M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1634 Press ~~Mis.~~

141-142.

Dated 15. 11. 1865 ~~19~~

24/25

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, *15th November* 1865.

No. 141. Read the following letter from the Registrar of the High Court of Judicature at Madras, Appellate Side, to the Secretary to Government, Fort Saint George; dated Madras, 28th October 1865, No. 62.

Having laid your letter of the 20th ultimo, No. 1348, and its enclosures, before the Judges who heard the appeal of Babu Naidu presented to the High Court, under Section 404 of the Code of Criminal Procedure, I am desired by them to state that on the hearing they would have been prepared to reduce the sentences passed by the Deputy Magistrate, if they had possessed authority to do so; but they were unable to say that there had been any such substantial error on a point of law as would warrant their interference under that Section. They are both of opinion that the punishment already undergone has been more than sufficient to meet the justice of the case, and they desire me to recommend that the remaining portion of the sentence be altogether remitted.

No. 142. ORDER THEREON, 15th November 1865, No. 1634.

The Governor in Council resolves to remit the remaining portions of the sentences passed upon Babu Naidu by the Deputy Magistrate of Coimbatore, Mr. P. A. Cole, under Sections 504 and 189 of the Indian Penal Code, viz., under Section 504, six months' simple imprisonment, and a fine of Rupees 100, or in default, a further period of imprisonment of one month, and, under Section 189, two years' rigorous imprisonment, and further directs that the said fine, if not already paid, be not levied, and that if levied, it be returned to the defendant Babu Naidu.

2. The Government are constrained to direct that Mr. P. A. Cole shall cease, from the date of receipt of these orders, to exercise the full powers of a Magistrate, and that his authority as a Magistrate shall be limited to the powers of a Subordinate Magistrate of the first Class, until further orders, it being clear from his proceedings in the present case that he is not qualified to exercise the powers with which he has been hitherto invested.

(True Extract).

Chief Secretary.

To the Honorable the Judges of the High Court.
,, Magistrate of Coimbatore.

Exd. J. H. Burns.

To

1647 7/65
7 Encl
20/7

His Excellency Sir William Denison K.C.B
Governor in Council
Fort Saint George.

The humble Petition of
Rungiah Naidoo for and on
behalf of his son Bauboo Naidoo.

Respectfully Sheweth,

That Bauboo Naidoo, son of your Excellency's humble Petitioner, was an Inspector on the Establishment of Major Smith, aſsistant Director of Revenue & Settlement. He suspended your Petitioner's son from Office, but gave him no intimation whatever of the grounds on which he resolved upon so doing. Your Petitioner's son is also unable to say, whether Major Smith, had any charge or complaint against him, and your Petitioner is compelled to submit, that in dismiſsing his son, Major Smith was purely actuated by motives of personal ill-feeling and displeasure.

That subsequently, in the month of May last, Major Smith, also prosecuted your Petitioner's son, before Mr. P. A. Cole Deputy Magistrate S. D. Coimbittore, under Sections 189 & 504 of the Indian Penal Code. The circumstances on which he grounded the charges, are stated in his Deposition marked A and herewith Submitted. According to this Deposition, Major Smith on the 17th May 1865 sent for your Petitioner's son, but that he was not found on that day; that he appeared before Major Smith on the next morning at his Baylow, that he asked your Petitioner's son where he had been the previous day and what explanation he had to offer for having gone to the Head Gumastah Kristnama Charry, who had been ordered to investigate into a case against him; that his answer was, Major Smith had no business to ask him, he was no longer in his Service, and he would please himself to go wherever he liked; that Major Smith, had reason to believe your Petitioner's son was endeavouring to suppress charges that were being brought against him, and therefore ordered the Duffadar to send a peon to watch his movements; that your Petitione son, then remarked in the most insolent manner, that if a peon were placed over him he would kill the peon and continued with a great insolence of manner, that he would bring an action against Major Smith for Rs 10,000 - Major Smith, further proceeds to state the insolent behaviour of your Petitioner's son subsequent to this altercatio and undertakes to Swear in conclusion in these words, "I believe the prisoner acted in this manner to provoke me to "commit a breach of the peace, his manner

was

"was so offensive that most persons would "have been led to commit a breach of the peace".

Your Excellency in Council, will observe that upon these circumstances your Petitioner's son was convicted under Section 504 and Sentenced to 6 months' simple imprisonment, and to pay a fine, of 100 Rupees or in default to be imprisoned to a further period of one month.

