M.R.O. 1—30,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1834 Press Mis.

225-226

Dated 20. 12. ~~19~~ 1864

12/13

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
20th December 1864.

Read the following Petition :—

No. 225. To His Excellency the Governor in Council,

Fort Saint George.

The humble Petition of TAJAMOOR-TOOLA LUTCHIAH, late Head Goomastah in the District Moonsiff's Court of Palasa in the Zillah of Ganjam.

My Lord,

Dissatisfied with the Proceedings of the Madras Government, No. 834, dated 6th June 1864, "resolving to withdraw their order for his re-employment," your petitioner most respectfully submits herewith, in triplicate, an Appeal Memorial against the same order to the address of the Right Honorable the Secretary of State for India, which, it is requested, may be directed to be despatched to that noble power.

Your petitioner, as in duty bound, shall ever pray.

5th October 1864.

To the Right Honorable the Secretary of State for India.

The humble Memorial of TAJAMOORTOOLA LUTCHIAH, lately a Head Goomastah of the District Moonsiff of Palasa under the Governor's Agent of Ganjam under the Presidency of Madras.

Respectfully Sheweth,

This is an Appeal against the Order (A.) No. 834, passed by the Government of Madras on the 6th June 1864, "resolving to withdraw their order for the re-employment of your Memorialist."

2. Before stating the grounds of this appeal, your Memorialist briefly states, for the graceful information of Her Majesty the Queen in Council, that your Memorialist had, on the 10th June 1863, submitted to the Honorable the Secretary of State for India a memorial with several accompaniments (A. to S), which memorial is known by the office Memorandum of this Government (B.) to have been forwarded to its destination on the 14th July 1863.

3. Your Memorialist is not aware of what way the Home authorities may have disposed of that memorial ; but from what His Excellency the Governor of Madras has been pleased to issue some instructions to Mr. Agent Forbes, your petitioner fully concludes that the Home authorities ought by all probabilities to have gone through the papers (A. to S.) therewith submitted, and arrived at the conclusion that the Agent was not justified in removing your Memorialist, and ought to have issued necessary orders to the Governor of Madras, requiring him to see your Memorialist re-employed.

4. Your Memorialist would respectfully bring to the notice of the Home authorities that His Excellency the Governor of Madras has, there is every reason to believe, called on the Agent (Mr. Forbes) to send in the records, with a view to carry into effect the instructions which may have come from the Home authorities, and has very justly considered the burden of the cause which gave rise to your Memorialist's total dismissal, and very strictly required the Agent (Mr. Forbes) to re-employ him in the District.

5. Your Memorialist was told that the Agent (Mr. Forbes), who, from the beginning, has given his ear to the District Moonsiff's words, and been disposed to uphold his false reports (oral or written), and of never listening to your Memorialist's reports, however they were in fact and in justice true, as at length visible from the late memorial, and from its enclosures, has skilfully

lent his view quite reverse to what he relied on, has treated your petitioner as he may be subjected to pitiful annoyance, viz., "*as if your Memorialist had appealed to the High Court against the sentence passed by him, and as if that Court had dismissed the same appeal; that your Memorialist should not, therefore, be re-employed in Ganjam.*"

6. Although His Excellency the Governor of Madras, from the moment of your petitioner's appealing to him, has not satisfied himself with the manner in which his removal was effected, and willingly appeared to be right doer, yet, from the circumstance of the Agent (Mr. Forbes) having turned his reasonings anew in not re-employing your Memorialist, that noble and graceful Sovereign has, your Memorialist can confidently say, unwillingly withdrawn his own resolution recorded on the receipt of the Home orders on the former memorial, *apprehending that the Government cannot interfere with the orders of the High Court in Criminal or Civil matters disposed under Regulations and Acts.*

7. From the foregoing reasons, your Memorialist can freely submit, for the information of the Home authorities, that the arguments which this appeal memorial should contain, should be limited only to Mr. Agent Forbes' vague reasons than to any thing on the Government Endorsement A., why? because the obstacle thrown in carrying out the instructions of Her Majesty the Queen, *is chiefly occurred by the Agent's (Mr. Forbes') objections, and not in the least by His Excellency the Governor of Madras.*

8. In such a case as this, in which the interior authorities will avowedly throw obstacles in executing the local Government's directions, which may have been issued to them in obedience to the Sovereign power of England, your Memorialist has, it is true, no other alternative than soliciting the graceful interference of the same Crown, submitting good and legal grounds to have his ill-face wiped, for Her Majesty the Queen has not any rule or Acts which can deter Her Majesty from executing unlimited discretion over the acts of the agents in the native land, viz.,

1*st.*—Because the sentence passed by the Senior Assistant and confirmed by the Agent, not being appealable to the High Court under Section 428 of the Code of Criminal Procedure, your petitioner sent a petition to that Court, but they struck it off as inadmissible (vide their Proceedings C.)

