

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	839	Press ~~Mis.~~
	7-8	
Dated	23 - 6 - 1958	

Not to be folded or roughly handled

No. 7. Read the following letter from J. J. COTTON, Esq., Civil Judge of Masulipatam; to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint George, dated 10th June 1858, No. 292.

SIR,

1. In acknowledging the receipt of an Extract from Minutes of Consultation, dated 22nd Ultimo, No. 671, passed upon a letter from the Acting Register of the Court of Sudr Udalut, reporting the perpetration of an impudent robbery committed in the office of the Nazir of this Court, and directing that I shall be held responsible for the loss to the extent referred to, viz. Rupees (2,676-2-4) two thousand six hundred and seventy-six, Annas two and Pice four, I beg respectfully to bring forward the following circumstances for the favorable consideration of His Lordship in Council which I trust may induce them to look with more leniency upon the alleged dereliction of duty pointed out by the Sudr Court in their letter of the 12th Ultimo, copy of which has been forwarded with the above Extract from Minutes of Consultation for my information.

2. There are one or two points upon which I would particularly request the attention of His Lordship which are not apparent upon a primary perusal of the Sudr Court's letter.

3. The property stolen from the Nazir's office was taken by *choice*, (if I may use such an expression) from among others which were purposely left intact; clearly indicating that the robbery was committed by some party or parties well aware of the difference between them, as beyond items Nos. 5 and 6 enumerated, which amounted in the aggregate to Rupees 319-8, the whole of the rest was property the value of which had not been credited as an asset to Government, while other monies, &c., left untouched were either on account of batta collected during the previous month and payable to peons &c., or a balance to a tradesman in the town upon the auditing of his accounts for certain manufactures of brass utensils ordered for the use of the Convicts in Jail.

4. It must not be argued that the fact of such sums &c., also being retained in the hands of the Nazir is a dereliction of the "spirit" of the Circular Order quoted by the Sudr, because it should be known that the Nazir of a Court is the Executive Officer whose duty it is to carry out the orders of the Judge for the preparation and manufacture of articles required for the use of the Department generally; and monies are placed in his hands with this object, for which he becomes responsible, particularly when they are of inconsiderable amount.

5. With reference to paras. 2 and 5 of the Acting Register's letter, it might lead to the inference that a practice has always prevailed in this Court for the Nazir to retain in his charge jewels and "valuable property" of the extent and worth of the gold Pagodas, lately stolen. The jewels alluded to in the Nazir's return, forwarded with my return of the 21st April last, consist generally of joys, &c., individually valued at a few Annas or at most of a Rupee or two each; found on prisoners committed to Jail for short periods, a note of which is always immediately entered in the Court Diary, and Jail Memorandum Book; and the monies detained by the Nazir, also referred to Warrant and other deposits for which he is responsible while passing through his hands into the Court cash chest, and during which the reports are prepared, and the batta, &c., calculated. The Circular Order alluded to by the Court has *no* reference to such property or monies, but refers to unclaimed property, which may eventually escheat to Government,

6. The Nazir of a Court is a highly responsible Officer, one in whom confidence and trust is more necessary than perhaps any other Subordinate of the Court. This is mutually felt by all parties concerned, and therefore though I should feel myself to a degree responsible for the honesty of this individual, especially if he happened to be, as in the present case, one of my own appointing; the case is different when without his or my cognizance an impudent theft is committed, by parties inimical to him to throw the blame on his shoulders, and property *selected* from among others is thus carried away, in the shameless way pointed out, (no clue to the robbery has yet been found.)

Fort St. George, Judicial Consultation, 29th June 1858.

7. With regard to the Circular Order, Sudr Udalut, dated 20th May 1853, in "wanton disregard" of which I am accused of having acted, I beg particularly to point out that the Pagodas in question regarding which the Sudr Court are the more urgent in their censures upon my conduct, were originally transmitted to the Court by the Magistrate in accordance with a precept from this Court on the 14th November 1855, (they had been secured by that Officer in 1853,) and they were almost immediately forwarded for safe custody to the Collector's Treasury, whence they were again received only on the 4th November 1857, in order to carry out the orders of Government for their sale dated 13th October 1857. On the following day the 5th November they were handed over to the Executive Officer, the Nazir of the Court, for sale. The date of such sale was originally left to this functionary's discretion. However subsequently (on the following evening) it was resolved to sell these Pagodas by out-cry on the ensuing Monday the 9th. In the interim the robbery took place.

8. I respectfully submit that I can hardly be accused of a "wanton," that is I presume a wilful disregard of the Circular Order in question by my proceedings as above. Government property is repeatedly consigned to private salesmen for disposal, several days before the date of sale, and the delivery of the Pagodas, &c., to the public Executive Officer of the Court for a similar purpose after sanction had been received from the Government for the purpose, might, I should hope, bear a more favorable construction than has been placed on the act by my immediate superiors and the Government who have adopted the same view.