In respect of the charge under Section 189, Major Smith, in the same deposition states, that your Petitioner's son after he left the Bungalow but on the same date, told the Duffadar, that he had charges against Major Smith and was able to prove them by 200 Ryots; that the Duffadar was requested to give information of these contemplated charges to Major Smith - He also states the Duffadar duly communicated the facts to him and that when this statement was made to the Duffadar no one but himself was present - Major Smith further Swears as follows. "I gather from what the Duffadar said, that prisoner meant, I should not proceed against him in any way on being threatened with the charge of bribery". Your Petitioner's son was on these facts convicted under Section 189 and Sentenced to two years regorous imprisonment, the full penalty provided for the offence.

Your Petitioner's son was convicted under Section 504, upon the evidence of Mahomed Khan the Duffadar and Syed Saib a peon both in the Service of Major Smith, and one Mr Taylor. If your Petitioner was rightly informed Mr Taylor, was employed on the Railway, but having been dismissed from Office is at present residing at Eurode. These Depositions are herewith Submitted marked B, C&D- With reference to the conviction under Section 189, Your Excellency in Council will observe that the only evidence produced by Major Smith was the evidence of Mahomed Khan a Duffadar in his own Service.

The Deputy Magistrate in his sentence (Marked E and submitted herewith) observes with reference to the first charge under Section 504, that he would believe the 1st & 2d witnesses Mahomed Khan and Syed Saib, and that their evidence is indirectly corroborated by the 3d witness- Your Petitioner is, unable to understand, what the Magistrate means by an indirect corroboration- The evidence of Mr Taylor the 3d witness is, that he was at a moderate distance in his own Bungalow and heard the prisoner talking in a loud tone and violently gesticulating that he could have heard, what the prisoner said if he understood the language in which he spoke, that prisoner kept striking

his

his breast and that in the Course of a residence of 10 years in India, he never saw such insulting conduct from a Native to a "Gentleman". Now according to this Gentleman's evidence the conduct of your Petitioner's son could not have been any thing like provocation if it was towards a Native or if he himself was an European, but why the one and the same thing should so differently operate on the temper of a "Gentleman" and a Native your Petitioner is also unable to say. Your Excellency in Council will also observe this witness could not have then seen Major Smith from his Bungalow.

As to the charge, under Section 189, the Magistrate relies on the sole evidence of Mahomed Khan- He observes, "the Court considers the witness worthy of all credit, his manner of delivering his evidence, careful and conscientious, impresses the Court, with full belief in his trustworthyness, but in dealing with the evidence of this man on the first charge the Magistrate had to fortify it by the additional evidence of Syed Khan and the "indirect" corroborative testimony of Mr Taylor.

Your Petitioner's son appealed from these convictions, to the Court of Session, but unfortunately for the Petitioner that Court confirmed the conviction. He thereupon moved the High Court to revise the sentence under Section 404 of the code of Criminal Procedure. At the hearing, his Vakeel had to make out to the Court, that the convictions were wrong in law upon the facts found by the Magistrate. Under this section, it was not open to him to contest the finding of the Magistrate, and he therefore confined his argument to the following purely legal objections.

Against the conviction, under Section 504.

I The evidence on record does not disclose provoking conduct on the part of the Prisoner.

II The Prisoner was in the first instance provoked to behave in the manner imputed to him, and the evidence does not shew that his conduct was intentional.

Against the conviction, under Section 189.

I The alleged threat of injury was not held out either to the prosecutor or to any person in whom he was interested.

II The evidence for the prosecution does not shew the charges which the prosecutor intended to enquire into.

III It was also not shewn and proved that the contemplated charges were connected with the exercise of the public functions of the prosecutor.

Your Petitioner regrets to state that before, this Court he was also equally unsuccessful.

Your Petitioner considering the convictions unjust begs leave to submit them to your Excellency in Council and prays that the discretion of remitting punishments vested in your Excellency in Council by Section 54 Act XXV of 1861 may be exercised for the benefit of his son. Your Petitioner is compelled to observe that the convictions are unjust and unsupported by reliable evidence and that the sentence is as unnecessarily heavy as it is vindictive on its face.

