M.R.O. 1—22,000—16-11-53.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1107 Press Mis.

149-152

Dated 16 7 ~~19~~ 1866

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
16th July 1866.

Read the following papers:—

No. 149. From Mr. F. T. LLOYD, Merchant and Agent at Cochin, to the Chief Secretary to Government, Fort Saint George; dated Cochin, 9th May 1866.

I have the honor to forward, herewith, a Memorial to the address of the Right Honorable the Governor in Council, and request you will have the goodness to lay it before His Lordship at your early convenience, and communicate to me the orders that may be passed thereon.

To

THE RIGHT HONORABLE THE GOVERNOR IN COUNCIL,
Fort Saint George.

The Memorial of FRANCIS THEODOSIUS LLOYD, of Cochin, Merchant,

HUMBLY SHEWETH,

That Mr. John Martin Bass, late Printer and Publisher of a Newspaper in this town under the designation of the *Malabar Mail*, having been prosecuted for defamation, he was sentenced by the late Joint Magistrate of Cochin, under the Indian Penal Code, to twelve months' imprisonment.

2. That Mr. Bass having appealed to the Session Court at Calicut against the said sentence, and the periodical adjournment of that Court having simultaneously commenced, the Session Judge ordered the release of Mr. Bass on bail, under Section 421 of the Criminal Procedure Code, pending the decision of his Appeal. That, accordingly, Memorialist became bail for the appearance of the said Mr. Bass before the Joint Magistrate of Cochin, whenever called upon, subject to a penalty of Rupees (1000) one thousand.

3. That, eventually, the sentence passed on Mr. Bass by the Joint Magistrate was commuted by the Session Court to five months' imprisonment, and Mr. Bass, who had gone to Calicut to await the decision of the Session Court, proceeded on to Madras, to submit his case to the High Court, and succeeded in obtaining a further reduction of the sentence to two months.

4. That, in the meantime, Mr. Bass not having been present at Cochin, to submit himself to the modified sentence that was passed on him by the Session Court, he having proceeded to Madras to prosecute his Appeal there, ignorant of the consequences of his not immediately returning from Calicut to Cochin, and influenced by the hope of obtaining a complete reversal of his sentence, the Joint Magistrate called upon Memorialist to pay the forfeiture according to the Bail Bond.

5. That Memorialist solicited* that, under the peculiar circumstances of the case, the penalty on his recognizance might not be enforced, but that, in the exercise of the discretionary power with which he was vested, according to Section 294 of Act XXV of 1861, he would allow time for the return of Mr. Bass from Madras; but the Joint Magistrate would not grant this prayer, and the penalty of Rupees one thousand was recovered from Memorialist.†

*Agreeably to accompanying copy of his address, attested by the Joint Magistrate.

† Vide Endorsement by the Joint Magistrate on his above-mentioned application as per accompanying attested copy.

6. That, subsequently, the modified sentence of two months' imprisonment passed on Mr. Bass by the High Court was carried into execution against him.

7. That Memorialist humbly submits that omission on the part of Mr. Bass to return to Cochin and surrender himself to the Joint Magistrate, immediately the decision by the Session Court was passed, did not arise from dishonest motives, but, as already stated, from ignorance, and a natural anxiety to procure a reversal of his sentence, in which he was partly successful. That no failure of justice has occurred from Mr. Bass' default, according to the strict letter of the Bail

Bond, inasmuch as the final sentence of the High Court was actually executed against him, and the appearance of Mr. Bass before the Joint Magistrate would have been positively secured if that officer had only granted a slight extension of time for that purpose.

8. That the recognizance into which the said Mr. Bass was required to enter, of Rupees 1000, and for which Memorialist stood surety, was, with reference to the magnitude of the Joint Magistrate's sentence of a twelve months' imprisonment, and as considered as a proportionate and adequate security in view of Mr. Bass' evading the execution of it, also as a compensation for the failure of justice in the event of his doing so. But that sentence, according to the decision of the High Court, is shown to have been excessive, and quite disproportionate to the offence. Whilst so, merely on account of a slight infringement by Mr. Bass of the strict letter of the Bail Bond, as interpreted with a severity totally incompatible with the requirements of justice equally to all, that the payment in full of the above mentioned sum of Rupees 1000 should have been enforced against the surety, without any fault of his, even under the considerably reduced sentence of the Session Court, Memorialist trusts will appear to your Lordship in Council a case of real hardship, calling for relief, especially when it is considered that the ultimate object which the penalty in a Bail Bond is intended to secure was fully answered when the still further modified sentence of the High Court was carried in execution ; and thus, that the *only* condition under which such penalty is enforced, viz., the absconding or concealing of the party bailed, was wanting in this case to justify the harsh procedure of the late Joint Magistrate of Cochin against Memorialist.

9. That the Legislature, in guarding against eventualities of the nature contemplated by the enjoinment of penalties and forfeitures, did not intend to exclude the application of equitable principles in the enforcement of the law, is shown by Section 185 of Act XXV of 1861, which provides the restoration of property declared to be forfeited to Her Majesty, and, if the same shall have been sold, the proceeds thereof, when the party, supposed to have absconded or concealed himself, shall surrender his person, within two years, and it be proved that his absence did not arise from a set purpose of evading justice.

