named, Appayya, Kala Gounder
Ardayan, & Soubaya Indraly.

The defence of the prisoners & the depositions on
solemn affirmation were taken from their witnesses
from 3rd to 9th and 18th to 14th and 16th to 17th and 19th
to 22, and from 1st to 2, 9th;

51 Called, Shrivitegar, Indraly, Sooratty Indraly,

Moonanatten, Annamalai, Cooney, Pannan, Mather,
Kalie, Vencatachelum, Kavase Rajah, Govindan,
Parooman, Parooman Perabathesen, Chinna Theemba
Chetty, Coolamatha Chetty, Coolappa Chetty,

the other witnesses being unnecessary are left.
unexamined trial conducted on the 24th October

1857. The prisoners from 16, 9, 10, 12, and 14, being
proved guilty of keeping a stolen property in their
possession are sentenced to 14 years imprisonment
with hard labour in iron and the eight and 13th
prisoners give two securities each 50 Rs for their
faithfulness during a period of and the 7th

11th and 15th prisoners were acquitted
in as much as there was no proof to the charge
laid against them.

Ordered that the extract from
these proceedings be forwarded to the Sub.
Judge for his information & guidance.

W. H. Cochrane

Handwritten text in a cursive script, likely a ledger or account book. The text is organized into columns and rows, with some entries underlined. The script is dense and difficult to decipher without knowledge of the specific language or dialect used.

11th Sheet
W. Woodman
Leicester
12th March 58

Copy of the
Don't forget

True & correct
Signed/ J. M. Cherry
Commissioner

Memo:

Here enters
5/8th May/50.

2. The case on reaching Gort, a House.
Let no notice as to its merits - But
be known. W. Inverland observed that
the state of the country did not
justify the summary trial of
such cases.

4. McCleary, whose Commission
was not finished till the 1st August,

transferred the case to his
file as Commissioner, with
the consent of the Judge, who
however somewhat doubted
the propriety of the measure;
as well he might, the course
taken being directly opposed
to the Circular in the Judicial
Dept. No 937 of the 1st August.

4.5. Meanwhile the Prisoner was
tried & sentenced by the Com-
missioner - who further did
not offer to rectify his proce-
-dings on the receipt of the
order of Govt No 1601 D/19th
Decr/57, wherein the
illegality of any such trial
was distinctly pointed out
for his information in par-
-ticular.

6. orders are now required
on the case.

J.S.P.
28/5/58.

11
The Prisoners were sentenced
in the same case. The proceedings must
in each case be set aside - It is out of the question
at this distance of time to order the retrial of
the accused before the Supreme Ct. The Govt here-
fore resolve to remit the sentences under Act
XVIII of 1855.

6. Mr. Ganga's procedure is viewed by Govt
there appears no question - that
Mr. Chetty acted illegally - in fact
transferring the case - I suppose.
The main point is set at liberty.

J.S.P.
Well

The sketch sent by Mr. Ganga
shows four other Prisoners sentenced
illegally in the same case - The proceedings
must all be set aside - It seems
unpossible at this distance of time
to set aside those of 10th Decr - 9 Decr

57
Well

Jud. Cons.
15 Decr/57.

The C.O. in the
Judicial Dept No
937 of the 1st August
has instructed him
to the same effect,
and to all the other
Prisoners.

It will appear that four

Judicial Department.

N^o. 759

Extract from the Minutes of Consultation

Dated 9th June, 1858.

Read the following letter from
the Session Judge of
Salem.

Presented 10th May 1858

1. One Shinnery Tamm
was sentenced on Commission
case / Salem / 12th of 1857 to
14 years imprisonment with
hard labor in Iron by Mr
Commissioner Cherry on
conviction of a charge of
"Larceny Robbery" by open
violence with wounding
and complaint as now
made that the proceedings
in the case were unauthor-
ized.

Send copy to
Mr Cherry for his
information

St

2 It appears that the robbery was perpetrated on the 19 June 1857 and committed by the Sub to the Sessions Court on the 1st October following.

3 Mr. Cherry, whose Commission was not published till the 1st August transferred the case to his file as Commissioner, with the consent of the Magistrate, who, however, somewhat doubted the propriety of the measure.

4 Meanwhile the Prisoner was tried and sentenced by the Commissioner who further did not rectify his proceedings on the receipt of the order of Govt. No 1601 of 19th December 1857, wherein the illegality of any such trial was distinctly pointed out for his information in particular

12
particular. The L. O. in the Judicial Dept^t of 19th of the 1st August last would further have instructed him to the same effect, had he attended to it.

5 Besides Prisoner Thimay Launder, it would appear that four other Prisoners were sentenced in the same case. The proceedings must in each case be set aside. It is out of the question at this distance of time to order the retrials of the accused before the Sessions Court. The Govt therefore resolve to remit the sentences under act XVIII of 1855.

6 Mr. Cherry's procedure is viewed by Govt. with extreme dissatisfaction.

To the J. Judge of Salem } Disp. 12th
Mr. Cherry Esq.

D. H. 3/6/58

JP

Staff.

June 10, 1858. Copy 2. 13. 2002

In Oct 1858. 16. June
Indicative 1858. Department

P 11
No. 759

Extract Mins. Cons.

Dated 9th June 1858

St. 11. 1858

*Communicated
to Mr. Carey*

341

Machine:—[printed at the Government Press.]

*Ch. June
1858*