

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	44	Press
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Dated	12 — 1 — 19	1864

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
12th January 1864.*

No. 68. Read the following letter from R. R. COTTON, Esq., Session Judge of Madura; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madura, 21st December 1863, No. 297.

With reference to the Proceedings of Government, dated 12th instant, No. 1934, I have the honor to submit herewith copies of the Deputy Magistrate's Calendar in No. 8 of 1863, on his file, and of the proceedings held by me upon the appeal preferred by the aggrieved parties from the sentence passed therein.

Proceedings of the Madras Government, Judicial Department,
12th January 1864.

Calendar of Persons tried before P. Seshageri Row, Deputy Magistrate of Madura.

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Number of the case.	Name of the accused.	Copy of the charge, or substance of the complaint.	Name of complainant.	Names of witnesses for the prosecution.	Names of witnesses for defence.	Summary of the facts proved, or confessed.	Finding and sentence.	Date of offence.	Date of complaint.	Date of apprehension or appearance.	Date of commencing trial.	Date of sentence.	Explanation of delay.
No. 8 of 1863.	1. Kathiar Anuppan. 2. Basawara, Police Constable.	That the 1st prisoner, Village Moonsiff of Kariapatti, Teromungalam Taluk, on 20th	Kandasamy Pillay, Police Inspector.	Names of witnesses for the prosecution. 1. Mahalingam Chetty. 2. Ramen Chetty. 3. Kunjaro Chetty. 4. Sickander Rowthen. 5. Ramalingum. 6. Sundrem Chetty. 7. Chinna Sikkander Rowthen. 8. Bawaw Sing. 9. Vellian Chetty. 10. Irulamuppen.	Names of witnesses for defence.	That 1st witness states that his house was broken into on the 27th November 1862, and property and documents worth Rupees 1350 stolen, he gave information on the subject to the 1st and 2nd prisoners, who with Kavilgars came to his house immediately and traced the track for some distance; they guessed from foot prints that the thieves were the 10th witness and another, who, together with the 9th witness whom he (deponent) suspected, were apprehended and kept for three days in custody at the station house under the orders of the prisoners; the 1st prisoner subsequently proposed to him (deponent) to obtain a bond from the suspected parties for the value of the property lost, and that he (deponent) dissenting to the arrangement, the prisoners liberated the said individuals.	The Deputy Magistrate finds the 1st prisoner guilty of the offence charged, punishable under Sections 202 and 217 of the Indian Penal Code; and the 2nd prisoner of the offences charged, punishable under Sections 202 of the Indian Penal Code, and Section 44, Act XXIV of 1859, and sentences the 1st prisoner to six months, and the 2nd prisoner to three months' rigorous imprisonment.	28th November 1862.	3rd January 1863.	15th January 1863.	28th January 1863.	28th January 1863.	
That the 2nd prisoner, Police Constable of Kariapatti station, on 28th November 1862, having had reason to believe that a theft has been committed in the 1st witness' house within the limits of his station intentionally omitted to give the information which he was legally bound to give, and having arrested without warrant Vellia Naick and two others, and detained them in his custody for three days, released them without bringing them before the Magistracy, and he has thereby committed an offence punishable under Section 202 of the Indian Penal Code, and Section 44, Act XXIV of 1859, and within my cognizance.													
This statement is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven witnesses, and the 8th, a Constable, is fully corroborated by seven 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This statement is fully corroborated by seven witnesses, and the 8th, a Con-

stable of the same station, deposes that the 9th and 10th witnesses and another, not present, were kept in the station house by the 2nd prisoner and released two days afterwards.

The 9th and 10th witnesses admit the fact of their having been in custody with the other suspected individual for three days. The prisoners plead not guilty: 1st prisoner says he saw the 9th and 10th witnesses and the other suspected persons in the station house, but denies all concern in the matter, stating he went to the 1st witness' house after being informed of the theft, and did not see the witness there, and from what he heard he had no reason to believe that a theft had been committed in his house, and so made no report of it, and the 9th and 10th witnesses, &c. were not apprehended at his instance.

The 2nd prisoner flatly denies the whole fact. He has before the Subordinate Magistrate stated that the 1st prisoner wanted him to detain the above-said suspected parties in custody at the station house, and that he did not allow it. The prisoners cited no witnesses on their behalf to disprove the charge; but the 2nd prisoner named a few witnesses for some alleged enmity between himself, and the 1st witness, and this the Deputy Magistrate considers to be a trifle.

There is abundant proof of the prisoners having released the 9th and 10th witnesses, &c. apprehended on a charge of theft, of which they gave no intimation to their official superiors. The contradictory statements of the prisoners themselves criminating each other, betray their having wilfully transgressed from their duties.

The charges in the Deputy Magistrate's opinion are sufficiently established against the prisoners.

Extract from the Proceedings of the Session Court of Madura, dated 11th February 1863.

Read Calendar No. 8 of 1863, on the file of the Deputy Magistrate P. Seshageri Row, in which he has sentenced the 1st prisoner, a Village Moonsiff, to six months' rigorous imprisonment, under Sections 202 and 217 of the Penal Code; and the 2nd prisoner, a Police Constable, under Section 202 of the Penal Code, and Section 44, Act XXIV of 1859, to three months' rigorous imprisonment. Read record called for, and submitted.

