

MADRAS RECORD OFFICE.

Government of Madras.

Judicial

DEPARTMENT.

G.O. No.

959

Press

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
21st June 1862.*

No. 151. Read the following papers:—

TO THE RIGHT HONORABLE SIR CHARLES WILLIAM DENISON, K.C.B.,

Governor in Council of Fort Saint George,

The humble Petition of RAMASAWMY GOVOONDEN, Puttamanyumdar and Moonsiff of the Village of Seereevady in the Talook of Tindevanam in the Zillah of South Arcot, by his Agent and Vakeel W. M. NARRAINSAWMY NAIDOO residing in Condappa Chetty Street, No. 35, within Madras.

HUMBLY SHEWETH,

That your Petitioner addressed to your Excellency's Council three petitions under dates the 17th, 22nd and 28th February last, bringing to the notice of your Excellency's Council, on account of the robbery that has been committed in his village by one Maury Hoosain Ackeyum Ally Saib's servant and his son Assoodoollah in the house of his brother Goolam Mabomud; to which an Endorsement was given that the Petitioner should produce the Endorsement of the Collector under date the 8th March last. Petitioner according to the instructions contained in it, addressed 3 letters under dates the 1st, 18th March and 4th April last to the Collector of South Arcot, whose Endorsement is herewith submitted. The Collector himself acknowledges that "carelessness, unintentional, has been duly noticed in the conduct of the Sub-Magistrate who originally investigated and as well as the great delay that occurred between the re-arrest of the accused and their subsequent trial by the Talook Magistrate." He moreover proceeds to say that "he regrets the escape of persons in whose real guilt there would seem such strong reason to believe." However, it does not appear what punishment the Collector has inflicted upon the Sub-Magistrate for his carelessness. Petitioner submits that the accused parties escaped from punishment through his influence alone by their being wealthy inhabitants of the village although there were proofs and still the Jewels which were recovered is in the Court.

Under these circumstances Petitioner prays that your Excellency in Council will be graciously pleased to peruse the former petitions submitted in this case and render him justice by ordering Mr. Reade to re-investigate the case, so as to enable the Petitioner to commence his proceedings against the said Ackeyum Ally Saib for trespassing in his house with his shoes and making a search throughout Petitioner's house with the assistance of the said Sub-Magistrate after Petitioner made his report to him about the said robbery and evading him from obtaining damages in the Civil Court of Justice.

For which Petitioner shall as in duty bound, ever pray.

17th May 1862.

(Signed) W. M. NARRAINSAWMY NAIDOO,
Agent and Vakeel to
RAMASAWMY GOVOONDEN.

ENDORSEMENT.

The Petitioner is informed that full enquiry into the subject of his representation has been made, but that at this distant date it has not been deemed practicable or expedient to again arraign the parties who were acquitted by the Taluk Magistrate. That Officer's acquittal is held to have been strictly correct, not so however the proceedings of the Sub-Magistrate who originally investigated the case and whose carelessness, unintentional as it is believed, has been duly noticed as well as the great delay that occurred between the re-arrest of the accused and their subsequent trial in the Taluk. The Magistrate regrets the escape of persons in whose real

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guilt there would seem such strong reason to believe, but it is now beyond remedy and further representation on the part of those interested in their conviction must now be fruitless.

SOUTH ARCOT,
Magistrate's Office on Circuit,
Perambai,
7th April 1862.

(Signed) CHARLES W. READE,
Magistrate.

No. 1,354 of 1862.

With reference to the Endorsement recorded by the Magistrate of South Arcot, under date 7th April 1862, on the Petition presented to him by the writer of the foregoing petition, the Governor in Council resolves to direct that the Magistrate will submit a full report on the case referred to, explaining in what manner the conduct of the Sub-Magistrate is considered by him to have led to the acquittal of the perpetrators of the robbery in question, and stating what notice has been taken of it.

FORT SAINT GEORGE,
4th June 1862.

By Order,
(Signed) W. S. WHITESIDE,
Acting Deputy Secretary to Govt.

No. 152. From C. W. READE, Esq., Magistrate of South Arcot; to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to Government, Madras, dated 12th June 1862, No. 29.

