

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	832	Press Mis.
<i>71-73</i> Dated	7-6-	19. 18.65

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
9th June 1865.*

Read the following papers :—

No. 71. Proceedings of Government in the Military Department.

Communicating the case of a Pensioner,
Shaik Bauben, who was tried and con-
victed for theft, in view to the Session } (Dated 11th April 1865, No. 1397).
Judge of Salem being called upon to
re-investigate his case.

Referred, accordingly, to the Session Judge of Salem, for his opinion.

FORT SAINT GEORGE,

22nd April 1865.

(Signed) J. D. SIM,

Secretary to Government.

No. 72. From H. E. SULLIVAN, Esq., Acting Session Judge of Salem, to
the Honorable A. J. ARBUTHNOT, Chief Secretary to Government,
Fort Saint George; dated Shervaroy Hills, 13th May 1865.

I have the honor to acknowledge receipt of the Order of Government, dated
11th April 1865, No. 1397, calling upon me to report upon the case of Pensioned
Private S convicted by the Head Assistant Magistrate of Salem of
theft by a servant under Section 381, and sentenced to receive thirty
lashes.

2. A perusal of the record inclines me to think that the prisoner in this case
should have been indicted under Section 408, rather than under Section 381. As a
servant of the Railway Company, he was entrusted with a certain quantity of oil
for a particular purpose, which oil, it was alleged, he dishonestly misappropriated,
thus committing a Criminal breach of trust, as defined in Section 405.

3. With reference to the question as to whether there was sufficient evidence
to convict on an indictment framed under either of the Sections, it is extremely
difficult to form an opinion, when the evidence has been given before another Court,
as its value very much depends on the manner in which it is given. I do not
however, that I should have convicted the accused myself on the evidence adduced,
for the following reasons :—

It is in evidence that he gave the full quantity of oil issued to the Engine
cleaners, and there is nothing to show that any of it came back into his possession.
The 2nd and 3rd witnesses depose that he directed them to return to him any
surplus, and, in his defence, the accused admits that he gave this order with a
view to returning the unexpended portion into store, and there is no evidence
to show that this was not his intention. The 1st prisoner, Karayan, was detected
with a portion of the pilfered oil in his possession, which, *he said*, he was taking
to Shaik Bauben's house, by order of the 2nd prisoner Syed R. Both the 1st
and 2nd prisoners, the Head Assistant Magistrate states in his report, of
the grounds of conviction, plead guilty to their share of the transaction; but
it is hardly necessary to point out that their admissions, though the best evi-
dence possible against themselves, could not be received against their (supposed)

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accomplice, Shaik Bauben; but, apparently, it is on these statements that he was convicted, whilst K. and Syed Ráza, who by their own admissions were guilty, were discharged. The 4th and 5th witnesses deposed that they detected K. bottle of oil to Shaik Bauben's house but they had only his (K.) word for this. Had they followed him, Bauben receive the oil from him, the matter would have been different. moreover, be remembered that the witnesses for the prosecution are all Engine cleaners, and under the orders of the Maistry, Shaik Bauben, who may, in the discharge of his duty, have given them cause of offence, so that their evidence should have been received with caution, especially as it is difficult to conceive why, if he was dishonestly disposed, he did not retain a portion of the oil before sending it to the cleaners under his supervision.

3. Had the case come before me, I should have convicted Karayan and Syed Ráza, and have acquitted Shaik Bauben.

No. 73. ORDER THEREON, 9th June 1865, No. 832.

The foregoing letter from the Session Judge of Salem is communicated to the Military Department, with reference to paragraph 2 of the Order in that Department, dated 11th April last, No. 1397.

(True Extract).

Chief Secretary.

To the Military Department.

Exd. J. H. Burns.

*Sole by the H. C. H. G.
Phillips, on Letter. 1490 of 1865.*

*He. have been
in authority
Karapattan. No charge was given of oil
that ought to be in
But before second time punishing a Governor
Prisoner of nearly 23 years' service, for a
dumpey " " for which has been already
not injudiciously I think) punished by stripes
old draw the attention to
the character of the Evidence on which the un-
fortunate man seems to have been convicted.
vide for this the Head Assistant Magistrate
Mr. Hathaway's sentence which shows clearly
that the testimony against the Prisoners as
Prisoners is nothing but the criminatory
allegations of the 1st and 2nd Prisoners who
have been acquitted. That is not Evidence as
we all know. Before acting in this case, I
would require the Session Judge to
call up the record, look into the case and
report.*

the mag. w. p. 1490/6

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers—
From the Acting Superintendent of Pensions, Fort Saint George, 20th March 1865, No. 4142; to the Secretary to Government, Military Department.

