M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1218 Press ~~Mis.~~

276-277

Dated 30 · 8 · 1865 ~~19~~ .

5/5

Not to be folded or roughly handled

No. 276. Read the following letter from T. M. BUSTEED, Esq., Barrister at Law, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 26th August 1865.

I have the honor to forward, herewith, a petition to His Excellency the Governor in Council, from M. Ramiah, a Merchant of Cuddapah, under Section 54 of the Code of Criminal Procedure, which, from the very peculiar and exceptional circumstances surrounding the case, well deserves the attentive consideration which His Excellency in Council will bestow upon it.

2. I may perhaps be permitted to mention that, in case the Government should deem it desirable to be informed respecting the previous character of the petitioner, the Honorable Lutchmanarasu Chetty has been named to me as one whose family as well as himself have been long well acquainted with the petitioner and his family, and who will vouch for the excellent character for integrity and honesty which he and they have always borne.

To His Excellency Sir WILLIAM DENISON, K. C. B.,
Governor in Council, Fort Saint George.

The humble Petition of MOOTEALOO RAMIAH, Merchant of Cuddapah, now a prisoner in Cuddapah Jail.

Respectfully Sheweth,

That aggrieved by the sentence of the Session Court of Cuddapah, dated the 21st day of March 1865, and of the High Court of Judicature at Madras, dated the 29th day of April 1865, confirming the same, your petitioner appeals to your Excellency in Council, under the provisions of Section 54 of the Code of Criminal Procedure.

1. The charges against your petitioner substantially are—that he fraudulently forged an account, showing a balance of Rupees 21-13-6 against one Causim Saib; and that he fraudulently used it in a judicial proceeding as genuine, knowing that it was forged.

2. The entry in question is to the effect that Causim Saib was present, and agreed to the entry as a settlement of their accounts.

3. The evidence is shortly as follow:—

1*st Witness, Causim Saib*,—First prisoner brought a suit against me in Moonsiff's Court. The principal was 17 Rupees. The date of settlement of accounts I heard would be Ramzan month. I was absent at that time from Cuddapah. I never had any dealings with prisoner. I was not in Cuddapah on Rudhirodgary Magha Bahoola (or February 25th, 1865), nor on the day before or after. I left Cuddapah five or six days after Shabon festival last year, in company with the Tahsildar's brother and many others. I was away a month and 15 or 20 days. I and Abboo Hamud returned in charge of a bandy, which we delivered to the Tahsildar. That was the evening before the Khootba feast (10th March 1864). I cannot say decidedly whether, when I returned with the bandy, a letter was given me for the Tahsildar.

I was confused when I stated before the Principal Sudder Ameen that I had brought a letter for the Tahsildar. I was a witness against 1st prisoner (M. Ramiah) in an assault case brought against him. He was fined. That is the only reason, that I know, for the first prisoner being my enemy.

2nd Witness, Tahsildar of Cuddapah.—Remembers sending his brother and his family to Amarachintala, to a marriage. My brother started from Cuddapah. I cannot tell the bandy-man's name who went with my brother.

3rd Witness, Bhagavan Sing.—Remembers going to Amarachintala for a marriage. We left Cuddapah 27th January; several came with us, among them Causim Saib. I wrote C—first witness was present when I wrote. C is in same state as when I wrote it. I also wrote D and E. It must have been through forgetfulness I made the mistake in D, about not having received a previous letter. When I was writing C, first witness and Abboo Hamud asked me to mention them. I cannot give the names of the bandy-men.

4th Witness, Abboo Hamud.—I asked last witness where he was writing to. He said to Cuddapah. I asked him to mention our welfare; he said he had not room. I told him to add a little. I only asked last witness to write once. This was from the Hyderabad country.

5th Witness, Shemshoomeya.—Nothing material.

6th Witness, Soobbarow.—Knows Causim Saib; he is a Woomadwar Peon. He went with the Tahsildar's brother on 5th April. Tahsildar went on leave; I acted for him. I saw the man eight or ten days before;—he said he had been to Avony and the Hyderabad country, and that he had returned with the bandy for Tahsildar.

7th Witness, Anniah.—I drew the verification (to the plaint). It was signed by Ramiah.

8th Witness, Vencatramiah.—Remembers Ramiah bringing a suit against Causim Saib, in Small Cause Side of Cuddapah Moonsiff's Court. I cannot say who produced the account book.

9th Witness, Gopalacharry.—Remembers suit by Ramiah against Causim Saib. Third prisoner produced the original account book; the signature of 3rd prisoner was put to this by order of the Moonsiff; as he produced the account he was ordered to sign it.

4. Now it is first of all to be observed that there was *no legal evidence* before the Court as to who wrote the entry, or as to your petitioner's connection with it. In their depositions before the Moonsiff in the Civil Suit brought by your petitioner, against Causim Saib, for his debt, the 2nd and 3rd prisoners, your petitioner's Clerks, who were examined, stated that the entry was made by the 3rd prisoner, and that they, your petitioner and Causim Saib, were all present at the time. This is the only evidence upon the point relied on, or quoted by the Session Judge. But as it is contrary to the Law to admit as evidence against accused persons, tried for a criminal offence, depositions of witnesses taken in a Civil Proceeding—not even the Decree or Judgment in a Civil Action being admissible as evidence in a Criminal Proceeding—*there is literally no evidence upon the most vital and important portion of the case.* It cannot be said that the evidence, such as it is, may be taken into account and valued at what it is worth, for the Judges are bound to administer the Law, and it would be a disgrace to the administration of Justice that any man should knowingly be convicted and punished for an offence contrary to Law. This is the solitary link which connects your petitioner with the commission of the offences with which he is charged, and once it is removed, the case for the prosecution entirely collapses.