By an Endorsement No. 1,354 of 1862, bearing date 4th June 1862, under the signature of the Acting Deputy Secretary to Government, I am required to submit a full report on the case referred to in the Petition numbered as above, dated 17th May last.

2. In December of last year, a charge of "robbery and receiving stolen property" was made before the Sub-Magistrate of Mercanum in the Talook of Tindevenum; and after an imperfect investigation by that Officer, one prisoner was finally committed to the Session Court, under Section 411 of the Penal Code; and 2 others were sent up on suspicion of being concerned in the robbery.

3. The two latter individuals were at once released by the Court without being arraigned, as there was no real offence charged against them; but in the course of the trial before the Session Court in the case of the 3rd prisoner, evidence was given clearly indicating the guilt of the other two who had been removed from the bar, and accordingly, at the instance of the Judge, these latter accused were subsequently re-arrested, and at a later date both were tried and acquitted by the Talook Magistrate.

4. Connected with the original investigation, the present Petitioner to Government, Ramasamy Gounden, was a suspected party, and it seems that at the instance of the Prosecutor the Petitioner's house was searched by the order of the Sub-Magistrate of Mercanum. This is stated by the Petitioner himself in a former Petition addressed to me on the 1st March last; but in the absence of any thing tangible against him he was at once released, and proceedings only were had against the other parties who were disposed of by the Sub-Magistrate as above.

5. In respect of the present Petitioner the case ceased with his release and acquittal in the Talook; but the search of his house under the orders of the Sub-Magistrate appears to have given him deep umbrage, and the object sought by him is to recover damages for loss and injury consequent on the disgrace—as he views it—which he has sustained at the hands of the Sub-Magistrate. The Petitioner's interests in the matter goes no further; he is simply very angry at the indignity put upon him in his opinion by the Police search, in his house, and he seems bent on gratifying his feelings of revenge by an action for damages against the Sub-Magistrate at whose orders that search was made.

6. The Government wish to know "in what manner the conduct of the Sub-Magistrate is considered by me to have led to the acquittal of the perpetrators of the robbery in question, and what notice has been taken of it." The error of the Sub-Magistrate consisted in his inadequate

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and imperfect enquiry at the outset, and his improper committal to the Court of two persons charged with a crime which had no existence in law, viz., on mere suspicion of their being concerned in the offence for which another was committed to, and was eventually convicted by, the Court.

7. A perusal of the papers submitted by Mr. P. Hutchins, my then Head Assistant, together with that Officer's report, satisfied me that the Sub-Magistrate's neglect was not intentional, and his experience in such investigations being comparatively slight, I merely signified my disapproval of his proceedings accompanied with a warning.

8. There had also been great delay in the subsequent disposal of the two prisoners who had been re-arrested, but who were finally released in the Talook, and this delay met with my severe displeasure and animadversion.

9. Copy of Mr. Hutchins' letter, and of my answer are herewith submitted for the information of Government by which it will be seen that the case had received every consideration, and that the original errors on the part of the Sub-Magistrate, however to be regretted, were the result of inexperience and not of intention. I knew little of this Officer at the time I wrote those remarks; but my subsequent knowledge of him has fully confirmed my belief that no real culpability attaches to him in the matter. "Samba Morthy" has been all his service in the Marabut Department, where he secured the high opinion of all under whom he served both for industry and intelligence, and in last year only he was appointed as Salt Ameen of Mercanum* by my predecessor with the powers subsequently

* Vide my letter to the Board of Revenue, now before the Government, dated 8th May 1862, No. 78.

of a Sub-Magistrate of the 2nd class; and it is no great matter of surprise that a man so entirely new to Magisterial work should have erred in his conduct of the examination of almost the first serious case that had come before him, and to this inexperience alone do I attribute the ultimate escape of the parties who in all probability would otherwise have been convicted on the original investigation had it been more carefully and rigidly conducted.