2*nd.*—Because the rejection of the said Criminal petition can by all authorities be viewed as nothing than mere non-acceptance thereof on their file. In proof of such strict meaning the pencil note by the Registrar of the said Court on a second petition (D.) (original and translation accompanying this) *will stand true example that the appeal was not dismissed by that Court upon merits, but for informality* under Section 428 of the Code of Criminal Procedure.

3*rd.*—This the Agent, who had not spoken in his several former reports to Government, *shews as a matter to make it appear as if the High Court had reviewed the case* by calling for the records, and disposed of the appeal, a circumstance adapted to mislead His Excellency the Governor, who was disposed to execute the orders of the Home authorities. Hence it is incumbent on the Home authorities to decide whether the term "rejection" of the Criminal petition, No. 72, is, as the Agent shews, a bar to the Governor to insist upon the Agent to re-employ your petitioner.

4*th.*—Because if the said point, upon which the Government withdrew their instruction, is cleared, there is nothing to add more in this Memorial than referring the Home authorities to the former memorial, and its enclosures, for all other particulars.

5*th.*—Because any other points which the Agent (Mr. Forbes) may have dwelt upon, in his reply to Government orders, as regards the amount of the embezzlement, Rupees 61, would reasonably be thought as quite after mention which cannot be taken as nothing than an avowed attempt on his part to abstract the orders of the controlling powers.

6*th.*—Because, on your Memorialist applying to the Agent (Mr. Forbes) to re-employ him, that gentleman even then has not strictly denied to employ him *than tacitly saying that your petitioner cannot be employed in Ganjam*, a circumstance which can be well meant that your Memorialist was fit for employment in the Districts other than Ganjam.

Proceedings of the Madras Government, Judicial Department,
20th December 1864.

7*th.*—Because the refusing of the re-employment of a former servant in a District should be considered when he may have displeased a multitude of people and committed serious acts which would be returned to him by the people. Your petitioner is a common Goomastah, and the one that was subjected to the displeasure of a single District Moonsiff. Hence his re-employment in the same, or in any other Taluqs, will not be injurious to any one at all.

8*th.*—Because the system of the Governor's Agency in Ganjam being abolished and incorporated with the regular Civil Court of Chicacole before His Excellency the Governor sent his orders in your petitioner's favor, it would have been better for that noble authority to have communicated his resolution to the Civil Judge, instead of the Agent.

In that case your petitioner would by this time have been provided with a Goomastah situation which became vacant, and for which your Memorialist requested the Government to direct that Civil Court to favor him with that post; but, owing to your petitioner's bad luck, the Government have declined to interfere with reference to their having ere to that withdrawn their orders. By this reason any orders that should go in your petitioner's case should go to the Civil Court as the District Moonsiff's Court in which he was is amenable to that Court now.

Therefore your Memorialist prays Her Majesty the Queen in Council will have compassion on your Memorialist, and especially considering that no interior authorities in India had ever thwarted the execution of the Home Orders as in the case in this memorial, take into its deliberate consideration the point under appeal, and decide that your Memorialist might be re-employed in any other District Moonsiff's Court, or in the Civil Court of the Zillah.

Your petitioner, as in duty bound, shall ever pray.

5th October 1864.

No. 226. ORDER THEREON, 20th December 1864, No. 1834.

In their Order, No. 834 of the 6th June 1864, the Government withdrew the Order which they had previously given, (G. O., No. 221 of the 20th February 1864,) directing the re-employment of T. Lutchiah, late Head Goomastah of the District Moonsiff's Court at Palasa in the Ganjam District. The cause which influenced the Govenment in passing their second order was the statement in the Agent's letter, that the conviction of T. Lutchiah "was right in equity as well as good in law *(for the prisoner's appeal to the High Court was rejected)*."

2. From the papers which accompany the present petition, it appears that the petitioner's appeal to the High Court was not dismissed on the merits, but rejected on a point of law, as not being admissible under Section 428 of the Criminal Procedure Code, and that hence it was never, properly speaking, "under the review of the High Court" at all.

3. This being the case, the Governor in Council resolves to cancel the Order, No. 834, and to declare the former Order, directing T. Lutchiah's re-employment, in force. The Agent will, therefore, take the earliest opportunity of re-employing the petitioner, and report his having done so for the information of Government.

(True Extract).

Chief Secretary.

To the Agent to the Governor of Fort Saint George in Ganjam.
To T. Lutchiah, late Head Goomastah in the District Moonsiff's Court of Palasa,
(with enclosures A. to F. returned.)

