

# MADRAS RECORD OFFICE.

Government of Madras.

*Indic* DEPARTMENT.

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|----------|-------|-----------------|
| G.O. No. | 938   | Pres            |
|          |       | <del>Mis.</del> |
|          | 44-46 |                 |
| Dated    | 9-7-  | 1948            |

Not to be folded or roughly handled

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*Fort St. George, Judicial Consultation, 13th July 1858.*

Read the following letters.

No. 44. From T. J. KNOX, Esq., Acting Agent to the Governor in Ganjam; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Chatterpore, 10th June 1858, No. 175.

SIR,

1. I have the honor to submit for the consideration of Government a case which, though not an actual offence of the nature which under orders dated 23rd July 1856, I am bound to report is very similar and of much more serious consequences, I enclose copies of papers relating to it.

2. It appears that on 2nd May last, the Aska Head of Police erected a whipping post and publicly declared he had the previous night received Captain Smith's verbal order to flog a certain man in order to induce him to confess his share in a robbery.

3. This man was highly thought of by Mr. Boothby, having been in his employ for many years, and had this year received an advance of Rupees 30,000 from the firm.

4. His brother brought the impending punishment or rather torture to Mr. Boothby's notice, and he spoke to the Head of Police, who distinctly told Mr. Boothby that he was acting under Captain Smith's verbal orders, and that he only waited for that Officer's written order to flog the man.

5. About the public erection of a post and his avowed intention to flog and his assertion to Mr. Boothby that he (the Head of Police) acted according to Captain Smith's orders, there is no doubt.

6. I now would call attention to the utterly inadequate sentence Captain Smith passed on the Head of Police for his conduct and also to the fact that when called upon by me for explanation, Captain Smith is silent as to what he did say to the Head of Police.

7. The Head of Police has borne a good character hitherto, and I have not the smallest hesitation in expressing my belief that Captain Smith who has a remarkable knowledge of the native language, did give most unjustifiable directions in a public matter to his subordinate which he probably never expected would be attended to.

8. As however his words were acted upon, he is I submit, liable for the consequences, and though I propose to dismiss the Head of Police, I feel that justice would be unequal unless some mark of the displeasure of Government at Captain Smith's conduct is shown to and understood by all classes.

9. It is a matter in which the appearance of evil because affecting a European Magistrate is of importance, for whether the man was flogged or not, he was intimidated, and the disgrace of having ordered such a deed, damages a European Magistrate's character as much as having executed it, would a Native official.

DECISION OF CAPTAIN SMITH.

Mr. Boothby brought to notice that the Head of Police of Aska frightened a prisoner ("Saradhmarnah") on whom suspicion of "theft" rested and threatened to flog him thereby attempting to extort a confession; and that he further stated that he had received personal instructions from the Assistant Agent to do this; and that an order was expected to enable him to carry out the corporal punishment. This statement of Mr. Boothby has been clearly proved by these witnesses; the Police when called upon for explanation admits having intimidated the prisoner and threatened that he should be flogged but denies ever having stated that he received instructions to do so from the Assistant Agent. From the circumstances disclosed it appears to the Assistant Agent that there is not the slightest doubt the Head of Police is guilty of the charge also of having made a gross mis-representation.

The Head of Police however has been under the control of the Assistant Agent for upwards of two years, and in justice to him the Assistant Agent must admit that his conduct has hitherto

*Fort St. George, Judicial Consultation, 13th July 1858.*

been unexceptionable, the present charge however is of too grave a nature to be overlooked. From the foregoing circumstances, the Assistant Agent considers it necessary to reprimand the Head of Police, and he is further fined a sum of 5 Rupees. The Assistant Agent resolves to forward these proceedings to the Acting Agent, with a request that the particulars of this case may be published in the Ganjam Gazette for general information.

Russelcondah, }  
29th May 1858. }

(Signed) C. SMITH,  
Assistant Agent.

(True Copies.)

(Signed) T. J. KNOX,  
Acting Agent.

COPY.

From G. W. BOOTHBY, Esq., to Captain C. SMITH, Assistant to the Agent to the Governor of Fort Saint George in Ganjam, dated Aska Sugar Works, May 6th, 1858.