10. But as far as this Petitioner is concerned, I may observe that there is no reason whatever for further notice of the case. Originally a suspected party, but eventually acquitted, his position in the matter does not entitle him to the remotest consideration; and the Sub-Magistrate merely did his strict duty in directing a search to be made in the Petitioner's house, and this part of the Sub-Magistrate's proceedings has no connection whatever with the investigation, and disposal of the case; and thus I am of opinion that the Petitioner is not entitled to be heard; but if he choose he is of course at liberty to bring an action for damages in the Civil Court against the Sub-Magistrate, or against any one else, by whose acts he may think himself aggrieved, but at his own cost and risk. Such action, however, would find no justification, because so far as the case of this petitioner, the Sub-Magistrate acted in perfect good faith and within the law.

11. With all deference I would suggest that an endorsement to the following effect be given to the Petitioner by Government.

"The Government on enquiry and from the report of the Magistrate find that the Petitioner was originally a suspected party in the case referred to; that his house in consequence underwent a search by the Police under the orders of the Sub-Magistrate, at the instance of the Prosecutor, and it is further shown to the Government satisfaction that in respect of this petition the Sub-Magistrate against whom the petitioner's complaint is directed, acted in all respects *bonâ fide* and within the law, in the legitimate exercise of his functions. The petition is accordingly dismissed."

From P. P. HUTCHINS, Esq., Head Assistant Magistrate of South Arcot; to the Magistrate of South Arcot, dated Cuddalore, 25th March 1862, No. 16.

I have the honor to return herewith Judicial petition, No. 493 of 1862, with the papers that accompanied your Tamil Memorandum of the 15th instant. It is there alleged that a charge of lurking house, trespass by night with theft has been improperly dealt with by the Sub-Magistrate of Markanum in the first instance, and subsequently by the Taluk Magistrate of Tindevanum.

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2. The persons charged are Asdulla Saib, nephew of the Prosecutor, and his 2 servants Maury Hussien and Tippu. The two first are charged as principals, the last as an accessory after the fact. The evidence against the two first, as taken by the Sub-Magistrate was purely circumstantial and conclusive, but the Sub-Magistrate committed them to Court as persons suspected of taking part in the robbery.

3. Of course the Court refused to put them upon their trial, representing the circumstances to the Deputy Magistrate to whom the Sub-Magistrate was subordinate. The 3rd Defendant was tried and convicted by the Court and on his trial two witnesses giving important direct evidence against the 1st Defendant as eye witnesses of the transfer of the stolen property from him to the 3rd Defendant.

4. One of these witnesses has since died, and the evidence now forthcoming is, first, that circumstantial and inconclusive evidence recorded by the Sub-Magistrate, and second, the direct personal evidence of a woman, to be received with caution because no such statement is recorded in her examination by the Sub-Magistrate. The deposition of the deceased witness before the Court would be receivable in evidence, but I doubt whether the Court would allow it much weight. I consider therefore that the Taluq Magistrate was right in refusing to commit the case.

5. In explanation of the delay that occurred, I must observe that the Deputy Magistrate might himself have taken up the enquiry, when informed by the Judge of the error of his Subordinate, and of a report that the Sub-Magistrate had purposely omitted to record the direct evidence before alluded to, with a view to screen the principal Defendants. I believe also that the Sub-Magistrate's record was then with the Deputy Magistrate and all the parties in Cuddalore before the Court.

6. The Court Inspector on the release of the 1st and 2nd Defendants by the Court, brought the case to me and was referred to the Deputy Magistrate. The Deputy Magistrate was reported to be absent for the day, but expected the next morning. However instead of getting a remand, the Court Inspector seems to have sent a Memorandum to the Tindevanum Inspector requesting him to lay the charge sheets before the Taluq Magistrate. This was done with a Memorandum dated 24th, and on the following day the Taluq Magistrate applied to me, then at Cuddalore, for orders. I am not able to discover from the urzi whether the parties were then in Tindevanum, but it would appear that the charge sheets were laid before the Taluq

Magistrate alone and unaccompanied by any record. I accordingly returned the charge sheets to the Court Inspector, reiterating my former order to lay them before the Deputy Magistrate in charge of Murkanum. No time was lost in my decision as will be seen by the dates in the margin.*

6. Some days after, the Sub-Magistrate being sick, the case again found its way to the Deputy Magistrate's office where the records lay, but the Deputy Magistrate who had jurisdiction, referred it to the Taluq Magistrate who had no jurisdiction. The case arrived while I was at Tindevanum, and I can answer for it

* Court Inspector's Memorandum to Tindevanum Inspector 22nd January.
Tindevanum do. do. to Taluq Magistrate, 24th do.
Taluq Magistrate's arrival 25th do.
Charge sheet retained by me at Cuddalore 27th do.