Encl. J. Wright.

Judicial Department

Proceedings of the Hon'ble Council

Read the following letter from the Agent to the Governor in Conjeveram

(Received 12th March 1864 No 134) (Sent on 6th June 1864 No 834)

It will appear from the foregoing letter that the sentence passed upon Sulochana, late Head Coomaty in the Court of the District Moonsiff of Palacaud, in the case referred to in the Proceedings of Council, under date the 20th February last, has been brought under the review of the High Court by an appeal made by the Governor in Council requesting he will withdraw the order for the re-employment of Sulochana

True Extract

(Signed) Illegible Secy to Govt

the

Moonsiffs

B

Judicial Department

No 170

4D

Memorandum

I Lutchuk is informed that his Memorial to the Right Honorable the Secretary of State for India dated 10th June 63 was forwarded to its address by the Steamer "Simla" on the 14th Instant

Fort St. George
15th July 1863

[Signed] W. H. Kerr
Dy Secretary to Govt.

To

Jagonnoota Lutchuk
late Head Jogindah of the
District Moonsiff of Palacaud
Jaffna

A

Petition of Jagonnoota Lutchuk late Head Jogindah of the District Moonsiff of Palacaud

Memorandum of the Petitioner's Statement

Petitioner's Exhibits

B (3 Ex

Government Endorsement that the Petition was sent to England.

14th July 1863

London 28th Sept 62

Proceedings of the High Court of Judicature at Madras 28th October 1862

The following Petitions were rejected —

× × ×

(True Extract)

C

Petition 2072/62

Date 26/4/1864

the Judges of the High Court of Madras.

The humble Petition of Tapamoortala Lutchia, late Head Goomastah of the District Moonsiff Court of Palasa in the District of Ganjam

Abstract of the Petition

In consequence of an enmity between me and the District Moonsiff of Palasa, the Governor's Agent Mr Forbes removed me upon the false & partial reports of the same District Moonsiff.

The District Moonsiff thinking that if I appealed to the higher authorities against the said order of dismissal, I would obtain justice, has after my dismissal set up certain Batta Peons to bring false charges against me as if I appropriated their Batta Money for some months, and so forwarded one to take my trial before the agent's Court.

The Agent knowing that there would be an appeal to this Court against his decision referred the case to his senior Assistant.

The senior Assistant disposed the case No 43 of 1862 wherein the District Moonsiff taken the his declaration that the Peons are in bad terms with me from the beginning.

The complainants also Corresponded with the

the District Moonsiffs declaration that I
before complained, but it proved unsuccessful.

The witness Annapatooloo Narayana Moo
states that I compromised with the complai
sions that I would pay down their Batta &c.

The witness Sadasiwuda also falsely de
against me in spite of my having taken steps that
She cannot do his duty until the charge against
him shall have been disposed of.

Although there are several contradictions in
the evidence on the record, yet the Senior Assist
sentenced me for three months' confinement.

On appeal, the agent confirmed the
sentence in respect to the District Moonsiffs
false Reports and inventions.

Although I am aware that I have no
right to appeal to this Court against the agents
orders under sections 405 and 428 of the Criminal
Procedure, yet I have presented this Petition
for making known the hardship I was met
with.

If I am really guilty, the District
Moonsiff is to bring charge against me
under section 168 of the Criminal
Code.

If this Court would refer to the Records
they will know that the agent has ordered
my removal in accordance with the District
Moonsiffs wishes.

Therefore it is requested that this
Honorable Court will do me justice by
referring to the Records.

(Signed) T. Lutchiah

18th March 1863

D (2 Encl)

Petition from Criminal
Petition forwarded to
Sessions by the
High Court

Criminal Petition from the High
Court as follows

"Refused with
reference to Sec 428
of the Code of
Criminal Procedure
21/3/63

Moonsiffs

To Forbes Esqre
Asst. Collector of Sangor

Honored Sir

I had presented Appeal Petitions before you under Section 495 of the Criminal Procedure Code against the decision of the Senior Assistant but as it appears from your Proceedings No. 182 dated 20th September 1862 and the Endorsement No. 61 dated 9th December 1862 the Govt. have confirmed the decision of the Senior Assistant & not without perusing my Appeal Petition. It further appears from the Proceedings of the High Court dated 27th October 1862 and 26th March 1863 that the Appeal Petitions presented by me before that Court against your decisions were rejected under Section 498 of the Criminal Proceedures Code. I have not as yet been favoured with your orders to my Petition dated 9th July 1862 which was registered in your Office under No. 116 and dispatched to you on the 21st July. B. Ramayah Nagadu who was retained to Police of Sangor from Tasildarship and who was subsequently promoted to Moondiapchik at Palasa asked me to give him some pecuniary aid on the ground that he had sustained a great loss in obtaining the promotion. When I refused to comply with his request, he received some money from Sheik Saida a monk one of his favourite

Ankies

[illegible] and caused some false charges to be preferred against me by some of his relations who were present in his Court & sent a recommendatory letter to you No. 50 dated 17th June 1862 and praying that my post may be conferred on the said Narayanamoorthy although I had brought these circumstances to your notice by Telegram Petition but they were not countenanced by you. I am a very poor man encumbered with large family suffering very hard for common necessaries of life having been without Employ for a long time.