In support of the conviction under Section 504, the Deputy Magistrate relies upon the evidence of Mahomed Khan and Syed Saib. These individuals, as peons, occupy the lowest position in a public office and it cannot be said they are independent and disinterested witness; being in the immediate service of Major Smith the prosecutor, it is impossible to suppose that in giving their evidence they should have regarded truth in defiance of the fear and favour of their master. It might be said their testimony was corroborated by Mr Taylor, but your Petitioner may as well leave, your Excellency to form your opinion of Mr Taylor's evidence. According to his own shewing, he is not disposed to admit that a Native and an European are, composed of the same flesh and blood. He states he did not understand the language in which your Petitioner's son then spoke and that he was not able to have observed Major Smith at the place. His deposition taking it at most amounts to a pure matter of opinion. He saw the prisoner striking his breast and violently gesticulating, his blood, then rushed up and he hastened to the Magistrate's office to swear to the unprecedently insolent conduct of a Native in the presence of a "Gentleman". He made the case a national cause and anxiously laboured to procure an exemplary or to say the truth a vindictive punishment.

With reference to the conviction under Section 189 the Magistrate relies upon the only evidence of Mahomed Khan the prosecutor's Duffadar. Here the Magistrate in commenting upon evidence says he was careful and conscientious but it is for your Excellency in Council to say whether all this could be expected of a Duffadar in giving his evidence at the instance of his own Master. Your Petitioner's son was also prosecuted by Major Smith

on

on the same occasion under Sections ~~[illegible]~~ 506 of the Indian Penal code. The Magistrate had to commit him to the Sessions Court inasmuch as the offence was not cognizable by him. These two peons were examined by the Session Judge and he disbelieved their evidence and acquitted your Petitioner's son.

Apart from all the objections pointed out to the truth of the case, your Excellency in Council, will in reading the depositions appended hereto, cannot but observe, that the conviction must be quashed also for other reasons. To make up the offence under Section 189, it was necessary for the prosecution to have proved, firstly, that a threat of injury was held out. Secondly, that it was to a public Servant and that with a view, to induce him to do any act or to forbear or delay to do any act, and that such act was connected with the exercise of the public functions of such public servant. The prosecutor states in his Deposition that the prisoner threatened to charge him with having received bribes and swears that the threat was used with a view to induce him (Major Smith) to refrain from proceeding with certain charges which were then in contemplation against the prisoner. Throughout the deposition of Mahomed Khan the only witness on the point there is not a word to shew what was the nature of the charge which Major Smith was to enquire into, whether it was a charge bonafide and well founded and lastly and materially whether it was connected with the exercise of his public functions. The prosecutor was bound to produce evidence to shew that there was a bonafide charge and it was connected with the public functions of the prosecutor and the Magistrate was equally bound to say he was satisfied with that evidence. Your Excellency in Council, will see that the prosecutor produced not an atom of evidence on these points, that not a word is to be found in the deposition either of Mahomed Khan or Syed Saib or Mr. Taylor. Indeed the prosecutor himself did not and would not say what the nature charge was.

A conviction under Section 504 could not stand unless there was evidence before the Magistrate to shew that the provocation offered was likely

to

to cause the prosecutor to break the public peace and that such provocation was intentional. Now taking the deposition of Major Smith for unmingled truth it is impossible to say that the provocation could have been intentional. Major Smith says he ordered the Duffadar to send a peon to watch the prisoner's movement, upto this stage the conversation was fair, calm, and considerate or at any rate not provoking, the part seriously complained against is that which followed on Major Smith resolving to watch the movement of the prisoner, Major Smith had no right to utter these words, he could not be legally justified if he acted as he expressed and it is difficult to imagine an insult more aggravating in its nature, would your Excellency in Council say that if the prisoner lost his temper at the expression he should be prosecuted and rigorously imprisoned for two years. Would your Excellency in Council say that the subsequent conduct of the prisoner was intentional and considerate. If your Excellency in Council will be of opinion that it was intentional. Your Petitioner submits it is impossible to conceive a case in which it can be said to be unintentional. He earnestly entreats that in construing the section creating the offence. Your Excellency in Council will not be swayed by the consideration of the superior official position of Major Smith. The section does not contemplate a difference of position between the provoking and the provoked, it does not profess to sanction that a particular line of conduct on the part of one may be provoking, and that it may not be so on the part of another. If therefore Major Smith said to an independent Merchant he will place a peon to watch his movement and it should be considered a provocation Your Petitioner submits that with reference to this prisoner it is equally a provocation and nothing short of it. He also begs to submit in conclusion that looking at the deposition of Major Smith the most that can be said against the prisoner is that he stood on his strict legal rights and made no concession to the position of Major Smith and that this cannot be said to constitute the offence provided by section 504-

Your Petitioner therefore pray
that the sentence may be
remitted and he may be released

Madras,
20th July
1865.

