M.R.O. 1—39,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1617 Press ~~Mis~~

69-75

Dated 28-11-1859

Not to be folded or roughly handled

No. 69. Read the following letter from SIR A. GRANT, Bart., Officiating Inspector of Schools, Northern Division; to T. PYCROFT, Esq., Chief Secretary to Government, &c., &c., Fort Saint George, dated Waltair, 6th November 1859.

I have just received an intimation from Mr. G. Thornhill, Acting Collector and Agent, &c., at Vizagapatam, that he has "forwarded to the Madras Government," the correspondence which has passed between myself and him, with reference to the present mode in which Captain Leycester's murderer is confined.

2. In taking this step, Mr. Thornhill no doubt wishes to secure the approbation of Government, for his conduct as a Magistrate. But in excusing himself, he to a certain extent accuses me, for he must wish to imply either that I had no right to make suggestions to him, with regard to a matter for which he was responsible; or that my manner of doing so was offensive; or that my suggestions were needless, Mr. Thornhill's execution of the important duties intrusted to him being irreproachable. To these different assumptions, I must in justice to myself, and also for public utility, beg to be allowed to make severally a brief reply.

3. In claiming the right to call the attention of Mr. Thornhill, or of any other functionary, to anything in their department, which may appear to me to be going seriously wrong, I only claim a right which belongs to every member of the public, and which is indeed rather a duty than a right.

Am I to observe that a bridge is unsafe and not give warning? Am I to see frauds committed and not expose them? Am I to see a prisoner insecurely guarded and not give notice to those who are responsible for his keeping?

Or are Civil Magistrates supposed to be omniscient by virtue of their office? I could not know that Mr. Thornhill was aware of the circumstance, that Murád Khán was every day allowed to go unshackled in the open air, in a place where the ground is familiar to himself and is peculiarly favorable for escape. I could not know that Mr. Thornhill was aware of the facilities which were afforded to the prisoner for committing suicide by his being daily allowed to cook his own dinner.

Indeed I do not now know whether Mr. Thornhill was or was not aware of these circumstances, for to these which were the most important points in my letter Mr. Thornhill did not condescend to reply. He merely said that he was aware that "Murád Khán" was "still confined in the late Captain Leycester's house."

I therefore submit from the above considerations that I was not only entitled but was in duty bound to call Mr. Thornhill's attention to the mode and circumstances of his prisoner's confinement.

4. But perhaps Mr. Thornhill may urge that the manner of my communication was offensive to a degree which deprived me of any claim to a courteous reply and to an assurance either that my anxieties (and those of other members of the public as represented by me) were groundless, or that the grounds of them would be removed.

This point, as my letter has been laid before the Government, I must leave the Government to decide. I submit that I could hardly have stated what I had to state in other terms without a sacrifice of distinctness. I alluded as delicately as possible to my impression that there was "a want of Magisteral discipline and of the proper forms" in the mode in which the prisoner was confined. The justice of this impression and of the language in which it was clothed I hope to substantiate below. At present I will merely observe that it was competent for Mr. Thornhill in answering my letter to have protested against that particular phrase, but at the same time to have replied in some way to my anxieties regarding the safe custody of the prisoner. Mr. Thornhill, however, elected to return what was virtually no answer to my communication.

On the mode of my remonstrance I have one thing further to add. I felt that any mere oral mention of the point I had to urge would be out of place and useless, because twice already the subject had *generally* been brought to Mr. Thornhill's notice. Three weeks ago, when the prisoner and his two accomplices were confined together under a guard of Sepoys at Captain Leycester's house, Major Strange wrote to Mr. Thornhill to represent that several persons were

of opinion that the prisoners should be separated and not left in charge of a *native* (and therefore probably *sympathetic*) guard. To which Mr. Thornhill replied to the effect that he did not see any grounds for anxiety, but that he would ask Captain Flint to direct the guard to forbid all communication between the prisoners. At a later period the accomplices in the murder were very properly (though too late) removed to separate confinement in the gaol. Murád Khán was still left in a room in Captain Leycester's house, open to the verandah with cliffs and ravines within a stone's throw, under the same guard of Native soldiers; and as one of these soldiers said in my presence was allowed *for two hours* in the middle of each day to be outside without hand-cuffs,* cooking his dinner. Of this latter fact I have no reason to know whether Mr. Thornhill, was or was not cognizant.

But the subject of the place of Murád Khán's confinement was renewed in conversation by myself, on the morning when the confession of the murder had taken place. Mr. Thornhill, then said that he "thought of removing Murád Khán to the gaol."

When I paid my last visit to Captain Leycester's house I had no expectation of finding the prisoner still kept there. When I found this to be the case, I determined to write to Mr. Thornhill, upon the matter. My first object was to see better arangements carried out. But I also determined beforehand that if Mr. Thornhill, should continue refusing to listen to all suggestions and remonstrances, I would appeal to public opinion whether as a Magistrate he was fulfilling his duty.