SIR,

Having been informed by Mr. Thornhill, the Principal Assistant in charge of the District, that the robbery case now being enquired into here in which an accusation has been made against one of our principal jaggery contractors, has by Mr. Thornhill's orders been sent up to you for immediate disposal, and having further been informed by the Principal Assistant in charge that in his opinion "it would be a great assistance to Captain Smith if you would kindly furnish him with a Memo. of what has been brought to your notice.

I have now the honor to address you on the subject with the view of placing before you a few important facts which may not otherwise come to your knowledge.

To show how very unfit a person the Head of Police here is, to conduct a case of this kind I have only to mention that not only has he been threatening those parties now under examination with a severe flogging as a means of extorting some confession from them actually erecting posts close to his office for carrying out the punishment, but he has had the effrontery to declare that he had your instructions for this proceeding; under such circumstances I submit that, all this functionary has done in this case must be looked upon with great suspicion.

In my letter to Mr. Thornhill on this subject, I made the following statement which I would beg to submit for your consideration. Here follows letter to Mr. Thornhill, dated 4th May 1858.

I need hardly add that any long confinement of Sarthy Marnah will very much endanger the fulfilment of his present large engagements with the Aska concern.

From G. W. BOOTHBY, Esq., to GEORGE THORNHILL, Esq., dated Aska, 4th May 1858.

MY DEAR SIR,

I feel under the necessity of appealing to you in the following matter of very great moment to the interests of the establishments under my charge. In cases of this kind, I have always been in the habit of addressing private communication to the Collector of the District, but should you be of opinion that in this case the official form would be more desirable, I had at once restate officially what I have now to bring to your notice.

From the late Head of Police of this place a quantity of jewels were stolen about ten days ago, and the present Head of Police having been informed that if the robbery is not discovered he will lose his situation, has been using very extreme measures towards one of our people, who to say the least, may be very innocent. The man in question Sarthy Marnah by name was for 15 years employed in this factory, during a considerable portion of which time he was the Carpenter Maistry and always bore a very good character. Having accumulated some money he took to trading as one of our jaggery merchants, receiving from us, as being a trustworthy man, large advances, especially last year when he took Rupees 60,000 from the factory as an advance on jaggery, and just now when he is in the middle of completing this large engagement to us, he has been seized, thrown into prison and is threatened with flogging if he does not confess, a scaffolding for the purpose having been erected close to the Police Office. Now the principal

*Fort St. George, Judicial Consultation, 13th July 1858.*

witness on whose testimony this extreme measure has been resorted to, is actually a man to whom the said Sarthy Marnah advanced a portion of our money and from whom he has vainly endeavoured to get it back again, and there is merely this man's bare word against the long standing good character of the other. The only other witness is a lad whose uncle has since declared that the evidence first given by his nephew was *extorted by torture* and moreover it has been actually proved that this lad declared to have seen things take place in Aska when he was in Russelcondah. It appears that great enmity exists towards the man Sarthy Marnah owing to some suspicion of his having carried on an intrigue with the late Head of Police's wife, but however that may be, certainly his character and position and ample means render it most improbable that he should have subjected himself to the consequences of such an act as he is charged with but of course it is far from my object to attempt to stand in the way of the fullest investigation of any real causes of suspicion against this man, for apart even from other considerations it is manifestly to my interest if he really is a bad character that that fact should be placed beyond dispute, but I have great reason to fear that the man will not have even a fair investigation into whatever may seem suspicious against him by the Head of Police here, as several circumstances which I need not here enter into, wear much the aspect of a sort of conspiracy against Sarthy Marnah, and Captain Smith from the threats he ordered to be held out to him of *flogging if he did not confess*, would appear to have been informed that there exist some very strong evidence against him, I do trust therefore you will be induced to let such measures be taken in regard to this case as may bring it to as speedy a termination as possible.

The accused person is still in our debt about Rupees 30,000 so that his confinement is a really serious matter. If, of course, any substantial evidence is adduced against the man I would submit uncomplainingly to the misfortune and make the best arrangement the case would admit of, but it is precisely because I feel convinced that there is not a vestige of evidence of any worth against the man that I have now taken the liberty of addressing you on the subject.

