M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1348	Press Mis.
116-117		
Dated	17-10-1860.	

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Not to be folded or roughly handled

1348

No. 116. Read the following letter from V. H. LEVINGE, Esq., Magistrate of Madura, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Arpukottai, 28th September 1860, No 265.

At the request of the Acting Head Assistant Magistrate, I have the honor to forward a letter* addressed to me by him on the subject of the enclosed proceedings† of the Sessions Court of Madura, with a view to Government, passing such Orders thereon, as may be requisite.

*27*th September* 1860, No. 43.
†22*nd September* 1860.
24*th* *do.*

2. It appears that an individual personally complained to Mr. Thomas, the Acting Head Assistant Magistrate, that (a man calling himself) the Combay Zemindar (but who is really only the grandson of the ex-Zemindar of Combay) had with others committed an assault on him and rescued pounded cattle.

3. Mr. Thomas took a deposition from the man, investigated the case and disposed of it, by sentencing the self styled Zemindar to imprisonment and fine under the extended powers given to Magistrates, under Section 54, Act VII of 1843; at the same time forwarding to the Court the regular A report of the case, which, I presume, the Court must have received, as it has not called for it; also that the perusal of it satisfied the Court, that the case had been properly disposed of, as no remarks have been made upon it.

4. The prisoner was also furnished with a copy of the decision; some days after his incarceration, this self styled Zemindar, by his Vakeel Mr. Fischer, presented a petition to the Sessions Court purporting to be an appeal against the Acting Head Assistant Magistrate's decision, but which is in reality a grossly false libel on Mr. Thomas.

5. The Court not having furnished either Mr. Thomas or myself with a copy of the appeal petition, its contents can only be judged from the Extracts, given from it in the Court's proceedings, by which it will be perceived that the grounds of appeal are based on assertions, which, I am sure, the Government will at once reject as incredible and impossible.

6. Mr. Thomas' letter and the record of the case, shewing the questions put by the appellant to the witnesses, containing also the deposition signed by the appellant, shew that the statements in the petition are false.

7. Mr. Thomas and his Kachari are with me at present; his Munshees indignantly scout the charges and can satisfactorily shew that the line of defence set up is utterly false.

8. The Session Judge, before proceeding with the appeal, called upon the Vakeel to verify his charges, and on the Vakeel's assertion that he believed them to be true, and on his saying he had witnesses to prove them, he, the Session Judge, without really in any way verifying them, and without having the record before him, set aside the Acting Head Assistant Magistrate's decision, placed the prisoner in the nominal custody of the Nazir, and reported Mr. Thomas to the higher authorities.

9. I am not exactly aware what rules are laid down for the guidance of the Sessions Court on receiving such appeals, but believe the course hitherto pursued in all the Courts has been first to call for the record and if it seemed in any way deficient, then to set aside the decision reporting the officer, if it appears necessary.

10. I am astonished, at the course pursued by the Sessions Court in this appeal; if such is to be taken as a precedent, it must lead to an entire loss of confidence in the Magistracy.

11. The gross contempt shewn to the Court by Mr. Fischer will speedily be followed by all the Vakeels in the Country, as the surest way of procuring the release of convicted persons, and the Courts of the Magistrates must fall into utter contempt.

12. I hope that Government will mark its sense of Mr. Fischer's conduct in this case by ordering that a Vakeel who could treat the Court and Magistracy with such gross contempt, be precluded from practising in any of the Courts.

13. A translation of the case tried before Mr. Thomas is ready and will be forwarded if required.

From H. S. THOMAS, Esq., Acting Head Assistant Magistrate, Periakalum, to V. H. LEVINGE, Esq., Magistrate of Madura, dated 27th September 1860, No. 43.

I have the honor to acknowledge the receipt of copies of two extracts from the proceedings of the Session Court of Madura, dated the 22nd and 24th of September 1860, respectively, and in obedience to the latter received yesterday to enclose the record in case No. 15.

2. I am surprised both at the calumnies of the Vakeel and at the credence given and course pursued by the Session Judge.

3. The charges brought are the merest fabrications of a paid Vakeel not even in the district at the time of the assault and trial. The evidence against the prisoner on whose account the appeal is made is so strong that it appears the Vakeel has no other resource than this novel mode of defence.

4. Such of these charges as the Court has thought well to capitulate I will notice in their order, and a reference to the record will suffice to shew their utter unfoundedness.

