

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1710

Press
Mis.

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Dated

1-12-1918

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
1st December 1865.*

No. 3. Read the following :—

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 your petitioner, since the petition to your Excellency of 26th August 1865 (a copy of which is herein enclosed), has, by his Counsel, Mr. Busted, moved the High Court to send for the record of your petitioner's conviction, and reconsider their decision, confirming the sentence passed upon your petitioner by the Session Judge of Cuddapah.

2. That such an application being novel, and as your petitioner believes without precedent, this fact, though not made a ground of the Court's refusal to accede to your petitioner's motion, no doubt must have had an effect in causing its rejection.

3. That the Judges of the High Court did not deny, and Mr. Justice Innes expressly admitted that the evidence of the two Clerks, which is the evidence by which your petitioner is connected with the commission of the alleged offence, was illegally admitted against your petitioner. The note taken by your petitioner's Counsel, Mr. Busted, of the observations of the Court above referred to, accompanies this petition.

4. That the Judges of the High Court, without inquiry, apparently disbelieved the Affidavit (herein enclosed), on which also your petitioner relied.

5. That your petitioner, relying on the fact of the evidence of the two Clerks (without which your petitioner confidently submits there would be *no evidence against him of his having committed any offence whatsoever*) having been admitted to be *illegal* by the Court, again begs that your Excellency in Council will take his case into your consideration, and, having regard to his condition and his hitherto unblemished character, and the long confinement he has already undergone, will, in the exercise of your Excellency's clemency, direct a suspension of his punishment and order his release.

And your petitioner shall ever pray.

CUDDAPAH,
7th November 1865.

(Signed) ముత్యాల రామయ్యరెడ్డి.

Memorandum for Prisoner's information, made at his request.

HIGH COURT, APPELLATE SIDE, Monday, 30th October 1865.

Present :—Frere, and Innes, J. J.

At the sitting of the Court, *Busted* asked for leave to make an application in the matter of M. Ramiah, who had been convicted by the Sessions Court of Cuddapah, under Sections 465, 471, 193, and 209 of the Penal Code, and whose sentence had been confirmed by that Court.

He made the application under Section 405 of the Code of Criminal Procedure.

The application was that the Court would, upon the facts which he was about to state, send for the record which had not yet been before them, and re-investigate the case.

The Court, he contended, had full power to grant his application, as Section 428 of the Criminal Procedure Code clearly contemplated a case which had been dealt with by an Appellate Court, and specially referred to Section 405, under which ample power was conferred upon the Court to reverse a sentence which was shown to be contrary to law.

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The facts were as follows:—

The prisoner was a wealthy merchant, with large and numerous monetary transactions. As such, he should, as a matter of course, depend largely for the details of his business on his Clerks.

It appeared, from his books, that Causim Saib owed him a small debt of about 20 Rupees. It was not paid, and was some time due, and he sued him for it in the Moonsiff's Court.

In that suit, in which, of course, Ramiah appeared as plaintiff, his two Clerks gave evidence respecting the debt, and deposed to a settlement of accounts with Causim Saib, in person, on a particular date, stated on the face of the account, the entry of which was made by one of the Clerks. They also deposed that Ramiah was present at the settlement of accounts. Causim Saib set up an *alibi* on the particular date stated, and for some short time prior and subsequent thereto; and upon that ground the suit was dismissed. The two Clerks and Ramiah were then indicted for fabricating a fraudulent account.

For the prosecution it was shown that Causim Saib was absent from Cuddapah at the date of the alleged settlement of accounts.

There was no evidence whatever adduced to show that Ramiah knew anything about the settlement, much less had any guilty knowledge of the transaction, which it was essential for the prosecution to establish.

This was quite illegal.

[Innes, J.—Was there not some evidence connecting him with it? Does not the 7th witness say he signed the plaint?

Busteed.—His signing the plaint is no evidence against him; it is a mere formal act which he would do, as of course, if he sued on the faith of his Clerks' representations.]

Now his case is this:—He recollects nothing about the transaction at all. If the entry be a *bonâ fide* one, he may have been present, or he may not. If it be not a *bonâ fide* one, then he cannot answer for his clerks' motives, in saying he was present when he was not.

Counsel did not know whether the evidence of the two Clerks had been given in Ramiah's presence or behind his back; he was instructed that it had been given behind his back. If such were the case, it made a serious difference in the moral aspect of the case, though none in the legal aspect of it; the reading of the deposition against him in the Criminal proceedings being under any circumstances entirely contrary to law.

Counsel then referred to the Affidavit filed in Court, in which three persons, who were present at the time, swore with great particularity to the Judge having refused to hear evidence for the defence, though asked by Ramiah repeatedly to do so, and though the witnesses had been duly summoned, and were present in Court for that purpose. The circumstances so sworn to were of themselves sufficient to cause the Court to quash the conviction.

