M.R. O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 874 Press ~~Mis.~~

22-23

Dated 4.6.1862 ~~19~~

6/7

Not to be folded or roughly handled

874

Proceedings of the Madras Government, Judicial Department, 4th June 1862.

No. 22. Read the following letter from J. FRASER, Esq., Acting Magistrate of North Arcot; to J. D. SIM, Esq., Revenue and Judicial Secretary to Government, Fort Saint George, dated Palamaner, 12th May 1862, No. 23.

1. I have the honor to refer the following case for your consideration, with a request that you will lay the matter if necessary before the Sudder Court or the Chief Judge the Honorable W. A. Morehead, as the Puisne Judges are all I believe on the Neilgherries.

2. The Zemindar of Carvetinagger is complainant before me in a criminal* matters and claims to appear by Vakeel. It appears to me that this is prohibited by the Criminal Procedure Code, as a complainant must (vide Section 43) be sworn and (Section 194) is liable to be cross-examined by the accused. Throughout this Code the personal attendance only of the complainant seems to be contemplated. The Carvetinagger Zemindar demurs to appearing in person, and it is an important question to decide, whether he can claim such exemption.

* One of Criminal breach of trust under Section 409 of the Penal Code.

3. The exemption under Section 335 Criminal Procedure Code, refers to the attendance of Zemindars and men of rank as Jurors, a very different thing from their attendance as prosecutors in criminal cases, as proceedings in this case are stayed till an authoritative opinion is given on the question of personal appearance of complainant, I have the honor to request one as early as possible.

No. 23. ORDER THEREON, 4th June 1862, No. 874.

In this letter the Acting Magistrate of North Arcot enquires whether the Zemindar of Carvetnugger who is prosecutor in a charge of criminal breach of trust before the Acting Magistrate and claims the privilege of appearing by Vakeel, can be permitted to do so.

2. The Acting Magistrate is of opinion that as Section 43 of the Criminal Procedure Code prescribes that complainants and witnesses shall be examined on oath or affirmation, while Section 194 provides for their being cross-examined by the accused, the Code contemplates the personal attendance of the complainant.

3. The Governor in Council does not concur in this opinion. It appears to him that the Section quoted by Mr. Fraser merely prescribes the mode in which a complainant, when he appears in person, is to be examined, but does not interfere with the practice hitherto in force of permitting a complainant to appear by an Agent or Vakeel—whenever the Judge or Magistrate considers the evidence of the complainant to be requisite, it is competent to him to require the complainant to appear in person, and then his examination must be conducted in the manner prescribed by Section 43 of the Code.

4. The question however is one which should not have been referred for the Orders of the Government or of the Sudder Court, the proper course is for the Acting Magistrate to pass such orders as he may deem proper, leaving it to the party who may consider himself aggrieved thereby to appeal.

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

Exd. F. Cartledge

No 26

From

To

The Assistant
Magistrate's office
Palamcotta 12th May 1862

Sir

I have the honor to refer
the following case for your consid
=eration, with a request that you will
lay the matter if necessary before
the Sudder Court or the Chief Judge
the Honorable W. A. Morehead as
the Puisne Judges are all absent
on the Circuit.

2 The Complainant
=nagger is complainant before
me in a Criminal matter, and
claims to appear by Vakeel. It
appears to me that this jurisdic=
=tion

× one of Criminal
cases subject to trial
under section
409 of the Penal
Code.

=bited by the Criminal Procedure
Code as a Complainant must (vide
section 43) be sworn and (Section 194)
is liable to be cross-examined by
the accused. Throughout this code
the personal attendance only of the
Complainant seems to be contem=
=plated. The Canetinager Zamindar
demurs to appearing in person,
and it is an important question
to decide whether he can claim
such exemption.

3 The exemption under
section 335 Criminal Procedure
Code refers to the attendance of
Zamindars & men of rank as
witness a very different thing
from their attendance as Prose=
=cutors in Criminal cases. As
Proceedings in this case are stayed
till an authoritative opinion
is given on the question of personal
appearance of Complainant I have the
honor to request one as early as
possible.

I have the honor to be
Sir,
Your most obedient Servt.

North Arcot
Magistrate's office
Palamner 12th May
1882

J. Thacker
Acting Magistrate

To

J. D. Sim Esqre
Revenue & Judicial Secty to
Government
Fort St George

Exp. A. Sim Rumisetty

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Actg. Magistrate of North Arcot

dated 13th May 1862 No 234

& order thereon 14th June 1862 No 874

In this letter the Acting Magistrate of North Arcot enquires whether the Zemindar of Conjeeveram who is prosecutor in a charge of Criminal breach of trust before the Acting Magistrate and claims the privilege of appearing by Pleader, can be permitted to do so.

2. The Acting Magistrate is of opinion that as Section 493 of the Criminal Procedure Code prescribes that Complainants and witnesses

witnesses shall be examined on oath or affirmation ~~subject~~ Vide Section 191 provides for their being cross-examined by the Accused, the Code contemplates the personal attendance of the Complainant.

3. The Governor in Council does not concur in this opinion. It appears to him that the section quoted by Mr. Fraser merely prescribes the mode in which a complainant, when he appears in person, is to be examined, but does not interfere with the practice heretofore in force of permitting a Complainant to appear by an Agent or Vakeel — whenever the Judge or Magistrate considers

consider the evidence of the Complainant to be requisite, it is competent to him to require the Complainant to appear in person, and then his examination must be conducted in the manner prescribed by Section 113 of the Code —

4. The question however is one which should have been referred for the orders of the Sudder Court, the proper course is for the acting Magistrate to pass such orders as he may deem proper, leaving it to the party who may consider himself aggrieved thereby to appeal —

To the Sy. Magte of North Arcot
despatched 3/5 — 1/52

Sent the letter on Copies

Proceedings Issued

Judl. 1862. Department

No. 874.

PROCEEDINGS of the MADRAS GOVERNMENT.

February 1863. No. 403

dated 4 August 62

Informing the Magistrate of North Arcot that Act 43 of the Crim. Procedure Code does not provide that the complainant must appear in person but simply lays down the mode in which he is to be examined, or his appearing in person; and that the Magistrate requires the complainant's [illegible] summons to appear for the purpose of giving evidence; his examination must be conducted according to the above Section.

Madras—Printed at the Government Press.

22-23