February 11th, arrival of parties at Tindevanum. Deputy Magistrate requested to send records.
February 17th arrival, of records and commencement of trial by Taluq Magistrate.
February 23rd, dismissal of case.

that not a single day's unnecessary delay took place in its disposal, what delay did occur was caused by the Deputy Magistrate's omission to send the records for the enquiring Officer's guidance.

7. I have no doubt that the Deputy Magistrate had good and just reasons for not taking up the case himself, but it is evident that great delay would have been saved if he had not been prevented from doing so.

8. The records of the case will follow this letter on their arrival from Tindevanum.

(True Copy.)

(Signed) CHARLES W. READE,
Magistrate.

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MEMORANDUM.

The Magistrate has had under his consideration Mr. Hutchins' letter of the 25th instant, reporting on the subject of the Government petition No. 492, (1862) Judicial Department, as well as on the other papers of complaint relating to the same case.

2. The Magistrate concurs in opinion with the Head Assistant, that no good could now result by the adoption of further proceedings against the parties alleged to have been improperly acquitted by the Taluq Magistrate. The evidence which might possibly have availed at the original trial when their accomplice in the crime was convicted before the Session Court bears a very different aspect at this late period, and it could only now be received with an amount of caution and doubt that would quite neutralize it as legal proof. The Magistrate therefore upholds the decision of acquittal recorded in the Taluq which he considers to be strictly correct.

3. There is however undoubtedly very strong grounds of suspicion against these acquitted persons and it is much to be regretted that the carelessness of the Sub-Magistrate whether intentional or accidental should have conducted to a result so hurtful to the ends of justice, but the Magistrate is willing to believe that ignorance alone and no sort of collusion on the part of the Sub-Magistrate has occasioned that Officer's error in his original investigation and commitment of the case, and in view of the very early period at which it occurred after the introduction of the new Criminal Code, it would seem clear that misconception alone is to be charged against the Sub-Magistrate.

4. The great delay and many references before the case was finally disposed of after the re-arrest of the 1st and 2nd Prisoners are much to be regretted, and for these the Deputy Magistrate "Mahomed Esoof" would seem most at fault. The circumstance will be noticed to that Officer who can submit any explanation he may have to offer on the subject.

(Signed) C. W. READE,
Magistrate.

CUDDALORE.
27th March 1862.

To the Head Assistant Magistrate of South Arcot.

(True Copy.)

(Signed) C. W. READE,
Magistrate.

No. 153. ORDER THEREON, 21st June 1862, No. 959.

Under the circumstances stated by the Magistrate of South Arcot, the Governor in Council sees no grounds for his interference in the matter referred to in the foregoing petition, which is accordingly dismissed.

2. His Excellency in Council observes that the Magistrate has quite gone out of his province in appending to his letter a draft of the Endorsement which he considers should be furnished to the Petitioner.

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

Exd. F. Cartledge.

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Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following Papers

Petition from Ramasawmy } (Received 17th May 1862)
Gounder }

From the Magistrate of South Arcot } . . . 12th June 1862 N^o 29

Order thereon 21st June 1862 N^o 959.

Under the circumstances stated by the Magistrate of South Arcot, the Governor in Council sees no grounds for his interference in the matter referred to in the foregoing Petition, which is accordingly dismissed.

2 His Excellency in Council observes that the Magistrate has quite gone out of his province

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in appending to his letter
a draft of the endorsement
which he considers should
be furnished to the
Petitioner.

To the Magistrate of Youth Street
Care of the Prisoner

W. H. ...
Sept 22nd

W. H.

J. A. de Fontaine

Proc. of Govt.
No. 6 1862. Department.

No. 959.

PROCEEDINGS OF GOVERNMENT.

Dated 21 June 1862.

*Under the circumstances
stated by the Govt. of
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