

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1856

Press
~~His.~~

94-95

Dated 14.11.1882

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
14th November 1862.*

No. 94. Read the following letter from D. F. CARMICHAEL, Esq., Acting Agent to the Governor, Vizagapatam; to the Honorable T. PYCROFF, Chief Secretary to Government, Fort Saint George, dated 24th October 1862, No. 569.

In their Order 3rd March last, No. 353, Judicial Department, Government forwarded a packet of papers relative to an alleged Military Pension fraud, to the Magistrate of Ganjam, who was desired to proceed against the parties according to law.

2. The Magistrate of Ganjam, on receipt thereof, replied by Telegram that "the fraud took place at Vizianagram," and asked permission to transfer the papers to the Agent in Vizagapatam; for which Government were pleased to grant authority in an Order dated 15th March last, No. 442.

3. I may mention that Mr. Forbes' solicitude about the jurisdiction would not have arisen, had he consulted Section 27 of the Code of Criminal Procedure. The offenders resided in Berhampore, and the pension alleged to have been fraudulently obtained was regularly drawn there; and for the purposes of jurisdiction, an offence is considered to have been committed where the act was done, or *where the consequence ensues*. However the case was transferred in due course, and on 9th May I transmitted it to the Acting Senior Assistant to the Agent, who resides at Vizianagram with these remarks.—"The offence imputed is stated to have taken place at Vizianagram, and the Acting Senior Assistant is requested to inquire into it, in view to its commitment before the Agent's Court;" and at the September Sessions, Captain Finlay did so commit it.

4. But, on looking through the record, I discovered that the alleged offence was committed at Waltair, or Vizagapatam, whereupon I lost no time in remitting the papers and parties and witnesses to Captain Finlay, with instructions "to commit the case to the Session Court of Chicacole, as Senior Assistant to the Magistrate, in time for the October Sessions."

5. I found Captain Finlay here when I joined, and I always supposed he was Acting Senior Assistant to the Magistrate as well as to the Governor's Agent. Certainly *he* should have known how he was gazetted. However it appears that he was gazetted to the Agency only; and this being within the knowledge of the Session Judge of Chicacole, that authority had no alternative but to return the entire record to me, the Magistrate of the District, together with the prisoners. The witnesses he did not give any instructions to, and they are no doubt gone to their homes at Berhampore and other places.

6. Thus the unfortunate case has changed hands thrice, and before summoning the witnesses again, I have been through the whole record very carefully, in reference to the very pointed remarks of the Session Judge of Chicacole, who would ultimately have the disposal of the case. Mr. Knox observes as follows:—"As much time has already been wasted in this matter, I would suggest, that, if it be recommitted in the present or any other form, there be fuller evidence forthcoming than at present is provided." Now the evidence has been wholly exhausted; not another shred is procurable anywhere, and as I am entirely of the opinion of the Session Judge that what there is constitutes no case against the prisoners, I propose that the prosecution instituted by Government be now withdrawn; which will obviate the necessity of my summoning witnesses whose testimony can only be to the effect already offered, and which I, as Magistrate, and Mr. Knox, as Session Judge, think insufficient.

7. What the witnesses deposed will be seen by a glance at the Senior Assistant's Calendar, which is enclosed.* The case is this. It appears that about the year 1842 a Military Committee assembled here to decide who were the heirs of certain Sepoys who had been lost on their voyage to China. The 1st prisoner swore and produced others to swear that she was the lawful wife of one of these Sepoys deceased, and that 2nd prisoner, whom she then carried in her arms, was born to his parents in wedlock. Whereupon a pension was passed to the child, which he has enjoyed ever since; till, a few months ago, when, on a quarrel between the mother and some relatives, also Sepoys, pensioned and effective, the latter informed the Adjutant General that the woman had been the late Private's concubine only.

* To be returned.

*Proceedings of the Madras Government, Judicial Department,
14th November 1862.*

8. These informants were promptly deprived of their own pensions in the Military Department, or dismissed the Army: and of course my opinion and that of the Session Judge, regarding the sufficiency of the present evidence, convey no imputation on that sentence; which the parties richly deserved, inasmuch as they averred that they had been cognizant of the alleged fraud all along. But I say that it is impossible to look for a conviction, and improper therefore to commit, in a case where the whole evidence consists of the negative testimony of two or three witnesses, that they had never heard of the woman's marriage. And, therefore, it is that I suggest that Government should retire from the prosecution. The packet of papers are re-transmitted as they may be required for re-perusal, before a decision is come to. The prisoners will remain in custody, pending a reply.

No. 95. ORDER THEREON, 14th November 1862, No. 1,856.

Under the circumstances stated in the foregoing letter, the Governor in Council concurs in the opinion of the Acting Agent that it is not desirable to proceed with the prosecution of the prisoner referred to.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the 11

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Here enter 24th October 1862 No. 569.

Order thereon. 14th Nov. 1862 No. 1856.

*Under the circumstances
the Governor in Council concurs
in the opinion of the Acting
Agent that it is not desirable
to proceed with the prosecution
of the prisoner referred to.*

by R

JP

Exd. T. McMootry,

*For the Agent to the Govt. in Bigay-palam with a Calendar & set 27
Military Department, with
Original Correspondence. set 27
Despatch 15th*

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1862. Department.

No. 1030

PROCEEDINGS OF GOVERNMENT

Dated 14th Dec 1862

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