Read also appeal presented by the prisoners, to Session Judge in charge of the Jail.

1. The Court while admitting that the record shows irregularity on the part of the Police, which might have been noticed departmentally, is of opinion that there is nothing whatever on the record to substantiate the charges against the prisoners, or to warrant their conviction under the Sections of the Penal Code quoted.

2. The facts of the case appear to be that the 1st witness in this case reported that he had lost a quantity of property from his house: tracks were followed, and the most valuable part of it (bonds and accounts) were found in a field. On being asked whom he suspected, he named Vellian Chetty, Irulamuppen, 9th and 10th witnesses in this case, and one Vellian, on which the prisoners sent for them, and pending an inquiry into the case, they were kept at the station house; they were merely suspected.

3. The 1st prisoner, Moonsiff, seems to have had his doubts about the truth of the charge; but Vellian Chetty challenged 1st witness and offered (if he, 1st witness, would swear that he 9th witness committed the theft) to be responsible for the loss, a proceeding, the Court remarks, no way equivalent to a confession of guilt. The Moonsiff ignorantly seems to have thought that if the parties would agree, this was the best mode of settling the matter, and recommended that a bond should be given; 1st witness would not accept this, or any thing less than the *cash down*: on this the prisoners seeing there was no evidence against the accused that would have even justified their being charged with the offence released them. The Court would ask what other course could they pursue? It is true they acted hastily in putting the suspected parties under restraint without having better grounds for so doing than they had, and that the detention of the parties in the Police station should have been reported to the Inspector; but this was the Deputy Constable's duty, and he admits it was so; but says he was deterred reporting it by the 2nd prisoner, who said he wanted first to see if there were any grounds for believing the charge against them; and this the Court thinks not unlikely, but the Deputy Constable in charge of the station was the proper person to report the matter, and had no business to listen to his subordinate. The error committed here in the opinion of the Court, simply amounted to an omission to act under Sections 153 and 160 Code of Criminal Procedure, and with this the 1st prisoner had no concern. The Court is not aware what the *Law* expects of Village Moonsiffs, but since the introduction of the new Police, it does not appear to have been the practice, for the Moonsiff of a village, where a station is, to *write* report, and the Court, as the Police were made aware of the robbery on the spot, can quite understand the Moonsiff having omitted to report the case in writing, specially as he says he did not believe it to be a true

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one. As to Section 202, it is shown that so far from *intentionally* omitting to give any information respecting the offence, he accompanied the Police, and even caused the detention of the accused parties. As regards Section 217, there is no evidence whatever to show that there were grounds even for charging the accused with the offence, and they have not to this present been charged with it. Had the accused been *tried* and *convicted* on the charge, it would have been necessary to have shown that in releasing them prisoners did so not from ignorance, or want of judgement; but with the *criminal intent* to save them from legal punishment. Again, there is no evidence whatever to show in what particular he "*knowingly disobeyed the direction of the Law*"; the Court believes that an offence being committed at a distance from the Police station, the Moonsiff is bound to report the fact in writing to the *station*, but if there is a station in the village, or a beat Constable comes round, it is sufficient for the Moonsiff to report the matter verbally; at least this is the explanation given to the Court for the absence of the Moonsiff's reports, in many cases that have been committed to the Session. As to the 2nd prisoner, there is no evidence whatever to warrant a conviction under Section 202, and the Court can discover no grounds for attributing any criminal motive, or intention to 2nd prisoner, or his immediate superior, the Deputy Head Constable, for not acting up to Sections 153 and 160 of the Code of Criminal Procedure, and it considers therefore that their misconduct should rather have been treated departmentally.

4. The Court for the foregoing reasons resolves to annul the sentence of the Deputy Magistrate as regards 1st prisoner, whom he will at once discharge; and considering the 2nd prisoner has by the punishment he has already undergone fully atoned for his neglect of duty, directs that he be likewise discharged.

(True Extract.)

(Signed) R. R. COTTON,

Session Judge.

(True Copies.)

(Signed) R. R. COTTON,

Session Judge.

*Proceedings of the Madras Government, Judicial Department,
12th January 1864.*

No. 69.

ORDER THEREON, 12th January 1864, No. 44.

To be recorded.

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

No. 12th Decr 1863 Oct 1964

I presume this
may be intended
for our approval
& have been
sufficiently returned
to our Superintendents

Yrs J. M. [Signature]
[Signature]

list of 21st Jan 1864

Chas. King/1864
129

Indt. No. 297
Indt. 1863 Departt.

From.

The Session Judge
of Madras

To
The Chief Secretary
to Government
Fort Saint George.

Dated 24th December 1863.
Received 28th

No. 2792
Enclosures one.

Recorded
Submits copy of the
Deputy Master's Calendar
in Nov of 1863 and the
Proceedings of the Sepm
Court thereon, with
reference to the Proceed-
ings of the Court dated
12th December 1863
No 1984. J. O.