I. "The Acting Head Assistant Magistrate not permitting the petitioner to make a defence, and when he asked to do so, threatening to tie him up and flog him and put him in irons." The defence recorded at length with the Petitioner's signature is enclosed. You will also observe in the record the several cross-questions put to the witnesses by the petitioner.

II. "Confining and dismissing the Village authorities because they would not depose as he, the Acting Head Assistant Magistrate, wanted." The real reason for the punishment of these Village authorities will be found in my decision based on the record.

III. "Keeping the petitioner without food or allowing him to answer the calls of nature," this and the charge of "himself tutoring the witnesses what to depose to" are statements the extravagant improbability of which lies on the very face of them.

IV. "Dismissing a Daloyet on suspicion that he allowed petitioner to have food." Against this Daloyet there was no mere "suspicion" but a clearly proved case of neglect of duty and the reasons for his dismissal will be found in depositions taken and decisions passed in case No. 18.

V. "The Head Assistant returned the *original complaint* to be corrected in order that he "might have jurisdiction in the matter." There was no other original complaint, but that given before me on solemn affirmation, and that is now forwarded with the "*entire* record" for which the Court significantly asks.

VI. "Also that the Head Assistant Magistrate suppressed the evidence of witnesses favorable to Petitioner." None such were ever adduced.

5. On the 7th September 1860, I forwarded to the Session Judge a full A form report of the case. By his silence he virtually confirmed it, for had he any objection to make, he would under Clause 5 of C. O. of the Foujdaree Udalut, dated 18th January 1857, and C. O. Foujdaree Udalut, dated 2nd September 1853, have made it "immediately." Thirteen days later on the 20th September 1860, the Session Judge receives a petition ostensibly of appeal, but instead of going into the decision appealed against, receives "very serious charges against the conduct of "the Acting Head Assistant Magistrate," to the verification of which that Court at first proposed to itself to proceed, but in the latter extract has submitted to higher authority. On the 24th September 1860, the Court being in possession of only the self-same A report on which it had already virtually confirmed my decision has now on the 24th of September 1860, without ever seeing or first sending for the record, on nothing more than the ipse dixit of an interested Vakeel "suspended" that decision, releasing the prisoner from jail, and this too, without noticing any thing either in the A report or record to lend even a show of probability to these charges, whereas had a perusal been given, in the natural course of appeal, to the record of the case, that record alone would, as above explained, have shewn these charges to be clearly false and nothing more than a gross contempt of Court.

6. A paid Vakeel "alleges his belief in the truth of the charges" lodged against the Magistrate that convicted his client and that allegation of belief is considered sufficient in itself

Proceedings of the Madras Government, Judicial Department,
17th October 1860.

to render unnecessary any examination of the record, sufficient at once to stay the course of justice, and outweigh the report and decision of a Government Officer sworn to "impartiality and integrity." If such a principle is admitted the signature of a Magistrate at the foot of a deposition is worth simply nothing and his decree is liable to be immediately reversed and his official character impugned by any criminal or paid Vakeel who has effrontery equal to "alleging his belief" in fabrications sufficiently gross.

7. It will not escape your notice that one object of these charges is an attempt to intimidate me from the impartial discharge of my duties.

8. I have the honor to request you will be good enough to lay this explanation with the Proceedings of the Court before the Government, for whose information as well as yours I enclose a copy with translation of the record in case No. 15 and also copies in case No. 18 and a Revenue case in that they have reference to the dismissed Daloyet.

9. At the same time I fear this explanation may not be full in that to this moment I do not know how many or what the exact charges laid against me are. I only know so much of such of them as the Session Judge has thought well to capitulate. No copy of the appeal petition has been sent to me. I am also kept in ignorance of what manner of verifying statement has been received and what witnesses cited against me.

10. The character of the Vakeel who has framed these charges will be found among the records of the Magistracy, Sudr Court, Revenue Board, Government and the Honorable Court of Directors.

Extract from the Proceedings of the Session Court of Madura, under date the 22nd September 1860.

Read M. P. No. 99, 1860, presented 20th September 1860, by G. F. Fischer, Esq., Vakeel, on behalf of the Combay Zemindar Teroomala Jeka Appachee Gownden, appealing against the decision of the Acting Head Assistant Magistrate, in No. 15 of 1860, sentencing the Petitioner to 3 months' imprisonment, and a fine of 150 Rupees, or 3 months further imprisonment for an aggravated assault, and rescuing impounded cattle.

Read Decision appealed from.

