

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.

327

Press
Mis.258-259
Dated

27-2-1918

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*Proceedings of the Madras Government, Judicial Department,
27th February 1865.*

No. 258. Read the following letter from the Honorable J. B. NORTON, Advocate General, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 14th February 1865.

I have the honor to report, for the information of His Excellency the Governor in Council, the results of the cases in which I officially appeared at the late Sessions.

2. In accordance with the instructions of Government, I obtained a *Habeas Corpus* to bring up C. C. Streemom Pillay before Mr. T. G. Clarke, on a charge of having committed criminal breaches of trust as a public servant, under Section 409 of the Indian Penal Code.

3. I attended on three occasions before the Magistrate, and after I had gone fully into the case, examining all the witnesses, and producing and proving the various documents, the Magistrate at once committed the case, the prisoner reserving his defence.

4. He was indicted by the Public Prosecutor upon various counts, the first set of which related to the prisoner's transactions respecting the Sydapet Choultry; the second, to his transactions respecting the Comaleswaram Covil Choultry; and the last, to his applying twelve monthly instalments of the interest on the Charity Funds, amounting each to Rupees 466-10-8, to the payment of his private debt to Shaboodeen Khan.

5. The last counts were confined to these twelve instances of fraud, because the whole of the receipts given in respect of them had been cashed at the Bank, and the proceeds paid over to Shaboodeen Khan by the Sheriff.

6. These transactions were all prior to the month of September 1862. The course of dealing between the prisoner and Shaboodeen Khan, from that date down to the month of August 1862, in which he pledged by anticipation the whole of the interest on the Charity Funds up to the month of March 1866, could not be made the subject of indictment; because, however fraudulent were the acts and intention of the prisoner, no money had in fact been paid on any of these bills, which His Excellency will remember formed the subject of the action brought by Shaboodeen Khan against the prisoner, on which I formerly reported in my letter under date 19th December 1864.

7. In the action, Shaboodeen Khan alleged that all his advances, from September 1862, were on account of charity purposes. It may not be out of place to remark that, before the Magistrate, Shaboodeen Khan, while still adhering to his former story, that the first of these advances was for charity, freely admitted that the other three were of a purely private nature; that one actually took place in Jail; and that its object was to relieve the prisoner from a private debt, on which he had been arrested.

8. At the criminal trial, which took place on the 11th instant, Mr. Miller appeared for the defence. On the indictment being read, he demurred, on the ground that it disclosed no offence. His point was that the prisoner was charged as a public servant, in respect of his being a Receiver appointed by the late Supreme Court. He argued that as such he was not an "Officer of the Court," any more than an Executor, Administrator, Committee of a lunatic, and the like.

9. There was nothing in the objection; for a Receiver is *ipso facto* the hand of the Court; the property is in possession of the Court; any one interfering with the discharge of his duties is guilty of a contempt of Court; and he acts under the immediate directions of the Court. In all these respects his office differs from that of the functionaries named by Mr. Miller; and the presiding Judge, Sir Adam Bittleston, held the indictment good, and pronounced judgment on demurrer.

10. Mr. Miller prayed to be allowed to plead over, to which I did not object, he having informed me that the prisoner intended to plead guilty. This was accordingly done; and Mr. Miller then addressed a few words to the Court, on behalf of the prisoner. I observed that he had exercised a sound discretion in pleading guilty; that any other plea would only have enhanced his guilt, had he attempted to set up a false defence: and while remarking on the necessity for such a sentence as would mark the enormity of the prisoner's crime, I stated that I was not disposed to press very hardly against him, as he was very young when he assumed charge of the charities; had been fleeced and victimized by unscrupulous money lenders; had entirely lost the position he held in Native society; and had already undergone eight months' imprisonment, with scarcely a Rupee to support him in Jail.

11. The Judge sentenced him to 15 months' *rigorous* imprisonment, remarking upon the impossibility of any other plea than that of guilty being set up, regard being had to the evidence which the prisoner had himself given at the trial of the civil action. He also intimated that transportation would probably have been not too heavy a sentence for the nature of the offence.

12. The second case in which I prosecuted was that of the Queen *v.* Edward Marshall and Henry Bardell; the first charged with criminal breach of trust as a public servant; the second with receiving the goods stolen by the first prisoner.