Rungiah Naidoo

In Lr. No. 4416/65.

Lr. No. 1647 of 1865

C. C. 4

Deposition of Major Charles Smith Assistant Director of Revenue Settlement-

On the 17th January 1865. Charges were made to me against the Prisoner, Baboo Naidoo, now suspended from his duties as an Inspector of the Revenue Settlement Department. I sent for him to make inquiry into the charges. The Peon returned and said he was no where to be found in the Village of Erode. A few days previous to this, I had ordered Prisoner not to leave Erode without my permission and until I had inquired into the charges made against him. On the morning of the 18th he appeared before me; I asked him where he had been the previous day. He replied, he had been away on private business. I then asked him what explanation he had to offer for having gone to Head Goomastah Krishnacharri, who had been ordered by me to investigate into a Case in which I had reason to believe Prisoner had been behaving irregularity. Prisoner then replied, I had no business to ask him the question, that he was no longer in the Government service, & he would please himself to go wherever he liked. This was said in an insolent manner. Having reason to believe that Prisoner was endeavouring to suppress charges that was being brought against him, and for this purpose was trying to prevent such complainants from coming to me, I ordered my Duffadar to detail a Peon to watch his movements. Prisoner then remarked in a most insolent manner that if a Peon was placed over him, he would kill the Peon. He continued with great insolence of manner that he would bring an action against me to the amount of Rs 10000, if I placed a Peon to watch him, and asked me "do you think I will let you off, who are you to give me such an order as that," at the same time using an expression of Contempt "Chee, Chee," Whilst saying this, Prisoner raised his voice, and gesticulated in a most offensive manner. I believe Prisoner acted in this manner to provoke me to commit a breach of the Peace; his manner was so offensive that most persons would have been led to commit a breach of the Peace. Prisoner then went away. Subsequently, and on the same day, my Duffadar, Mahomed Khan, told me that Prisoner had directed him to tell me that he (Prisoner) had 200 ryots to bring forward in support of a Charge of bribery against me, and that on my being informed of this, I would let him (Prisoner) go free, on Prisoner again coming before me I requested the Duffadar in presence of all my Office Establishment to repeat what the Prisoner had said. The Duffadar did so, but the Prisoner denied the whole statement. I was informed by the Duffadar that when Prisoner made the above statement, no one but himself was present. It was about 7 or 8 A. M. when the Prisoner insulted me this took place in the Verandah of the Bungalow I live in at Erode; the Duffadar Mahomed Khan was present, and heard and saw Prisoner's insolence, to the best of my belief no one else was present. When Prisoner was leaving a Peon, Mustafa came to me saying Prisoner had threatened to kill him if he followed. Prisoner had been suspended by me for gross neglect of duty. The Duffadar said Prisoner named the ryots of Dosyumpoondarie as concerned in the threatened charge of bribery against me. I gathered from what the Duffadar said that Prisoner meant I should not proceed against him in any way on being threatened with the charge of bribery.×

Where [illegible]

× By Prisoner's Counsel — Was Mahomed Khan & Mustafa present on the arrival of Prisoner on the morning of the 18th.
Answer — Yes.

By Counsel - Where was Mustafa during the transaction.?

Answer. I was so excited and absorbed by what took place that I am unable to state exactly where Mustaffa was, he might have been behind the Verandah tattie, and if so must have heard all that happened.

By Counsel - What were the offensive gestures used by Prisoner?

Answer - Shaking his arm with the fist clenched, in the manner done by Natives.

(Signed) C. H. Smith

Given before me this 23d day of January 1865
in accord with Section 199. C. P. C.

(Signed) P. A. Cole
Prosecutor

Prosecutor re-examined -

I swear that neither 4th nor 5th witnesses were present when Prisoner insulted me; I did not see Prisoner come to the Bungalow, but I saw him go away, and I can most positively state that Prisoner went away from my Bungalow alone.

(Signed) C. H. Smith

Given before me this 30th day of Jany 1865 in accordance with S. 199. C. P. C.

(Signed) P. A. Cole.

In No 4416/65.
Deposition of
Major Smith.