The Court observes, that the Appeal Petition contains very serious charges against the conduct of the Acting Head Assistant Magistrate, such as, not permitting the Petitioner to make a defence, and when he asked to do so, threatening to tie him up, and flog him, and put him in irons; confining and dismissing the village authorities, because they would not depose, as he, the Acting Head Assistant Magistrate, wanted. Keeping Petitioner without food, or allowing him to answer the calls of nature; and dismissing a Daloyet on suspicion, that he allowed Petitioner to have food—further that the Head Assistant returned the *original complaint* to be corrected, in order that he might have jurisdiction in the matter; also that the Head Assistant Magistrate suppressed the evidence of witnesses favorable to Petitioner, and that the Head Assistant Magistrate himself, tutored the witnesses what to depose to.

Such charges the Court cannot permit to pass unnoticed, and it considers that the ends of justice demand, that before taking official cognizance of them, they should be verified—and it therefore resolves, to call upon Mr. Fischer to verify them, before the Court, or at once recall them as unfounded; for which purpose a notice will be served on Mr. Fischer who will be furnished with a copy of these Proceedings.

Copy also to be furnished to the Magistrate, for transmission to the Acting Head Assistant Magistrate, Mr. Thomas.

(True Extract.)

(Signed) R. R. COTTON,
Session Judge.

To the Magistrate of Madura.

Proceedings of the Madras Government Judicial Department, 17th October 1860.

Extract from the Proceedings of the Session Court of Madura, dated 24th September 1860.

Read again M. P. No. 99, 1860, presented by G. F. Fischer, Esq., on behalf of the Combay Zemindar, appealing against the decision of the Acting Head Assistant Magistrate in No. 15, and bringing certain charges against the Acting Head Assistant Magistrate, in his conduct of the case.

(Here enter Proceedings of the Session Court, under date 22nd instant.)

In pursuance with the notice served, on Mr. G. F. Fisher, to verify or withdraw the charges against the Acting Head Assistant Magistrate, Mr. Fischer appeared before the Court, and not only alleged his belief in the truth of the charges made, but has to each charge given in the names of witnesses, by whom he is prepared, he states, to prove them.

Under these circumstances, it only remains for the Court, to report the circumstances to higher authority, for such notice as it may consider called for.

As regards the case of assault and rescuing pounded cattle, out of which the above charges have arisen, and against the Acting Head Assistant Magistrate's decision, in which appeal has been made, the Court resolves to call upon the Magistrate to transmit the entire record in the case, and to direct, that pending the disposal of this appeal, the Acting Head Assistant Magistrate's sentence be suspended, and the Combay Zemindar, placed under the custody of the Session Court Nazir.

(True Extract.)

(Signed) R. R. COTTON,
Session Judge.

To the Magistrate of Madura.

No. 117. ORDER THEREON, 17th October 1860, No. 1,348.

The Government observe that the case to which the above letter and its enclosures relate is now before the Sessions Judge. His proceedings in it are open to the review of the Court of Foujdaree Udalut, who can, if they deem such a course called for, report upon them to Government. But it would be premature for Government to pass any orders upon the matter in its present stage.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

recommending Mr. Fischer be precluded from practising in the Courts.

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As the case now stands, we, I presume, have nothing to do with it. The matter is before the Sessions Judge and will be disposed of by him as he deems fit. We may, however, be asked hereafter, the Court of Foujdaree Udalut, if they deem such a course called for, will be pleased to

Judicial 1860 Dept
1860 Pros 17th Oct.

No 1348.

case to Excel

-It would be premature for Govt to do anything before the F. M. has had the case under its review.

From
The Magistrate
of Madura

To
The Chief Secy.
to Government
Fort Saint George

Dated 28th September
1860

Recd 4th Oct. —

Enclosures 3

No 1632.

Reporting on the conduct of Mr. G. F. Fischer and the Sessions Judge in a case of appeal against the decision of the Asst Asst Magte the former in setting up serious charges against Mr. Thomas amounting to libel and the latter in acting upon such charges without verifying them and re-

Com
Rg.

Soar
Transmitted
13th October 1860

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Judicial Department.

Proceedings of the Madras Government.

Read the following letter from the Magistrate of Madura.

/Store rubbish 28th Sept. 1860 No. 215./

Order thereon 17th October 1860 No. 1348

The Government observe that the case to which the above letter and its enclosures relate is now before the Sessions Judge. His proceedings in it are open to the revision of the Court of Foujdaree Adalat who can, if they deem such a course called for, report upon them to Government. But it would be premature for Government to pass any orders upon the matter in its present stage.

To,
The Magistrate of Madura
" Foujdaree Adalat.

Dispd 19th