5 I now come to the third assumption on which Mr. Thornhill, may take his stand, namely, that his Magisterial duties were efficiently performed: that my suggestions with regard to the security of the prisoner were needless: and that my complaint of a "want of Magisterial discipline and of the proper forms" was unjust and unfounded.

With regard to the security of the prisoner I leave it to the Government, to decide whether a prisoner guarded as I have described is to be considered secure or insecure.

With regard to Magisterial forms, I submit that they are deficient when a prisoner under the civil authority has appearently not a single police peon or civil gaoler placed to watch over him.

I regret to state that the laxity of the present arrangements has appeared to me to be only in keeping with a certain laxity and apathy which have in the eyes of thinking people characterized the conduct of the entire investigation subsequent upon Captain Leycester's murder, as far as the local authorities of this place are concerned, and I may add since Mr. Reade's departure.

I will not lay stress upon the fact that the local authorities failed to convict the murderer, while a gentleman sent from Madras succeeded in a short time in bringing the crime home to him.

But I lay great stress on this, that the local authorities never satisfied the public here that they were taking proper steps to obtain conviction. I complain

First.—That they most unwisely left the prisoners together and so enabled them to confirm each other in perjury.

Secondly.—That they abandoned the examination of witnesses when they ought to in the hope, if even doubtful, of obtaining a clue to the truth.

Thirdly.—That they refused to listen to suggestions and so left several important points of evidence untouched, viz., with regard to Captain Leycester's missing property; with regard to the position of his dog on the night of the murder; and with regard to Murád Khán's wife.

Fourthly.—That one of the Magistrates most improperly gave it publicly as his opinion (which opinion was twice in my hearing repeated before several natives) that it would not be possible to convict the prisoner, and

* It must not be supposed that at these times the prisoner wears *leg-irons*. Such is not the case.

Proceedings of the Madras Government, Judicial Department, for the month of November 1859.

Fifthly.—I must in general terms complain and regret that even in such tragical and solemn circumstances, petty jealousies and petty local feuds appear to me to have had a stronger hold on the minds of persons placed in authority than the desire to vindicate the sacredness of European life.

I came to this country bearing an introduction from Lord Wrottesley to the unfortunate Captain Leycester. From the latter I had received a kind invitation, and I was much depressed by hearing of his dreadful end. But my depression turned into indignation at witnessing what appeared to me the apathy or weakness of the local Magistracy.

I have now, Sir, to apologize for the long letter which I have inflicted upon you. My addressing the Government through you has not been of my seeking. As Mr. Thornhill refused to listen to my suggestions, I felt it a matter fit to be referred to public opinion in the newspapers, the days having now gone by when Civil Officers were above being amenable to public opinion. I sent my correspondence with Mr. Thornhill upon one isolated point to the newspapers without adding any comment. But since Mr. Thornhill has "appealed unto Cæsar, unto Cæsar he shall go."

No. 70. MINUTE by the Honorable the PRESIDENT, dated 16th November 1859.

Sir A. Grant is not deserving of blame for feeling and thinking strongly on this occasion and for expressing himself openly. The heart of England has within the memory of living men been repeatedly stirred to the core by similar cases of domestic murder, and our position in this country makes the treatment of such cases a matter even of more vital interest than it is at home. The circumstance that a man who is believed to be an atrocious murderer was confined in a private house was owing to the unsafe state of the Jail. The condition of the Jails in this Presidency—without the means of classification, insecure, and often unwholesome—is discreditable to the British Administration. I earnestly hope that the time is not far distant when a portion of the vast sums expended on the various branches of our Military system will be applied to the true ends of government. I refrain from proposing a measure of Jail Reform only in consequence of the present unsatisfactory state of the finances.

Sir A. Grant has now adopted what, on receiving Mr. Thornhill's letter, we informed him was the right course—that is, he has addressed his representations to the Government. Those representations include some topics, besides the one which formed the subject of the correspondence with Mr. Thornhill—but there is nothing, in my opinion, which calls for the interference of the Government. Painful divisions have existed in the European society of Vizagapatam and the neighbouring Stations for several years past, and I should be sorry if the excitement were prolonged by a continuance of this discussion.

(Signed) C. E. TREVELYAN.

No. 71. MINUTE by the Honorable WALTER ELLIOT, dated November 1859.

There appears to have been some laxity on the part of the Magistrate and considerable dissatisfaction in the public generally at the manner in which the investigation of this crime has been conducted. But the ends of justice have been accomplished by subsequent measures, and I concur with the President that it is unnecessary to stir the matter further.

(Signed) WALTER ELLIOT.

No. 72. MINUTE by the Honorable W. A. MOREHEAD, dated 18th November 1859.