[Innes, J.—It is a suspicious circumstance connected with this Affidavit that it is not brought forward till Mr. Child, the Judge who tried the case, has left Cuddapah.

Busteed.—The case is in my hands since long before Mr. Child left Cuddapah. The date of the Affidavit will speak for itself on that point.]

On either of the grounds put forward, both of which Counsel believed were urged then for the first time, he submitted the Court would grant the application and re-investigate the case.

[Frere, J.—We do not see any sufficient reason to interfere.

Innes, J.—There can be no doubt that the evidence referred to was illegal. If the Affidavit were true, the circumstances stated in it would certainly have been mentioned on the former occasion. This was, I know, a very painful case to Mr. Child, as he had known the prisoner for a long time. He is a very lenient Judge, and would have been very unwilling indeed to convict, if it could have been avoided. We do not think it necessary to interfere.]

Application refused.

[Busteed.—If the Affidavit be not true, they who made it ought surely to be prosecuted.]

(Signed) T. M. BUSTEED.

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1st December 1865.*

MADRAS }

THE QUEEN,
Versus
M. RAMIAH and others.

We Chethum Chetty Nursunah, of Cuddapah, Merchant, Gondah Gopaul, of Cuddapah, Cloth Merchant, and Pootah Soobiah, also of Cuddapah, Merchant, severally residing at No. 85, on the High Road at Washerman's Pettah, within the limits of Madras, severally do solemnly affirm, and say as follows:—

That, on the trial of the above prisoners at Cuddapah, aforesaid, before the Session Judge, F. S. Child, Esquire, witnesses were summoned to attend and give evidence on behalf of the 1st prisoner, Mootial Ramiah.

2. That the summonses for attendance of the said witnesses were duly served on them, and that they were all in attendance at the Sessions Court, aforesaid, on the day on which the above named prisoners were tried.

3. That, at the close of the case for the prosecution, the 1st prisoner called out that he had witnesses to call, and prayed that they might be examined; but that the learned Judge, imagining that the evidence for the prosecution was all that he was bound to look to or notice, became impatient, and stated that the evidence for the prosecution was quite sufficient to enable him to dispose of the charge against the prisoners.

4. That the Vakeel who was employed to conduct the prisoners' defence was afraid, after the learned Judge had expressed his opinion, as aforesaid, to press upon him the necessity for calling the witnesses, who had, as aforesaid, been subpoenaed, and who were in attendance ready to depose to what they knew.

5. That, notwithstanding the 1st prisoner's repeated application to the Judge to examine his witnesses, they were not examined.

6. That we were in Court, and heard the 1st prisoner call out two or three times, and tell the learned Judge that he had witnesses in attendance, whom he wished examined, and also heard the learned Judge express his opinion, to the effect that he considered the evidence for the prosecution quite sufficient to enable him to dispose of the case; and we further say that, from our knowledge of the charge upon which the above named 1st prisoner was arraigned, and from the evidence we heard adduced on behalf of the prosecution, and from what we heard from the persons so, as aforesaid, summoned as witnesses for the defence, of the circumstances they could speak to, we have good reason to believe that such evidence would have been most material and important for the said 1st prisoner, and would most probably have been a full and complete answer to the charge against him, and would most probably have been sufficient to have procured his acquittal.

7. That the names of the witnesses subpoenaed on behalf of the said 1st prisoner, who were in attendance in the Session Court-house, on the day when the above case was tried at the Session Court at Cuddapah, are Bettah Rungapah, of Cuddapah, Weaver; Thotah Sithappah, of Cuddapah, Merchant; Isman Sah, of Cuddapah, Mundy Merchant; Dilloo Khan, of Cuddapah, Cloth Merchant; Amunchy Chinnayapah, of Cuddapah, also a Weaver; Jinka Chennapah, of Cuddapah, also a Weaver; Davathee Boodiah, of Cuddapah, Shroff; Soorah Vadachellum, of Cuddapah, Indigo Merchant; Cotharamah Soobiah, of Cuddapah, also Mundy Merchant; Dallay Lingappah, of Cuddapah, Merchant; Poala Joganah, of Cuddapah, cultivator; and others, whose names we do not now remember.

The × mark of CHETHUM CHETTY NURSUNAH.

(Signed) చింతామణి నర్సనాథులు

(„) పుట్టాపర్తియ్య

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Solemnly affirmed to, at Madras, by the said Chethum Chetty Nursunah, Gondah Gopaul and Pootah Scobiah, respectively, this 11th day of August 1865.

Before me.
(Signed) T. G. CLARKE,
Justice of the Peace.

Explained by me.
(Signed) C. VODACHELLA MOODELLY,
*Sworn Interpreter of the Madras
Town Police Court.*

No. 4. ORDER THEREON, 1st December 1865, No. 1710.