In No 1647 of 65

23rd January

Deposition delivered on Solemn affamation by Mahomed Khan 1st Witness for the Prosecution and the Duffadar in the Assistant Director's Office -

The Prosecutor ordered me on the 17th January to call the Defendant - I could not find him that day - I saw him on the 18th idem, and while carrying him to the Prosecutor he told me that hitherto he was obedient, & that he will infuture speak to him dishonorably - After we both came before the Prosecutor, he asked the Defendant where he had been yesterday, but the latter answered that he need not ask him, that he is not in the Circar Employment, that he may do as he likes, and that he should not ask him. The Prosecutor then told he is mad, and ordered me to tell him to get out of the place. The Defendant then told contemptuously that he will not leave the Prosecutor, and that what sort of Gentleman he is. The Prosecutor ordered me to place a guard over the Defendant to prevent him from going any where, and any one from speaking to him - The Defendant told that he will bring a suit for damages against the Prosecutor amounting to Rs 10,000, and that he will kill the peon who will come to guard him, and asked the Prosecutor what business he has to order a guard over him, and went away - I ordered the

Peon Mustafa to go along with the Defendant, but he returned, and told me that the Deft said that he will beat, and kill him if he follows him - The Defendant thus spoke before the Prosecutor with a loud voice without shewing respects - This transaction took place about 6½ O'Clock in the morning - Again I went to bring the Deft with the permission of the Prosecutor at 10 O'Clock on the very morning, and saw him in his house. Then the Defendant told me that, if the Prosecutor would bring a Charge against him, he would bring a Charge against him - This you must hear, and tell the Prosecutor that there are 200 witnesses to prove the fact of his having received bribe in the Village of Poonduri, and charged black-stone worth 6 annas with 1 Rupee - There are still some other Circumstances to be brought to light - If you will go, and tell all these to the Prosecutor, he will ask me secretly about them - Then I will tell him the other Circumstances - Thus the Defendant told me, considering that the Prosecutor will enter into a Compromise with him - The stone above mentioned by me is used for demarkation - After myself, the Defendant and the Prosecutor went to the Cutcherry, the Prosecutor sent for me before the officers thereof, and told me to state what the Defendant had said, and which I stated - Then the Prosecutor seeing the Defendant told

told him you need not say any thing in secret; but you may state what you ought to do - On this, the Defendant told that he said nothing to me - At the same time, I told the Prosecutor what the Defendant had said - After the Defendant came to the Cutcherry, the Prosecutor stated before it as alleged above - After my return, the Deft. came alone - When he again came before the Prosecutor at 10 O'Clock on the very morning he saw him in the presence of the officers attached to the Cutcherry, and showing his hands, said you are a good Gentleman; but why your Conduct is such - Thus he spoke without showing respects - The word Mosul stated above means what the Defendant speaks to any body, and what he does are to be seen with eyes, but not to prevent him from going anywhere -

Answer to the Question by the Defendant } I know the Peon Mustafa guarded against the Deft. till 4 O'Clock in the evening of the 18th of the said Month - Afterwards, I went abroad - When I placed a Peon over the Defendant, I told him to see what he does, but not to ill treat him - When the Defendant told in his house that there are 200 witnesses to prove the fact of bribe being received, he said that if he would tell one word to them, they would certainly prove it-

Answer to the question by the Defendant } When conversa-tion took place between both the parties at 7 O'Clock in the Morning of the 18th, Mustafa and Kishnapillai were near, and Mr. Taylor was far, besides me-

Answer to the question by the Court } When the said Circumstances took-place Kishnapillai and Mustafa were near, and saw what took place- The cry made by the Defendant would have been heard at the place where Mr. Taylor was-

Further examination on the 30th January 1865-

I alone went to the house of the Defendant when he was there at 7 O'Clock in the Morning of the 18th- Then I saw the Defendant and his younger brother in the entrance hall of the said house- I could identify the latter- He was lately the Gumastah of Mr. Andis, and quitted the service- The said Mustafa was beyond 4 houses- I and the Defendant were seated on the pial of the entrancehall of the latter's house- Then the Defendant's younger brother went into street, and standing out, shut the door of the said house- Afterwards, we both were speaking about Gentleman (Prosecutor)- Then there was nobody excepting us both- I did not see the Defendant's younger brother stay outside at that time, but saw the sign of his having staid there- Consequently both of us spoke with a low voice, but we did not whisper- The door was shut up- About 10 O'Clock in the Morning I went away- When the Defendant in his house was abusing the Prosecutor in the Morning, there was nobody excepting the persons abovementioned by me- When conversation was held at Bungalow between both the parties on the morning of the 18th, no one of the 4th & 5th Witnesses was near to it- I did not see them there- I saw the Defendant go alone when he left the Bungalow to go- No one of the said 4th & 5th witnesses went along with him- There are Tatty screens tied in the Bungalow, and the said 4th & 5th Witnesses were not near to them, nor am I acquainted with them- But, I recollect that I might have seen the 4th Witness at any time-