With reference to paragraph 72 of the revised Pension Regulations published in G. O. G., No. 187, dated 29th August 1848, I have the honor to submit the following circumstance for the information and orders of Government.

2. Pensioned Private Shaik Hoossain, No. 39,704, of 2nd Class, was sentenced by the Cantonment Magistrate of Bangalore to three months' simple imprisonment on the following charge:—

"For having on or about the 19th November 1864, at Bangalore, being a servant in the employ of Prosecutor, did commit theft by dishonestly taking away from the liquor godown of Prosecutor, one bottle and one pint of Pale Ale the property of the said Prosecutor, and that he has thereby committed an offence punishable under Section 381 of the Penal Code."

3. He has been since released, having completed the term of his imprisonment.

4. By the Register of this Office he was Pensioned from 11th May 1860, on Rupees 4 per month but no information regarding his service and character is on record.

is herewith forwarded.

from the Criminal Calendar of 1864.

Crime.		Sentence.
Nov.	Mr. G. G. Brown. Bangalore, being a servant in the employ of Prosecutor, did commit theft, by dishonestly taking away from the liquor godown of Prosecutor, one bottle and one pint of Pale Ale, the property of the said Prosecutor, and that he has thereby committed an offence punishable under Section 381 of the Penal Code.	The Court finds the Prisoner guilty of the charge, viz., of theft as a servant under Sec. 381 of the Penal Code, and sentences the said Shaik Hoossain to three months' simple imprisonment. (Signed R. A. COLE, Cantonment Magistrate.)

(True Extract.)

(Signed) W. HILL,
Cantonment Magistrate.

BANGALORE POLICE COURT, }
7th March 1865.

From the Acting Superintendent of Pensions, Fort Saint George, 20th March 1865, No. 4143; to the Secretary to Government, Military Department.

With reference to paragraph 72 of the revised Pension Regulations published in G. O. G., No. 187, dated 29th August 1848, I have the honor to submit the following circumstance for the information and orders of Government.

2. Pensioned Heir Lutchmee Davey, No. 10,369, of 7th Class, was sentenced by the Cantonment Magistrate of Bangalore to two years' imprisonment, with suitable labor, on the following charge:—

"For having, on or about the 22nd February 1863, at Bangalore, committed theft of one silver wristlet off the hand of the grandson of the Prosecutor, and that she has thereby committed an offence punishable under Section 379 of the Indian Penal Code."

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3. She has been since released, having completed the term of her imprisonment.
4. By the Register of this Office, she draws a Pension of Rupees 2-6 per month, from 7th July 1859, on account of her late husband, Store Lascar Hoonoor, of the Ordnance Department.
5. A copy of the crime and sentence is herewith forwarded.

Extract from the Criminal Calendar of 1863.

Criminal No.	Date of suit filed.	Prisoner.	Prosecutor.	Crime.	Sentence.
92	1863. 23rd Feb.	Lutchm Davey.		That she, on or about the 22nd February 1863, at Bangalore, did commit theft of one silver wristlet off the hand of the grandson of the Prosecutor, and that she has thereby committed an offence punishable under Section 379 of the Indian Penal Code.	The Prisoner is therefore sentenced to 2 years' imprisonment with suitable labor. (Sd.) C. PEARSE, Cantonment Magistrate

(True)

BANGALORE COURT,
7th March 1865.

(Signed) W. HILL,
Cantonment Magistrate.

From the Acting Superintendent of Pensions, Fort Saint George, 20th March 1865. No. 4145; to the Secretary to Government, Military Department.

With reference to paragraph 72 of the revised Pension Regulations published in G. O. G. No. 187, dated 29th August 1848, I have the honor to submit the following circumstance for the information and orders of Government

by the Joint Magistrate in charge of Head Assistant Magistrate's Office of Salem, to receive 30 lashes with a cat-of-nine-tails, according to Act VI of 1864, on the following charge:—

“For having on or about the 31st January 1865, at Jollarapett, being a servant to the Railway Company, committed theft in respect to property in possession of the said Company, and he has thereby committed an offence punishable under Section 381 of the Indian Penal Code.

3. By the Register of this Office, he was pensioned from 18th March 1862, on Rupees 4 per month, his period of Service being 22 years and 7 days and his character good.