The Governor in Council cannot interfere with the sentence passed upon the petitioner. The case has been twice before the Judges of the High Court, and the sentence is affirmed by them.

(True Extract).
A. J. ARBUTHNOT,
Chief Secretary.

To M. Ramiah.

Exd, J. H. Burns.

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 GAOL,

RESPECTFULLY SHEWETH,

That aggrieved by the sentence of the Sessions 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, shewing 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 follows:—

1st 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 5 or 6 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 Sudr Ameen, that I had brought a letter for the Tahsildar. I was a witness against 1st prisoner (M. Rungiah) in an assault case brought against him. He was fined. That is the only reason, that I know, for the 1st 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—1st 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, 1st 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 8 or

10 days before—he said he had been to ² ~~Ayony~~ 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,—3rd 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 Sessions 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 1st 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 Suder 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.

1st. Letter C states the receipt of a previous letter from his brother, while letter D says "after we took leave of you we arrived here—you have not written from that time to this day."

2nd. The reference to Causim Saib in letter C, is at the end of it, and is, apparently, as your Petitioner has been informed, in a different ink. This fact alone throws doubt upon the testimony of 3rd and 4th witnesses, for their story is that the request to mention them was made and complied with while C was being written. If this were the case, the ink would be the same. But independent of this, what reliance can be placed on a statement at the end of a letter, which the writer might have had the opportunity of subsequently adding.

11. What the true solution of all this really is, your Petitioner cannot venture to suggest. But it is surely quite sufficient to make Criminal Justice pause before it relied upon such evidence, carrying doubt on its very face, to convict of fraud a man, whose honesty had been theretofore unimpeached.

12. It will be observed that the evidence against your Petitioner depends entirely on the absence of Causim Saib from Cuddapah, on or about the 25th February 1864, the date affixed to the settlement of accounts. But it is one of the most remarkable things in this remarkable case, that the date so affixed is, probably, an error. If this can be established, or if it be shown to be probable, away goes the entire evidence for the prosecution.

13. The date affixed is 25th February 1864, and the item purports to be made up of a principal sum, with interest upon it at 1 per cent per mensem up to the date of the settlement affixed to the account; but, according to the date of settlement so affixed, the interest is miscalculated just 2 months, the error being against your Petitioner. The interest actually due up to Rudhirodgary, Magha Bahoola 2 (25th February 1864,) is 4-7-6, while the interest actually charged is 4-1-6, making a total of 21-13-6 instead of a total of 22-3-6. The interest actually charged would make the date of the settlement of account the 27th December 1863. And it is worthy of notice, that the similarity between the native months in the two cases is so very great as easily to lead to the error which has probably occurred. The 25th February 1864, is Rudhirodgary Magha Bahoola and the 27th December 1863, is Rudhirodgary Margasira Bahoola. And though your Petitioner believes that the actual date of settlement was December and not February, yet it is impossible, after such a lapse of time, to say positively, whether the interest has been correctly calculated and one month erroneously written for another, or whether the month as written is correct, and the calculation of interest erroneous. But to put the date no higher than doubtful, is to disturb the very foundation of the prosecution.

14. The evidence of the 1st, 2nd, 3rd, 4th, and 6th witnesses, as regards the absence, from Cuddapah, of Causim Saib on and about 25th February 1864, may be all true, and, at the same time, your Petitioner guilty only of a clerical error made by his Clerk in an entry in an account Book. Your Petitioner, however, is well aware, that such is the ill-feeling of the 2nd witness and his family towards him, owing to his having unintentionally disobliged him on one occasion, that they would not be at all unwilling to lend their aid, truthfully it may be, to injure or annoy your Petitioner.

15. It is not denied that the entry in question was made by your Petitioner's clerks. Your Petitioner has very extensive monetary and mercantile transactions, and must, of necessity, depend for the details of his business upon his subordinates. Any Merchant will and must, else all business should come to a stand still, accept as *prima facie* correct and true the acts of his subordinates, and do accordingly. Therefore, when your Petitioner demanded of Causim Saib the debt which by his accounts, he appeared as owing, and sued him on its non-payment he did precisely what any merchant in Madras or elsewhere would have done and nothing else.

16. Your Petitioner, a wealthy merchant, is charged with fraud. It is alleged that he caused this entry to be made well knowing it to be false, and for the purpose of base revenge. The 1st witness states, that, having given evidence against your Petitioner in an assault case wherein your Petitioner was fined, your Petitioner has, therefore, become his enemy. He admits he can assign no other reason for the enmity which he alleges. Will it be believed that the

trial referred to, took place in December 1861, and that, by the evidence then given by the 1st witness, a copy of which is here to appended, your Petitioner was not, in the least affected. But if he had been, what a noble revenge is your Petitioner's!!! Having nursed his wrath for nearly three whole years, he brings a Suit against his victim for twenty-one Rupees, thirteen annas, six Pice, in the Small Cause side of the Cuddapah Moonsiff's Court!!