(Signed in persian Characters)

Mahomed Khan-

Ln No 4416/65.
Deposition of
Mahomed Khan
1st Witness.

B

Ln No 1647/65

23d January 1865

Before the Deputy Magistrate of the Southern Division of Coimbatore -

Deposition delivered by Syed Sahib Dalayet in the Assistant Director of Revenue Settlement Office -

I was guarding the office at Erode at about 6½ A. M. - On the 18th Instant, the 1st Witness brought this Deft. - This Prosecutor asked the Deft. where he had been yesterday - The latter answered he would go anywhere, and the former has no business to ask him. The Prosecutor asked the Defendant why did he go to Kishnasmah Charrie the Head Gumasta yesterday. The latter told that he may go anywhere because he is not in the Sirkar Service; and that the former has no business to ask him - The Prosecutor told the Deft. to go out of the place, to which the latter uttered "Chee Che" and told he has no business to tell him to go out - The Defendant said no more than "Che Che" - The Prosecutor ordered the 1st Witness to watch the movements of the Deft, who then told that if a Peon is placed on him, he will bring an action against the Prosecutor for Rs 10,000, as damages - At the same time Defendant told that he will not leave the Prosecutor with the motion of his hand - The 1st witness told the Deft that he should not speak so before the Gentleman The 1st witneſs ordered me to go and watch the movements of the Deft- I followed the Deft, he told he will beat and kill me if I follow him- I informed the said Circumstance to the Gentleman and the 1st witneſs, & they told never mind- At about 11 O'Clock A- M- a peon having told me that I should go and bring the Deft, I went and brought him, and left him before the Gentleman, and went to take my Dinner- When the above transaction took place, the Prosecutor, the Defendant, the 1st Witneſs, and myself were present- There were no one else- Both parties spoke in Telugu- The above conversation of the Deft is insulting- The Deft spoke with a loud Voice- The Deft, after repeated the said insulting words with a loud noise, attended with bodily motions- No one but the Prosecuter, Deft, 1st Witneſs, and myself were present when the transaction took place at 6½ A- M- The Deft has no question-

30th January 1865-

The 4th and 5th Witneſses were not present when the said transaction took place on the

morning

morning of the 18th Instant- They did not come into the gate- I followed the Defendant when he left the Bangalow- He alone went to his house, but the 4th & 5th witneſses did not follow him-

(Signed) Syed Sahib-

In No. 44/6/85.
Deposition delivered
by Geo: Taylor
C

C C 4 No. 4

In No. 16/7/85

Deposition of George Taylor, Esquire.

Civil Engineer

I live at Erode in a Bungalow next door to Major Smith. On the morning of the 18th January 1865 about 7 or 7½ A.M. I heard a noise proceeding from Major Smith's Bungalow, and saw and heard from the Verandah of my house Prisoner talking in a loud tone and gesticulating violently; the distance from the spot where I stood to the Prisoner was about 60 or 70 yards. Prisoner was shouting so loudly that I could have heard what he said if I understood the language in which he spoke; Prisoner kept striking his breast, and throwing out his arm all the time he was speaking; in the course of a residence of 10 years in India I never saw such insulting conduct from a Native to a Gentleman. Prisoner's conduct was so insulting, and of so aggravating a character that I do not think I should have been able to refrain from committing a breach of the Peace had he behaved to me in the like manner; I could not see Major Smith from where I stood, but I saw Major

Smiths' Duffadar and another peon ~
standing on the steps of the Bungalow,
Prisoner was standing there about 12 yards
from the Bungalow; I then saw Prisoner
walk towards the gate, and in doing so
he turned round once or twice and repeated
his shouting and gestures. I was inside
my house when I heard the noise made
by Prisoner and came out to see what
was the matter, being attracted by such
unusual uproar.