As I am about to proceed to Madras to submit my respectful case to Home Government through local government I respectfully pray Your Honor will be pleased to grant me Leave thereof and an Endorsement to my Petition

Date 20th July 1863.

6th July 1863

Thale Sundaram

Pycroft J. Hutchins

Endorsement

The Petitioner cannot be reemployed in Jaffna

Head Asst. to the Collector & Magistrate

Chatterton

1st Asst Commissioner of the District Moonsiffs Court at Palaces

Encl. to 2/5/64 [illegible]

E (2 Encl.)

Petition of the late Head Commissioner with Endorsement that the Petitioner cannot be employed in Jaffna

To His Excellency the Governor of Madras

Most Excellent Sir

Begging pardon for the liberty I have taken in thus intruding upon Your valuable time by the humble address

In Continuation of my petition to the right honorable the Governor in Council Madras dated 9th instant

I respectfully beg leave to bring to Your Excellencies notice that I was 1st late Head Commissioner in the Palaces District Moonsiffs Court the salary of the post is Rs. 20 that I was not a pensioned servant; that at the juncture of the abolition of the Provincial Courts the proceedings had been transferred to the Circuit Courts of Chavagacherry the proceedings had been Government dated 20th February 1861 No. 221 in Com Favour should be carried into effect by Head Court and a vacancy of Rs. 21 (Provincial Clerks) had occurred in the said Court humbly crave Your Excellency will be pleased to issue an Order in such a charitable feeling and Conveyance thereof to Circuit Judge of Chavagacherry by Telegraph and Letter Post in which Rs. 1 worth of postage Stamps are beg in preference pasted on the back of this petition may be Conveyed and the same acknowledged in due course and Order on same in Circuit Court being plunched in pursuance of the prayer of petition will be filled up as under and sent to the said Court

Most humble & respectful Servant

(Signed) [illegible]

1st Asst Commissioner of Moonsiffs Court

late Head Assistant Commissioner of Moonsiffs Court at Palaces now Postmaster of the District

Moonsiffs

8

Judicial Department.

10 X

PROCEEDINGS *of the* **MADRAS GOVERNMENT.**

Read the following Petition from Tapamoorthoola Lutchiah, late Head Gormaster in the District Moonsiffs Court of Palaver in the Zillah of Ganjam.

Fort St. George 5th Oct. 1864.

Order thereon 20 December 1864 No. 1834.

In their order No. 834 of the 6th June 1862, the Government withdrew the order which they had previously given (G.O. No. 221 of the 20th February 1862) directing the re-employment of T. Lutchiah, late Head Gormaster of the District Moonsiffs

F.

No. 1139 of 1864.

Petition with a Translation and a Copy of Government Order No. 834 of 6th June 1862 in the Judicial Department.

Received 26th Oct. 1864.

Monneiffs Court at Palasa in the Ganjam District. The cause which influenced the Government in passing their Second Order was the statement in the Agents letter, that the J. Lutchiah "conviction was right in equity as well as good in law / for the prisoners appeal to the High Court was rejected)".

2 From the papers which accompany the present petition, it appears that the petitioners appeal to the High Court was not dismissed on the merits, but rejected on a point of law, as not being admissible under Section 428 of the Criminal Procedure Code, and that hence it was never, properly speaking, "under the review of the High Court" at all.

3. This being the case, the Governor in Council resolves to cancel the order No 834, and to declare the former order, directing J. Lutchiahs re-employment, in force. The Agent will therefore take the earliest opportunity of re-employing the Petitioner, and report his having done so for the information of Government.

16 Dec 1880

To the Agent to the Governor
of Fort St. George in Ganjam &
J. Lutchiah, late Peon Gomastah
in the Distt Monneiffs Court at Palasa
with endorsee No 7 ret
Chalp. given to Lutchiah

dispd 24/12
10

Judicial 1864 Department.

No. 834.

PROCEEDINGS of GOVERNMENT.

Feb. 2260.

Dated 20 December 1864.

225-226