17. Your Petitioner has deemed it necessary, in vindication of his character, to go into the merits of the charge upon which he has been convicted, and your Petitioner submits, that the conviction is unsustainable for the several reasons already pointed out, viz:—

1. Because illegal evidence has been received upon the most vital and important point in the case against your Petitioner, namely, the depositions of the second and third Prisoners before the Moonsiff, in the Civil Suit brought by your Petitioner against Causim Saib, for the debt due to your Petitioner.

2. Because, taking the whole evidence at its highest, there are discrepancies and suspicious circumstances in its most material portion, namely, the letters C. D. and E, which make it as a whole unreliable.

3. Because the date affixed to the settlement of accounts is probably an error; and if it be even doubtful, the entire charge necessarily fails.

4. Because there is no motive for your Petitioner's alleged malice, the only one suggested being refuted by the mere statement of it.

18. No doubt it will occur to your Excellency, that if your Petitioner had so clear a case as he now puts forward, the High Court, sitting as a Court of Appeal, would not have confirmed the sentence passed upon him. But it must not be forgotten, that the Court of Appeal must, in the absence of the record, which in cases such as this, is never before it unless specially sent for, frequently act upon very imperfect information; and that, sometimes, it is impossible to bring the full facts before it, and sometimes that, though possible, it is not done. And though justice is administered in the vast majority of cases, yet, occasionally, perhaps unavoidably, is injustice done. The legislature, in reserving an appeal to your Excellency in Council, has done all that, in its wisdom, it could, to obviate the danger of such occasional injustice.

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.

MADRAS,

26th August 1865.

And your Petitioner,

SHALL EVER PRAY.

Signed and presented on behalf of the said Petitioner by

Barrister at Law.

By Karasimooloo Betty Egn Dr
To one Gold Chain weighing 9 Sovereigns—90. 00
" Wire for making—do—30. 00
120. 00

Sep Received 10 Sovereigns 100. 00

Balance Rs 20. 00

E. E.
Contents Received

H. Tracey

Madras
20 November 1865.

I don't see how the Gov^t can properly interfere in this
case, it certainly cannot meddle with the decision of the
High Court upon an appeal. ²⁴⁴⁶
Statement of Mr. Parnish that in the Judge's statement from
the Bench that ^{the} Mr. Parnish - a prisoner in
custody of the Jail. The Prisoner was convicted was
illegal when we have the evidence of the same Judge that the conviction
was void by his affirmation. Dated 7th November 1865
The sentence. For Orders.

This case has come before the High
Court twice. If they saw no reason
to interfere with the sentence I do
not see how the Government can
do so. 18/11/65 JF2

The case seems to me to be
of a very serious & important
character - as affecting the
position of our High Court -
In the enclosure to the Letter
last submitted to the Gov^t

we have it in the hand writing
of a Barrister who noted the pro-
ceedings he was ~~the~~ ~~was~~ concerned,
that one of our Judges - a non-
professional Judge - has, & has
admitted from her seat on the
Bench that the evidence on which
the Prisoner was manifestly convicted,
was "no doubt illegal evidence".
and yet the Court - the other Judge
being Mr. Fane, also a non-professional
Judge - refused to grant any
redress.

This illegal evidence was the introduction
from a civil record of a suit tried
in a ~~Justice~~ ^{County Court} Court; evidence
given by the 2nd & 3rd Prisoners,
by which the 1st Prisoner, is
shown (when they are)

affected - & this evidence too was
taken as appear from the papers, behind
the Prisoner's back.

we have no reporters here to
chronicle the deeds, our deeds, past or
a injustice of our Court; but in this
case we have what might be
published as a report of an appeal
heard in the N. Court - were it to
appear published in that form,
the Court wd. I think, be staggered
rather; at an acknowledgment of one
of their Judges such as seems to have
been publicly made, without its being
followed by some judicial
remedy.

In the absence of such, I
am of opinion that steps should
be taken by the Gov. to ascertain
from the N. Court what their

vidence of the kind nature of
not affect the legality of the
Lepin's sentence
20 Nov 65. W.D.N.

1st December 1865 No. 1710.

The Governor in Council
~~does nothing in the foregoing petition,~~
~~cannot interfere with~~
~~which would lead him to question the~~
propriety of the sentence passed upon
the Petitioner. The case has been
twice before the

Judges of the

High Court

and the sentence affirmed.

W.D.N. made by them.

I may be: as this will
not appear in a month
out with

I would allow the order as above,
because if we are to take the
petition & Council's advice as they
stand then might seem from
2/12/65 them reason to question the propriety
of the sentence. But I cannot
think that we have all before us. J.P. #