(Signed) George Taylor
Civil Engineer

Given before me this 25th day of
January 1865 in accord with Sec. 199
C. P. C.

(Signed) P. A. Cole

Suit No. 44/1865.
Deposition of
Mr. Taylor.

D

Case No. 4 of 1865

Suit No 1647/65

Court
of the
Deputy Magistrate S. D
of Coimbatore

Charles Smith - v - Baboo Naidoo -

Summary on the first Count -

Prosecutor deposes being insulted by Prisoner. First and 2d witnesses state they were present when Prosecutor was insulted, 3d witness proves seeing and hearing Prisoner, from a distance of 60 yards, shouting and using violent gesticulation in front of Prosecutor's house. Prisoner pleads not guilty and cites 4th and 5th witnesses. 4th and 5th witnesses state they were present on the occasion of the alleged insult, and that Prisoner did not commit the insult. The insult is proved by Prosecutor, 1st 2d & witnesses directly which fact is corroborated indirectly by 3d witness. The Court considers that independent of discrepancies in their evidence the 4th and 5th witnesses are utterly unworthy of Credit.

On the 2d Count Prosecutor proves & receipt of the threat from 1st witness. 1st witness deposes to being told by Prisoner to convey the threats to Prosecution and that he (witness) did so. Conviction upon the sole evidence of one witness is comparatively rare, but the law of evidence looks to the quality rather than to the quantity of evidence. In this case the Court considers 1st witness worthy of all Credit, his manner of delivering his evidence, Careful and Conscientious, impresses the Court with full belief in his trust worthyness. Another point to be Considered is that the offence with which Prisoner is charged is one which would necessarily be Commited in secret and that therefore it would but rarely happen that the direct evidence of more than one witness Could be adduced. The violent and insolent Conduct of Prisoner on other occasions raises the presumption that he could be guilty of the odiocity of threatening his Superior officer to escape from the consequences of his own previous bad conduct.

The Prisoner in defence to this charge pleads not guilty and states 4th and 5th witnesses were with him the whole day and Can prove 1st witness never came to him on the day in question, and that therefore he never made the threats. But although corroborated in his statement by 4th witness, the 5th Witness states he left Prisoner early in the morning, which flatly contradicts 4th Witness-

The offence charged is a most serious one and deserving of severe punishment. Prisoner said to Prosecutor "do you think I will let you off" and thus coupled with his threats afterwards strengthens the

evidence

evidence against him-

Sentence

The Court finds that Baboo Naidoo is guilty of the Offence specified in the 1st Charge, namely, that he insulted the said Charles Smith, and has thereby committed an offence punishable under Section 504 of the Indian Penal Code and the Court directs that the said Baboo Naidoo be simply imprisoned for the space of six (6) Calender Months, and do pay a fine of Rupees 100 (one hundred) or in default be simply imprisoned for one Calender month.

The Court finds that Baboo Naidoo is guilty of the offence specified in the 2d Charge, namely, that he did hold out a threat of injury to the said Charles Smith and has thereby Commited an offence punishable under Section (189) of the Indian Penal Code and The Court directs that the said Baboo Naidoo be rigorously imprisoned for (2) Two years.

(Signed) P. A. Cole
Deputy Magistrate

Bavanee
30th January
1865

(True Copy)
P. A. Cole
Deputy Magistrate

L. No. 16 of 65.

Translation

Deposition given on the 25th January 1865 by the Deft Bauloo Naicken by profession an Inspector.

As stated in the Charge I have not committed either the offence stated in the 1st Count for having spoken ill of the Prosecutor or that mentioned in the 2d Count for bringing troubles upon him to prevent him from doing his services. Neither have I stated that there is a Charge of bribery against the Prosecutor. When I went to the Prosecutor at the time of dispute or on the morning of the 18th, I did not conduct myself to be in the least blamed as shown in the 1st Count. I have witnesses named Vencatachellum of Karungalpollium and Vencatarama Naicker of Erode to prove the false charge against me because they were present at that time. Certain persons kept aloof from the place when I and the Prosecutor staid.

I have nothing to say any thing about the 2d Count. The 1st witness did not as promised by him, come to me at 10 O'Clock. This also will be proved by the said Witnesses.

Re-examination on the 30th Jany 1865.