5. It may be alleged, that if it were proved to be false that Causim Saib was indebted in the sum stated to be due, that this would, of itself, be sufficient evidence to charge your petitioner with a fraudulent attempt to obtain money from him; but that such is not the case must be obvious even to the most ordinary understanding. If it were so, then every mistake which a Merchant's Clerk may make in his accounts would render him liable to an indictment. No man's fraud is to be presumed; and an error in an account, to subject a man to penal consequences, must be affirmatively shown to be a fraud. But, furthermore, even though it were *proved* that your petitioner's Clerks fraudulently made the entry in question, yet, since no man is, in the eye of the Law, answerable for the crime of another, your petitioner would be guiltless of any offence, except he were proved to be cognizant of the fraud. Of this there is not a particle of evidence, and, without a guilty knowledge, neither of the acts with which he is charged is an offence.

6. But still it may be said that what the 2nd and 3rd prisoners said in the Moonsiff's Court are admissions, and, as such, evidence. Admitting for a moment that such is the case, such admissions could only bind themselves, and are not receivable against your petitioner.

7. Therefore, even on this point alone, your petitioner is entitled, at your Excellency's hands, to the remission of the punishment to which he has been sentenced; and though it was not urged either in the Court below, or in the Court of Appeal, from inadvertence or some other cause, and was overlooked, still, now that it is brought to the notice of your Excellency, your petitioner relies upon it, and claims his privilege of being tried and convicted according to the Law of the land, and not otherwise.

8. But taking the evidence, as it stands, it comes to this:—

1st.—That, on Causim Saib's own uncorroborated evidence, he does not owe your petitioner the alleged debt of Rupees 17; and

2nd.—That on Causim Saib's evidence and that of 2nd, 3rd, 4th, and 6th witnesses, Causim Saib was away from Cuddapah on and about the day of the date affixed to the settlement of accounts.

9. As regards the first of these, it must be admitted that if this portion of the case stood alone on the evidence and on the probabilities of the case, Causim Saib's indebtedness could not be doubted. On the one hand, there is Causim Saib's evidence alone; on the other, that of your petitioner and his two Clerks; and upon the trial before the Moonsiff in which your petitioner sued for his debt, three witnesses proved the fact of Causim Saib being your petitioner's debtor for the amount in question; and the suit was dismissed entirely on the alleged absence of Causim Saib from Cuddapah at the date affixed to the settlement of accounts.

10. As regards the 2nd result of the evidence, several discrepancies are observable. The 1st witness contradicts himself about a letter which he alleged before the Principal Sudder Ameen he brought back for the Tahsildar. The 2nd witness, the Tahsildar, contradicts himself flatly. He says first—"They left this on the 29th January," and again "I cannot remember what time my brother started for Cuddapah."

But the most important portions of the evidence are the letters C. D. E.; and it is remarkable that there are circumstances, *on the face* of these, which throw doubt on the whole correspondence.

19. But there is still another reason, which, of itself, vitiates, and, in law, invalidates your petitioner's conviction and sentence, namely, that your petitioner's witnesses were refused a hearing. The learned Judge, who tried your petitioner, acting no doubt inadvertently, or under some misapprehension, declined to hear the evidence of your petitioner's witnesses, who had been duly summoned to give evidence in his behalf, and were present in Court for that purpose, notwithstanding that your petitioner cried out, begging that their evidence may be taken. Your petitioner begs to enclose an affidavit on the subject, sworn by three persons who were present on the occasion. This fact was not brought under the notice of the learned Judges of the High Court, through inadvertence, or from some other cause.

20. On this ground alone, your petitioner would have relied as, of itself, entitling him to claim your Excellency's interposition in his behalf, but that your petitioner owed it to himself to go into the entire case, and shew what is the character and force of the evidence upon which the charge against him has been considered to be established.

21. Your petitioner, therefore, humbly prays that your Excellency in Council will take this his petition into your consideration, and cause inquiry to be made into the matters herein alleged and set forth, and, being satisfied with the truth of your petitioner's allegations, quash the conviction and sentence which have been had and passed upon your petitioner, and order his release from custody; or give such other relief in the premises as, to your Excellency in Council, shall seem fit.

And your petitioner shall ever pray.

Signed and presented on behalf of the said petitioner by

T. M. BUSTEED,
Barrister at Law.

MADRAS, 26*th August* 1865.

List of documents appended to this Petition.

1. Vakalutnamah.
2. Copy of Calendar of Cuddapah Session Court.
3. Copy of evidence before Cuddapah Session Court.
4. Copy of deposition referred to in Part 16 of the petition.
5. Copy of the Settlement of Account on which the charge is founded.
6. Copy of order of High Court, confirming sentence.
7. Original Affidavit sworn by Chetnum Chetty, Narasimah, Gondah Gopaul and Potha Soobiah, sworn before T. G. Clarke, Esq.

No. 277. ORDER THEREON, 30th August 1865, No. 1218.

The Governor in Council declines to interfere with the sentence passed upon the petitioner, and which it appears has been confirmed by the High Court.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To T. M. Busteed, Esq., with seven enclosures returned.

Exd. J. H. Burns.

Order thereon. 30 August 1865 No. 1218.

The Governor in Council declines to interfere with the sentence passed upon the Petitioner and which it appears has been confirmed by the High Court.

To T. M. Busteed Esq - with 7 Enclosures returned. & dated 31/8 in Cust.