4. A copy of the crime and sentence is herewith forwarded.

I, William Frederick Hathaway, Head Assistant Magistrate of Salem, declare that there is hereby made against Karayan, Syed Raza and Shaik Bauben, the charge

That they, on or about the 31st January 1865, at Jollarapett, being servants to the Railway Company, committed theft in respect of property in the possession of the said Company, and have thereby committed an offence punishable under Section 381 of the Indian Penal Code, and within my cognizance.

And I hereby direct that the said Karayan, Syed Raza and Shaik Bauben be tried on the said charge.

TRIPATOOR,
15th February 1865.

(Signed) W. F. HATHAWAY,
Head Asst. Magistrate.

The accused are employed in cleaning the Engines. A certain amount of oil, viz., two ounces is served out for each Engine, it ought to be all used, as it is impossible to clean the Engine properly without doing so, and the 3rd accused Shaik Bauben is the Maistry put over them to see that they do so use it all. Instead of doing his duty, he not only allowed them to keep some of the oil unexpended, but himself collected afterwards all this oil that they had dishonestly retained, and took it himself.

The amount of oil is by no means excessive: on the contrary, the 3rd accused had complained it was not enough. On the day in question the 1st accused was caught with about a quarter of a bottle-full taking it away to the Maistry's house. To this he pleads guilty.

The 2nd accused Syed Raza poured the savings of the oil into this bottle and hid it during the day time, and in the evening told the 1st accused to take it to the house of the 3rd accused. This he admits.

The 3rd accused pleads not guilty.

Full allowance must be made for any idea that the accused might possibly have had of there being no harm in saving any oil that they might save. It may be difficult to draw the line between taking a thing and stealing: but whatever might be the actual character of the act, the moral depravity would not be the same, and full consideration must be paid to all possibility of excuses of this sort. This being borne in mind therefore there may be some excuse for the 1st and 2nd accused. They may have thought that there was no harm in the Maistry appropriating any oil that

betted the act of the 3rd accused, not that had no personal intention themselves, and did not do so for personal gain.

Moreover, some allowance must be made for their being subordinate to the 3rd accused, and in under his orders. not being therefore the intent fully apparent in

their act. acquitted.

Best to which it is possible to stretch these considerations. is impos-

3rd accused. He was responsible for a amount of

none was retained. Nor can any excuse be made on much,

ing that it was too much: because he had repeated, in

or at any rate of not enough while it is proved that at the very time he was ordering daily and to give it is utterly

or him: it is a matter of system and it can-

he may have thought the article wanted by his

not justice and Syed Raza are

employed. It finds that they of the Madras Railway Company committed theft in

in the that they of the said Company and have thereby committed an offence

respect of property Indian Penal and the Court directs that the said Karayan

discharged. is guilty of the offence specified in the charge; viz., that

The Court is guilty of the offence specified in the charge; viz., that

Shaik B. being a servant of the Madras Railway Company, committed theft in respect of property

in the possession of the said Company, and that he has thereby committed an offence punishable

under Section 381 of the Indian Penal Code; and the Court directs that the said Shaik Bauben

receive 30 lashes, according to Act VI of 1864. (Signed) W. F. HATHAWAY,
Head Asst. Magistrate.

TRIPATOOR, 15th February 1865. ORDER, No. 1397, 11th April 1865.

Pensioners marginally noted, be continued

to them from the date of their release from

imprisonment.

2. Pensioned Private Shaik Bauben will be referred to the Judicial

Department, in view to the Sessions Judge of Salem being requested to call up the

record, for the case and report to Government whether it has been properly

disposed of. (True Extract.)

Under Secretary to Government.

To the Superintendent of Pensions.

Adjutant General.

Controller of Military Accounts.

Examiner Pay Department.

al Department, with copy of note.

Exd. T. Stubbs.

PROCEEDINGS of the MADRAS GOVERNMENT.

the following papers:-

Udy. Dept. - Order 11 April '65 No. 1397

Letter from the Session

1. Jge of Salem - 13 May '65 . X.

Order - 7 June 1862

Foregoing letter from
the Session Judge of Salem
is communicated to the
Udy. Dept., with reference
to para 2 of the Order
in that Dept., dated
11 April last No. 1397.

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The Udy. Dept. dec 14/6

1862
Salem
District

India. 1865 Department.

No. 832

PROCEEDINGS OF GOVERNMENT.

File 1403

Dated 9th Dec 1865.

File 1403-1865.

*Passing order in the
Case of Government
Abdulla (Daudan). -*

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