From G. W. BOOTHBY, Esq., to GEORGE THORNHILL, Esq., dated Aska, 6th May 1858.

MY DEAR SIR,

I beg to thank you for your prompt attention to my letter of the 4th Instant, I shall furnish Captain Smith with a statement of all that has come to my knowledge in regard to the case in question.

If I have been misinformed as to the threats said to have been held out in order to extort confession, I must beg to say that the Head of Police, his Goomastah and Duffadar have been guilty of a very impudent misstatement, for they one and all declared that Captain Smith on his way through Aska to Russelcondah stopped at the Police Office and openly with a great number of people present, told the Head of Police that all the men in custody were to be flogged if they did not confess by the next day, and Captain Smith told the Head of Police at the same time that he would send him an order to carry out the punishment. Further it is certain that posts were erected close to Police Office for the purpose and at 1 o'clock on the afternoon of Sunday a large crowd was collected under the belief that the flogging was to take place at that hour. The brothers and other relatives of the man Sarthy Marnah, men who have worked in the factory for 15 to 16 years came and implored me to prevent the disgrace with which Sarthy Maharanah was threatened and certainly these men were in earnest and under the full conviction that the flogging would take place: the Head of Police positively stating that he was in immediate expectation of an order to carry out what he had been told to threaten.

I am sorry to trouble you when I am well assured you have so very much on your hands, but I wished to exculpate myself from its being supposed that I would have made this statement without very sure grounds.

From Captain C. SMITH, Assistant Agent; to G. W. BOOTHBY, Esq., Aska, dated Russelcondah, 20th May 1858, No. 32.

SIR,

With reference to your official letter to myself dated the 6th of May, also private communications dated 4th and 6th of May to the Principal Assistant in charge, I have the honor to request you will be good enough to state whether the threat of torture and flogging the Head of Police,

*Fort St. George, Judicial Consultation, 13th July 1858.*

his Goomastah and Duffadar have represented to have been authorized by myself was intimated to you in person by the Head of Police, and if so in what language, and through whose interpretation the circumstance was brought to your notice. I consider this a serious charge against the Police authorities, therefore it is necessary that I should be made acquainted with full particulars. I think it right that I should inform you that the Head of Police complained to me of your having attempted to intimidate him in the discharge of his Official duties regarding Saradhima-haranah on whom suspicion rested and this took place as I stopped at the Police Office on my way to Russelcondah, I certainly asked him whether he was acquainted with his duty, and if so, that he should not allow any one to frighten him and directed him to make every enquiry into the case, and forward me a full report, consequently I am at a loss to understand how the Head of Police could have made such a false statement to you. I have had so much to occupy my attention since my return from Chetterpore I beg you will excuse my not having replied to your letter by an earlier date.

(True Copies.)

(Signed) T. J. KNOX,  
*Acting Agent.*

No. 45. From Captain CHARLES SMITH, Assistant to the Agent to the Governor of Fort St. George in Ganjam; to T. PYCROFT, Esq., Chief Secretary to Government, Fort St. George, dated Russelcondah, 14th June 1858, No. 50.

SIR,

1. I have the honor to forward a copy of a letter received from the Acting Agent in Ganjam, also a copy of my reply, I beg most respectfully to state that, I would not have adopted this unusual course, did I not conceive judging from the tenor of Mr. T. J. Knox's letter that my official character has been aspersed, and that my conduct has been most unjustly brought to the notice of Government in an unfavorable point of view.

2. I have thus acted to avoid delay and in anticipation of my letter reaching Government through the usual channel.

From T. J. KNOX, Esq., Acting Agent; to Captain C. SMITH, Assistant Agent, Russelcondah, dated Chetterpore, 3rd June 1858, No. 156.

SIR,

I have the honor to request you will forward for my perusal all proceedings you have held as well as copies of your correspondence with Mr. Boothby regarding an alledged threat by the Head of Police of Aska to flog a man with a view to extort a confession.