I am of opinion that the Magistrate should submit a full explanation to the Government of the reasons why the Prisoner was kept at the late Captain Leycester's house. The proceeding is one of the most unusual description, and one for which I can imagine no necessity. It is incredible that the unsafe state of the Jail was the cause. If the Jail were unsafe, other places more fitting than the late Captain Leycester's house were surely to be found. The object of

Mr. Thornhill's representation to Government was not to complain of Sir A. Grant having written to him, on the subject of "Moorad Khan's" place of confinement, but in reference to Sir A. Grant's announcement, that he meant to appeal to the Press. As observed by the President, the Proceedings of Government, will point out to Sir A. Grant that his proper course was to have in the first instance addressed Government.

(Signed) W. A. MOREHEAD.

No. 73. MINUTE by His Excellency the COMMANDER-IN-CHIEF, dated November 1859.

I concur with the Honorable Mr. Morehead.

(Signed) PAT. GRANT.

No. 74. MINUTE by the Honorable the PRESIDENT, dated 25th November 1859.

I acquiesce in Mr. Morehead's opinion.

(Signed) C. E. TREVELYAN.

No. 75. ORDER THEREON, 28th November 1859, No. 1617.

Resolved that an extract from Sir A. Grant's letter be forwarded to Mr. Thornhill, Acting Magistrate of Vizagapatam, and that he be directed to furnish full explanation of the arrangements made by him for the custody of Moorad Khan and the other individuals suspected of the murder of the late Captain Leycester, and for preventing communication between them, and in particular to state why Moorad Khan was confined in Captain Leycester's house and not in the station Jail or other place of security.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. S. T. Augustin.

69 @ 75

Judicial 1859 Despatch

From
Sir C. Grant, Kt.
Officiating Secretary to Government
Fort St. George (Revenue)

To
The Secretary to Government
Fort St. George (Judicial)

Dated Ootacamund 9th November 1859.

Rec'd 18th

No 1617

Sir

I have the honor to forward for the consideration of the Right Honorable the Governor in Council, a letter from Mr. Thornhill, Acting Magistrate of Vizagapatam, dated 7th instant, with its enclosure, and to request that I may be favored with the instructions of Government thereon.

Sir A. Grant is not deserving of blame for feeling and thinking strongly on this occasion and for expressing himself openly. The heart of England has within the memory of living men been repeatedly stirred to the core by similar cases of domestic murder, and our position in this country makes the treatment of such cases a matter even of more vital interest than it is at home. The circumstance that a man who is believed to be an atrocious murderer was confined in a private house was owing to the unsafe state of the Jail. The condition of the Jails in this Presidency - without the means of classification, insecure, and often unwholesome - is discreditable to the British Administration. I earnestly hope that the time is not far distant when a portion of the vast sums expended on the various branches of our Military

The object of Mr Morehead's representation to Govt was not to secure the opinion of his A.G. – but to have on the record of "Mooneah Khan's" Case the Govt sentiment – but in reference to his A.G.'s opinion Mr Morehead – that he meant to appeal to Government – that he meant to appeal to the Queen – as observed by the President – the proceedings of Govt – will point out to his A.G. – that this Judicial course was to have in the first instance addressed Govt –

18

I concur with the Hon'ble Mr Morehead

[signature]

I acquiesce in Mr Morehead's opinion

25 Nov 59

Col Thuillier
Walter Elliot

Those representations include Borneo Proper & Labuan

The Govt of the Netherlands will be addressed

Thus appeared before Capt. & Col. Low the Hon'ble Mr Morehead

Capt of Engineers
Col of Engineers
Lieut Col of Engineers
Major of Engineers

Proceedings of the Madras Govt. Judl. Depts.

Read the following letter

From Lt. A. Grant Asst.
Offg. Supt. of Police Northern Division —
6 Nov. 1859 —

Minute by the Hon. the President. 16th November 1859
Minute by the Hon. W. Elliot — — —
Minute by the Hon. W. Morehead — 18th November —
Minute by H.E. the Comr. in Chief. — — —
Minute by the Hon. the President — 25th — Nov. —

Order thereon 28 November 1859. No 1617.

Resolved that Lt. A. Grant be informed that he is directed to furnish full explanation of the arrangements made by him for the custody of Moonoo Khan and the other individuals suspected

Pl. from Narsapoor 4 days — to — Bought by conveying Ra Khan to the Jail —

This Return to me is all that I need or desire

Wm Elliot

Lt. A. Grant be informed that he is directed to furnish full explanation of the arrangements made by him for the custody of Moonoo Khan and the other individuals suspected

of the Murder of the
late Capt: Segersten,
and in particular
to state why Mr Read
there was confined
in Capt Segersten's
House and not in the
Station Jail or other
place of security -

Act. Maj. of Vols } 2
Sub A Genl Barb's } Decbr 29th

Copies of
Orders

not for preventing communication
between them,

Prov: of Govt 30 Nov.

Judicial 1859 Departt

No. 1617.

Proceedings of Govt.

Dated 28th November 1859.

F. No. 2053.

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