

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	847	Press
		~~Mis.~~
19-20		
Dated	28-6-1958	

Not to be folded or roughly handled

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

No. 19. Read the following letter from W. ROBINSON, Esq., Acting Magistrate of Malabar; to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort St. George, dated Calicut, 27th March 1858, No. 53.

SIR,

No. 381.

* Case No. 67, dated 27th March 1858.

I have the honor, with reference to Extract from the Minutes of Consultation, dated 22nd Instant, to forward for the information of Government, a copy of the decision* of the Subordinate Judge in the case committed to that Court.

2. There were 4 prisoners committed: one has been convicted of being an accomplice in the illegal arrest of the Teean, and fined 50 Rupees. Two others, the village Patrol, were released as they merely kept guard over the man committed to their charge by the Mookyastens. The committal of the fourth seems to have taken place on no sufficient ground whatever.

3. The last para. of the sentence alludes to the seriously summary and irregular proceedings of the second day on the part of the Joint Magistrate.

4. With reference to para. 2 of the Extract from the Minutes of Consultation under acknowledgment, I have determined to proceed at once to Shoratur whence I hope shortly to be able to submit a full report on all that has occurred. In the mean time I will not cumber the correspondence with further translation of the several Arzees and charges which have been preferred before me in relation to this matter.

Report of case forwarded to the Sub Court, Zillah Calicut, and disposed of in the month of March 1858.

No.	Names.	Crime charged against the prisoners.	Mode in which the prisoners were disposed of and when discharged, the grounds thereof.
67	1 Poolikel Oomata. 2 Mulishery Conhen. 3 Venkata Rama Puttur. 4 Elleyakat Ayapen Nair.	Assault.	1. The 3rd prisoner is not identified by any of the witnesses. His only crime appears to have been presence in the pagoda on which he was arrested on the day succeeding the commission of the offence charged. 2. The witnesses called by 1st prisoner clearly shew that the Tean was placed in the custody of himself the 3rd prisoner and other patrols by the heads of the village.

They obeyed the orders which they received and their presence as guards over the Tean is the only fact alleged against him. Men are not liable criminally for acts done without malice in obedience to an authority *prima facie* sufficient, and there is nothing to shew that their acts were other than *bona fide* ones.

3. These prisoners are therefore released.

4. In this case the evidence for the prosecution shews that as three Railway Engineers were walking along a bye road, a Tean who followed them was seized by some Nairs and Brahmins and placed in the custody of the village patrol. The alleged assault upon the three Europeans was clearly merely an effort on the part of the Natives to prevent the rescue of the Tean whom they had captured.

5. No credit is due to the statements of the two witnesses called for the 4th prisoner that the Tean was captured because he went inside the pagoda wall. This statement is opposed both to the direct evidence of the two Europeans examined and also to the whole conduct of the defence which has striven to shew that there is really no public road past this pagoda.

6. No reasonable man can upon the evidence doubt that in the very centre of Malabar Hindooism, this man was captured and taken into custody for approaching within the forbidden distance of men of a higher caste. It is equally manifest that this unrighteous pretension of excluding a man of a certain caste from public thoroughfares,* and it is clear that this is one and the still more illegal mode of summary arrest and incarceration to support such pretension cannot for a moment be maintained. Insults to the religion of Native subjects of the Queen have ever been discouraged both by the illustrious statesmen who founded our

* Sic in original.

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

empire in India and by the law of the country. Common justice requires that such insults should never be permitted, but common justice equally demands that most oppressive personal disabilities which form no part whatever of Hindooism which are to be found in no book expository of its tenets be not imposed and still less by force. This local custom will be found like so many other customs in other countries when submitted to legal investigation to have no sound basis either in law or in reason.

* The Tean. 7. I have no hesitation therefore in holding the arrest of the 3rd* complainant to be an illegal act.

8. As to the assault on the three English gentlemen, nothing can be clearer than the fact that the violence used was not great. Mr. Ross's hat was knocked off and picked up, a difficult process in an infuriated crowd intending to commit an injury. He was doing his best to defend his servant. His gun loaded and half cocked did not go off. Mr. Coe who deposes to having striven to put an end to the struggle by a "conciliatory countenance" and pushing, no doubt, both from the circumstances of the case and actual evidence, laid greater stress upon the latter mode. Moreover when the Tean was finally taken into custody no opposition whatever was made to the three gentlemen going home, their clothes were not torn, they sustained not a bruise and these circumstances are quite inconsistent with a violent assault upon them. That no such assault was even intended is perfectly clear. The seizing of their arms was to prevent them from rescuing the Tean. It has been doubted by a very great lawyer although perhaps on insufficient reasons whether a master is justified by the law of England in committing an assault in defence of his servant, while however I should certainly hold him justified. I cannot regard the prevention of the rescue of a man whom the Hindoos had as they thought legally taken into custody as aggravating the offence committed by them. The friendly relations which Mr. Coe tells us have uniformly existed between himself and the Hindoos of the District as well as the facts of the case clearly shew that no such assault was intended. The force used was supplementary to the act already committed.

9. While therefore of opinion that an illegal act has been committed, I am equally of opinion that the accidental circumstance of Europeans being involved has led to very factitious importance being attached to the case, and looking at the unquestionable impression that some act derogatory to the pagoda had been committed (although no evidence exists that such was the case) to the fact that the inhabitants of the talook in which this assault occurred are among the most peaceable and best subjects in the district, to the widely spread impression that this personal disability of the Tean is a right to be enforced by immediate incarceration of him who infringes it. I am of opinion that a fine of 50 Rupees on the 4th prisoner clearly proved to have been an accomplice in the illegal arrest; and in default a sentence of six months' imprisonment will meet the requirements of this case. I under Section VII, Regulation X of 1816, sentence him to pay this fine and direct under Section XXXV, Regulation X of 1816, that it be paid if collected to the Tean.

It is only necessary to see the process by which these prisoners merely charged with misdemeanor were seized on the succeeding day to render it perfectly understandable that villagers should not comprehend the distinctions which exist between offences that justify arrest on the hue and cry and such as require a regular legal procedure for the capture of the offenders.

(Signed) W. HOLLOWAY,
Sub Judge.

27th March 1858.

(True Copy.)

(Signed) W. ROBINSON,
Acting Magistrate.

No. 20.

ORDER THEREON, No. 847; dated 25th June 1858.

To be recorded.

(Signed) T. PYCROFT,
Chief Secretary.

C 23rd Dec 1858 A 21/22

Ind. to Govt: 2nd July
1858
Depart. 24

From
The Actg Magt. of
Malabar

To
The Chief Secretary
to Government
Ind. Dept.
Fort St. George

Dated 24 Mar/57

Recd 3rd April/58.

1847
Recorded S.H.
25 June/58. No. 53.

1/6 Incl: 1
No. 604 W.H.

Submits with reference to
Min: Corr: 22nd Inst: No. 381,
a copy of the decision of the Sub.
Judge on the case committed
to that Court & informs that
he has determined to proceed
to Shoranur & hence a
rule report will be
forwarded - W.H.

C 8th Dec 19020.
R13 "

Recd from reference branch 26/6/58

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

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Acting Magistrate

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(Signed) T. PYCROFT,
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