2. You will also state distinctly whether it is possible any words you spoke to the Head of Police could have been so misunderstood by him as to warrant his assertion to Mr. Boothby that he was acting under your verbal orders, and only awaited your written order. I request also that the case about which this occurred, may be concluded, and that the record may accompany your report of it to my office.

From Captain C. SMITH, Assistant Agent; to T. J. KNOX, Esq., Acting Agent to the Governor of Fort St. George in Ganjam, dated Russelcondah, 7th June 1858, No. 45.

SIR,

With reference to your letter No. 156, dated the 3rd Instant, I have the honor to forward the official\* correspondence that took place between Mr. Boothby and myself. The proceedings to which you allude were forwarded to your Court on the 2nd Instant. The case about which this occurred is under investigation, and will be forwarded with my report when concluded.

From T. J. KNOX, Esq., Acting Agent; to Captain C. SMITH, Assistant Agent, Russelcondah, dated Chetterpore, 9th June 1858, No. 173.

SIR,

I have the honor to acknowledge your letter dated 7th Instant.

*Fort St. George, Judicial Consultation, 13th July 1858.*

2. I regret to inform you I have considered it my duty to report the matter to Government, for I consider an European Magistrate who threatens torture is as bad as a Native who perpetrates it, and from your silence as to what you did say to the Head of Police, I conclude you felt you had used intemperate language.

3. I request the case about which this arose may at once be concluded and sent me.

From Captain C. SMITH, Assistant Agent; to T. J. KNOX, Esq., Acting Agent to the Governor of Fort St. George in Ganjam, dated Russelcondah, 14th June 1858, No. 49.

SIR,

I have the honor to acknowledge the receipt of your letter No. 173, under date 9th Instant, and in reply beg respectfully to state, that I consider you have taken an erroneous view of the case in question. I beg most emphatically to deny having ever "threatened torture" nor did I ever use "intemperate language" towards the Head of Police in this or any other case.

2. The Head of Police having in his deposition taken before me, denied having received any orders of the nature alluded to in your letter now under reply, and as the decision appended to the proceedings held on the occasion, I recorded my conviction on the evidence adduced that there was not the slightest doubt, but that the Head of Police made a gross misrepresentation, but as his previous character during the two years he was under my immediate control was unexceptionable, but still considering the charge against him of too grave a nature to be allowed to pass unpunished, I fined him 5 Rupees, and at the same time admonished him, I consequently came to the conclusion that there was no actual necessity for replying to the 2nd para. of your letter No. 156, dated 3rd June 1858, more particularly as the proceedings had been duly forwarded to you.

3. As you considered it necessary to bring my conduct in a disparaging light to notice, I hope I may be permitted with all due respect to remark that I conceive that, in common courtesy, I was entitled to receive a copy of the letter you have considered proper to submit to Government.

4. During the period of five years I have had the honor of discharging Magisterial duties, I never until now have had a letter addressed to me of the nature of the one now under reply, nor one containing such ungrounded charges, I therefore request that your letter, this my reply, and the proceedings which were forwarded to you on the 2nd Instant, may be submitted to Government, as I cannot, as an Officer, and a Gentleman, allow myself to be subjected to such unjust charges, and uncalled for animadversions, having now no other course but to appeal to Government as you state that you have reported the case.

5. Finally I beg to state that, I have forwarded direct to Government, copies of your letter and of mine in reply. This course I have considered absolutely necessary to avoid any delay occurring in making Government acquainted with the true merits of the case.

6. Enclosed is a copy of my letter to the Chief Secretary to Government.

(True Copies.)

(Signed) C. SMITH, Captain,  
*Assistant Agent.*

No. 46. ORDER THEREON, No. 938; dated 9th July 1858.

The Assistant Agent Captain Smith, having in his letter to the Acting Agent of the 14th Ultimo, copy of which was transmitted to Government on the same date, most emphatically denied having given the instructions ascribed to him by the Aska Head of Police, the Government accept that denial, and have therefore no orders to pass on the reference made to them by Mr. T. J. Knox, under date the 10th Ultimo.

2. They must however observe that the Acting Agent before applying to Government in the matter, should have obtained from his Assistant a distinct and categorical answer to the charge made against him. If this had been done, there would have been no occasion for the present reference to Government.