13. The case was committed by E. B. Foord Esq., Justice of the Peace in Ganjam. The first prisoner was a Deputy Constable, and the second a Head Constable in the Ganjam Police. The first, who had temporary charge of the clothes stores at Chettpore, took out a quantity of cloth and cotton suits, and dispatched them to the second at Gopalpore, where he was in charge of the Police at the Salt-works. The witnesses who saw the first prisoner take the clothes from the store, and who carried them to the second, were called, and fully proved that part of the case. A portion of the property was recovered from one Lutchmiah, a washerman, who deposed before the Justice of the Peace that he had received the articles from the second prisoner. These clothes were produced. A witness also deposed that he had purchased another portion from the second prisoner, for Rupees 6-8. These were also produced and identified. None of the cloth clothes were produced. One suit was stated to have been sent by the 2nd prisoner to Peon No. 273.

14. The first prisoner set up that a portion of the clothes were his own, and that another portion had been given him by Constable Chester, for whom he was acting, in support of which he called a witness formerly a Constable in the Ganjam Force, but now employed as a Guard on the Railway. This witness, who on cross-examination did not appear to be of a very good character, supported the prisoner's statement. The Judge summed up strongly for a conviction. The Jury, however, retired, and after an absence of nearly four hours, returned a verdict of not guilty in the case of both prisoners.

15. There were, no doubt, circumstances to justify this verdict. The clothes when inspected appeared to be old; some were frayed at the heels, others were patched in the seat, and the Foreman happening to be a tailor, Mr. Hunter, probably brought the knowledge of an "expert" to bear upon this question. The witnesses swore that the clothes were entirely new when taken out of the Stores.

16. I am sorry to be obliged to report that in my opinion there has been a failure of justice, and that this might have been avoided had the case been more closely investigated by the Committing Magistrate.

17. In the first place, although the evidence of the washerman, Lutchmiah, was taken before Mr. Foord, that witness was not sent down to Madras. The Magistrate remarks that his attendance was unnecessary, inasmuch as the 2nd prisoner admitted in his statement that the clothes recovered from the washerman had been given to the washerman by himself.

18. I cannot think that this was a sufficient reason for not forwarding this witness along with the rest. It drove me to the necessity of putting in the 2nd prisoner's statement, which of course contained a lot of exculpating matter, to which it is impossible to say what weight the jury, may have attached. Again, the absence of so important a link in the chain of evidence as that of the washerman is just one of those points which excite the suspicion of a jury and give rise to doubts of which the prisoner has the benefit. Had Counsel been employed for the defence, which was highly probable, seeing that they were Europeans, it is needless to point out how much would have been made of the absence of this witness, and I consider his presence here would have been most material, as he would have been able to speak to the appearance of the clothes when they were first delivered to him to be washed.

19. The first prisoner, in his statement before the Magistrate, vouched Mr. Chester as the donor of some of the clothes; yet, strange to say, Mr. Chester was never examined to negative that fact; and lastly, what appears to me a fatal blot in the case, there was no evidence taken to show that there was any deficiency in the clothing stores.

20. The case was committed on the 10th January, and reached the office of the public prosecutor only on the 3rd February. It came into my hands still later. There was no time for communication with Ganjam, the production of the necessary evidence, and the transmission of the witnesses to Madras. Had the case been originally made perfect, in respect to the points above-mentioned, I make no doubt a conviction would have been secured.

21. There is a third case which I am desirous of bringing to the notice of His Excellency in Council, although I appeared to prosecute in my private professional, and not my official, capacity. It is that of the Queen *v.* Jugganada Pondiah.

22. I am induced to report upon this, because it is connected with the Government prosecution of Rope Kishore Soojan Mull and others, for counterfeiting stamps, and having counterfeit stamps in their possession, at the 2nd Sessions of 1863. The whole of the prisoners then charged were acquitted, and their cases reported upon by my predecessor, in his letter to the Chief Secretary, under date 24th April 1863.

23. In the case now under notice, the tables were turned. One of the principal witnesses against Rope Kishore Soojan Mull, if not the principal instigator of the

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whole matter, was now brought to trial for having given false evidence in his deposition before the Magistrate on the 11th February 1863, upon which Soojan Mull and the others were committed to the Sessions.

24. The Jury found the prisoner guilty, and he was sentenced to seven years' transportation.

No. 259. ORDER THEREON, 27th February 1865, No. 327.

The Governor in Council directs that paragraphs 12 to 20 of the foregoing letter be communicated to Mr. Foord.

(True Extract).

Chief Secretary.

To ~~Mr.~~ E. B. Foord, Acting Magistrate of Ganjam.
To the Inspector General of Police.

*N^o 327 - 27 February 1865.
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directs that paras 12 @
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be communicated to
Mr. Foord.*

*Mr. E. B. Foord.
Acting Magistrate
of Ganjam. } des^d 9/3
The Inspector General
of Police. }
" Ad. Secy General des^d 4/3*