When a Conversation was held between me and Gentleman (Prosecutor) on the morning

in No. 44/16/65.
Deputy Magistrate's decision
L.

morning of the 18th my witnesses were by the side of the steps of Mr Taylor's Bung The place is on my right hand side when I go to the Bungalow, and is opposite to it There are 4 or 5 yards of distance between the places where we and the witnesses staid— On the morning of the 18th my said witnesses came to my house for dealing— Consiquently they also accompanied me, conversing with me when I went to the Bungalow. When I went up the steps thereof, they stood near to them— When, after conver-sation took place, I left the Bunga and was going, the witnesses were at the same place where they stand before— They came along with me to my house, and staid there till about 2 O'Clock— After making a proposal of dealing I sent them away— From the time I left the Bungalow in the morning till the witnesses parted with me at about 2 O'Clock, I was at home— About 10 O'Clock on the morning of the 18th I did not go to the Bungalow— The Prosecutor did not ask me before the Cutcherry officer to state the matter represented by me to the Duffadar at Bungalow at the same time—

(Signed in Tamil Characters)

Baubunaicker

Su No. 4416/65.

Deposition given
by Babos Naiker
Defendant

F

H. C. Ju No. 4416/65

No. — 1647 of 1865

From Rungiah Naidoo, for and on behalf of his son Bauboo Naidoo residing at Madras.

Dd 20th July 1865.
Recd 20th — " — "

1834

Seven Enclosures.

Protesting against the decision passed by the Dt Magistrate of Coimbatore against Petrs son, subjecting him to 6 months simple imprisonment and a fine of Rs 100... for having insulted his immediate superior Major Charles Smith of the Rev: Settlement and also to 2 years rigorous imprisonment for having held a threat of injury to the same gentleman prays that in consideration of the reasons herein adduced the above unjust sentence may be withdrawn & his son liberated the Session Court having confirmed the sentence & the High Court refused interference

1

Judicial.

No. 2319.

From The Registrar of the High Court of Judicature at Madras.
Dated 28th October 1865.

For Orders.

The remainder of the sentence to be remitted as recommended by the High Court.

I must question whether Govt ought not to withdraw from Mr Cole the full Magisterial powers of which in this case he has made such an extraordinary use

over

when the papers in this matter first came round, the record being nearly as complete a one as the High Court can have had under consideration, it was my opinion that full magisterial powers ought no longer to be entrusted to a Gentleman who had so grossly misused them. I therefore willingly concur in Mr Tyrrell's suggestion that Mr Cole Thomas be deprived of them and° be permitted to exercise only those of a 2nd Class Sub magistrate. W.D.

° I wd propose ^ that he

~~If persons who have been appointed deputy Collrs have not passed a sufficient exam in the Code & Laws of India, I~~

~~Until they Shd be required to pass~~

~~an~~

Judicial **Department.**

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Registrar of the High Court &c.

(Here enter 28th October /65 No. 62)

Order thereon 15th November 1865 No. 1634

The Governor in Council resolves to remit the remaining portions of the sentences passed upon Babu Naidu by the Deputy Magistrate of Coimbatore, Mr. P. A. Cole, under Sections 504 and 189 of the Indian Penal Code viz under Section 504 6 months simple imprisonment and a fine of Rs. 100 or in default a further period of imprisonment of one month, and under Section 189 two years rigorous imprisonment and further directs that the said fine, if not already paid, be not levied, and that if levied, it be returned to the defendant

Babu Naidu—

2 The Government are constrained ~~regret~~ ~~to feel called upon further~~ to direct that Mr. C. A. Cole shall ~~do~~ cease, from the date of receipt of these orders to exercise the full powers of a Magistrate and ~~they direct~~ that his authority as a Magistrate shall ~~pro~~ be limited to the powers of a Subordinate Magistrate of the First ~~second~~ class, until further orders since they consider that the use which he has made in the present case of the powers vested in him has shewn him to be quite unfitted for their exercise—

C.W.

it being clear from his proceedings in the present case that he is not qualified to exercise the powers with which he has been hitherto invested

[illegible] in office petition [illegible]

To the Hon. the Judges ~~Registrar~~ of the High Court. despd 20/11

— Magistrate of Coimbatore. despd 18/11

Entd B.H.

Remission of sentence
in a certain case

Criminal

1634 Pro: of Novr
Judicial 1865. Department.

No. 1634

PROCEEDINGS OF GOVERNMENT.

~~F. No. 117/67~~
" " 484/68.

Dated 15 November 1865

Pros No. 212-212 A
10/9/65

141.142.