Fort St. George, Judicial Consultation, 13th July 1858.

3. At the same time the Government would remark that Captain Smith should have been more explicit in his reply of the 7th Ultimo, to the Acting Agent's letter of the 3rd Idem, and should have given a clear answer to the question asked him in para. 2.

4. There seems further no reason to doubt that the Head of Police did misunderstand Captain Smith. That Officer should be cautioned to be most precise and distinct in all verbal directions that he may give to his Native Subordinates, and to ascertain by questioning them, or by causing them to repeat his instructions whether in point of fact they do or do not really understand his orders.

(Signed) T. PYCROFT,  
Chief Secretary.

-4-

*Judicial Department*  
*11th July 1858*  
*From the Acting Agent to the Chief Secretary*  
*Dated 10th June 1858*  
*For Orders*

*There is not a particle of proof  
beyond the assertion of the Head  
Police at hoka - but Capt. S. gave  
the instructions in question - & yet he  
is unable to be conclusive - but this  
was done - the Capt. S. positively  
denies it - this is jumping down  
chairs but unnecessary.  
Reference seems unnecessary to 7.0.*

*Emphatically denied  
having given the instructions  
ascribed to him by the  
Asst. Head of Police -  
the Govt accept that  
denial, and have there-  
fore no orders to pass  
on*

The conduct of the Head of  
Police deserves more serious  
notice than Capt. L. has  
been led to take of it.

He has seemed to say the more  
I added to him the more  
certain his moderate European  
superior. It does not appear  
whether or not he has dis-  
missed the matter or only means  
to do so if approved.

With should be told to act  
as he deems right & should  
tell

Capt. L. has not said his  
notice of the conduct of the H. of P.  
was inadequate. Well  
I suppose the reference has  
been made, under the power of  
instructions issued by Govt. in re-  
sponse to the fact cases  
will be

Emphatically denied  
having given the instructions  
ascribed to him by the  
Asst. Head of Police.  
The Govt. accept that  
denial, and have there-  
fore no orders to pass  
on

Indian Dept.

No 938

Extract from the Minutes of Consultation  
Dated 9<sup>th</sup> July 1858.

Read the following letter

From the Acting Agent to the  
Governor of Fort St George } Here enter 10<sup>th</sup> June 58.  
Benjamin

From Captain Smith, Asst. ——— " ——— " ——— "  
to ———

W. M.

The Assistant  
Agent Captain Smith,  
having in his letter to the  
Acting Agent of the 14<sup>th</sup>  
ultimo, copy of which  
was transmitted to Govt  
on the same date most  
emphatically denied  
having given the instructions  
ascribed to him by the  
Asst. Head of Police.  
the Govt accept that  
denial, and have there-  
fore no orders to pass  
on

in the reference made to  
them by Mr J. J. Knox  
under date the 10th ult.

2 They must how-  
ever observe that the Acting  
Agent before applying to  
Government in the matter,  
should have obtained  
from his assistant a dis-  
tinct and categorical  
answer to the charge  
made against him -  
If this had been done,  
there would have been  
no occasion for the  
present reference to Govt.

3. At the same time  
the Government would  
remark that Captain  
Smith should have  
been more explicit in  
his reply of the 7th ult.  
to the Acting Agent's letter  
of the 3rd idem, and should  
have given a clear answer  
to

to the question asked  
him in para 2.

4 There seems for the  
no reason to doubt that  
the Head of Police did  
misunderstand Captain  
Smith. That officer  
should be <sup>cautioned to be</sup> most precise  
and distinct in all  
verbal directions that  
he may give to his native  
Subordinates - and ~~that~~<sup>to</sup>  
ascertain by questioning  
them, or by causing them  
to repeat his instructions  
whether in print or face  
they do or do not really  
understand his orders.

JP

Copy to the Actg Agent in 3 Dispd. 9th M.S.  
Glasgow.

2840-5

H. M. Maceck  
Glasgow

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J. 18. 1/2. 1/2. 1/2. 1/2. 1/2.

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Abstract of the

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