9. The Circular Order alluded to directs that every thing connected with unclaimed assets should be thereafter "carefully entered in the Civil Diary of the day, and that invariably when jewels or money are forwarded to the Court, such be at once secured in the Court cash chest." I respectfully submit that this order has been strictly and literally obeyed by me, and my Subordinates ever since I assumed charge of this Court; and there is nothing in the above order which appears to me to indicate that such property should at all times be secured in the Court Treasury. How indeed could this be effected where a sale of such is ordered?

10. On a previous occasion upwards of Rupees 4,000 worth of property consisting of jewelry, pots and pans, and brass utensils to an immense extent, (originally attached as "unclaimed property" on behalf of Government) was ordered to be sold by the Sudr Court on behalf of those concerned. After the receipt of the above orders the property in question was sent for duly from the Collector's General Treasury where it had been long deposited for security, and delivered to, and remained thereafter in, the charge of the Court Nazir until the sale was completed; and I certainly never imagined for a moment that by so acting I was infringing the "spirit" of the Circular Order alluded to, as it now appears, I must have unwittingly done!

11. The office of the Nazir is equivalent to that of the Sheriff in the Supreme Court and his duties and records are entirely distinct from those of the Civil Court. He has special responsibilities, which he is aware of, and has under his control the Court peons as a guard to protect such property, &c., as may come into his hands primarily before they are passed on to the Court. His office is a detached one, usually in a separate quarter of the Court House, and is provided with boxes and almirahs fitted with a variety of locks and bolts sufficient to secure any ordinary property that may be passing through his hands, and as for public monies, &c., what are his responsibilities as compared with that of the Revenue Officers of the second and third grade? Being moreover under the immediate surveillance of the Court Sheristadar, in the first place, and directly of the Civil and Session Judge.

12. The practice of this Court so severely animadverted on by the Judges in para. 2 of their letter, I imagine is universal, simply from the necessity that exists for such sums therein alluded to being paid through the office of the Nazir.

13. With regard to para. 8 of the Court's letter in which they observe that I have offered no explanation on the gross irregularities of which the Nazir was guilty &c. I confess I had none to offer beyond the plain statement of the facts of the case. The object was to realize the best prices procurable for the property in question, and the Pagodas were placed in the hands of one whom I believed to be a trustworthy (public) Agent for this purpose; and the sums realized by him by private sale were considerably in excess of those offered on the previous day for the whole lot. It is a well known characteristic of natives that they are most unwilling to purchase valuables, especially gold without ascertaining practically its intrinsic worth.

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Fort St. George, Judicial Consultation, 2nd July 1858.

14. I now come to place before the Government another point on which I would pray for their favorable and lenient consideration.

15. Of the large sum noted in the margin of the Court's letter, for which the Government have resolved to hold me personally responsible, for reasons, which I trust I have, to no inconsiderable extent, explained away; it is observable that with the exception of Rupees 268, the remainder (Rupees 2,408-2-4) consists of sums, never credited as assets at all to Government, and consisted of items claimed arbitrarily by them in their prerogative, for want of better claimants thereto. (The value of the Pagodas not sold was roughly and certainly widely estimated at the rate of Rupees 4½ each, because 25 of the best had been sold at that rate, and so of the other unclaimed property mentioned.) The item No. 4 on account of waste paper proceeds, is another against which there is the same negative claim. The paper was ordered to be destroyed. This was carried out to an extent by its being torn into 4 or more pieces, but was afterwards sold to merchants in the town. It was my intention to devote the sums so realized to the payment of a temporary establishment to index the voluminous records in this Court, and was kept for that purpose when a most useful and necessary record would have been prepared without cost or expense to the State.

16. From the above explanation it will be seen that the actual "loss" to Government on which much stress is laid in the concluding para. of the Acting Register's letter is merely *in prospectu*, no assets belonging to the Government having been lost at all.

17. With regard to the remaining item (Rupees 268,) No. 5, as the Government would be responsible for such sum, I trust that a refund to this amount, for which I confess that either I or my Subordinate should be held liable may be deemed by the Right Honorable the Governor in Council, a sufficient punishment for any dereliction of duty that can be placed to my charge.

18. The existence of the Circular Order of 20th May 1853, is as well known throughout the office as it is to myself, and the unfortunate delay of the Nazir in paying in the amount received by him just before he was attacked with illness, into the Court Treasury was a contretemps which has eventuated in a certain loss, which must be made good. But with regard to the other items, I trust after what has been stated His Lordship in Council may be induced to take a lenient and liberal view of the circumstances, and give the subject of this correspondence a favorable consideration.

No. 8. ORDER THEREON, No. 839; dated 23rd June 1858.

Forwarded to the Court of Sudr Adawlut for their remarks.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

W. H. *John George*
23rd June, 1858. 3

PAID May 1858 \$29.30

Judicial Letter to Cong^{rs}

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