10. That the above enactment, intended by the Legislature to moderate the action of the law of penalties and forfeitures, and to confine its operation within the bounds of strict equity and justice, Memorialist trusts will be found, in spirit and principle, applicable to the case hereby submitted for the kind and equitable consideration of your Lordship in Council, inasmuch as the absence of Mr. Bass, at the time he was required by the Joint Magistrate, was not from a criminal intent to abscond or conceal himself with a view to evade justice, but simply to his attendance at the High Court at Madras during the hearing of his appeal, that, by his presence on the spot, he may be enabled to insure that degree of proper representation of his case and exertion on the part of his Counsel on which he thought would, in a great measure, depend his experiencing a more satisfactory result than the modified sentence passed by the Session Court.

11. That Memorialist having utterly failed to recover the amount of his forfeiture from Mr. Bass, although every effort has been made to realize the same, he humbly prays your Lordship in Council will be pleased to take into your favorable consideration the circumstances above represented in the bearing the enactment above quoted has upon the case, and, in the exercise of the supreme executive powers vested in you over this Presidency, be graciously pleased to order the re-payment to memorialist of the above mentioned penalty, recovered from him on behalf of Her Majesty's Government.

For which act of grace and benign consideration, your Memorialist, as in duty bound, shall ever pray.

Cochin, 9*th May* 1866.

(Signed) F. T. LLOYD.

From Mr. F. T. LLOYD, Merchant and Agent, Cochin, to the Joint Magistrate of Cochin ; dated Cochin, 10th July 1865.

Having been served with a Notice from you, to the effect that, as I became surety for Mr. J. M. Bass, that he should appear before your Court when called upon, and bound myself, in default thereof, to forfeit the sum of Rupees 1000, and whereas the said Mr. J. M. Bass has failed to

appear, and, by reason of such default, that I had forfeited the aforesaid sum of Rupees one thousand, and, therefore, requiring me to pay the said penalty, or show cause, on or before the 10th day of July 1865, why it should not be paid, I beg to state—

That, having proceeded to Calicut, to conduct his case, in appeal, before the Session Court, and obtaining there only a mitigation of the sentence passed by you, the said Mr. Bass has gone to Madras, to prefer a Special Appeal ; and, as he is daily expected to return to Cochin, I pray the Court will be pleased, by granting me an extension of a week's time, to stay the enforcement of the penalty in the Bail Bond which I was required to execute.

The Joint Magistrate does not feel himself at liberty to accede to the request conveyed in this paper.

(Signed) E. CULLIN,
Joint Magistrate.

10*th July* 1865.

Referred to the Magistrate of Malabar for report.

Fort Saint George, (Signed) A. J. ARBUTHNOT,
22*nd May* 1866. *Chief Secretary.*

No. 150. From Mr. F. T. LLOYD, Merchant and Agent at Cochin, to the Acting Chief Secretary to Government, Fort Saint George ; dated Cochin, 12th June 1866.

With reference to my letter to the address of Mr. Arbuthnot, Chief Secretary to Government, dated the 9th May ultimo, giving cover to a Memorial to the address of the Right Honorable the Governor in Council, under the same date, I have the honor to forward a further Memorial to His Lordship in Council ; and soliciting you will have the goodness to submit the same to His Lordship at an early date, I have the honor to be, &c.

To

The Right Honorable the Governor in Council,
Fort Saint George.

The Memorial of FRANCIS THEODOSIUS LLOYD, of Cochin, Merchant,

Humbly Sheweth,

That your Memorialist had the honor of submitting a Memorial to your Lordship in Council, under date the 9th of May ultimo, representing the circumstances under which he was compelled to pay a penalty of Rupees one thousand, as the forfeiture of a Bail Bond your Memorialist had entered into, before the Joint Magistrate of Cochin, on behalf of Mr. J. M. Bass, the late Printer and Publisher of a Newspaper at Cochin, called the *Malabar Mail*, and praying that the said forfeiture might be ordered to be returned to him, in view of the peculiar hardship entailed upon him.

2. That your Memorialist submitted for consideration, in the said Memorial, that no defeature of justice had occurred from Mr. Bass' default according to the strict letter of the Bail Bond, inasmuch as the final sentence of the High Court was actually executed against him ; but, as your Memorialist believes he was not sufficiently explicit in defining the circumstances under which the said sentence was enforced, he humbly takes the liberty to submit the following new and important points, which he trusts will clearly tend to prove that there was not the *least* intention on the part of the said Mr. Bass to dishonestly evade the course of justice, such as to demand the rigorous exercise of the Law against your Memorialist, as his surety.

3. That, no sooner was the decision of the Session Court of Calicut, on appeal, communicated to the Joint Magistrate of Cochin, than the latter Officer called upon your Memorialist to produce the defendant, Mr. Bass, or make good the penalty of his Bail Bond, within three days, and, simultaneously with the enforcement of the forfeiture against your Memorialist, a warrant of arrest

against Mr. Bass was forwarded by the Joint Magistrate to the Commissioner of Police at Madras, whither Mr. Bass had proceeded to prosecute his appeal before the High Court.

4. That the first hearing of the appeal came on before the High Court on the 27th of July 1865, on which occasion, not only was the said Mr. Bass actually in attendance in the Court, but the fact of his being then present there was, in the course of the pleading, brought by his Counsel to the knowledge of the presiding Judges, Messrs. Justices Holloway and Innes, as stated in a Report of the case given by the *Madras Standard* of Saturday the 29th of July 1865, and other journals of that place. On the following day, the 28th of July, the High Court issued orders calling for the records of the case from the Session Court at Calicut, and it was not until the 12th of August that the final sentence of two months' imprisonment was awarded. Meanwhile, Mr. Bass, who was awaiting the termination of his appeal at Madras, was arrested there by the Commissioner of Police, while in attendance at the Court House, as above mentioned, on the 28th July (15 days before the sentence), under the warrant of the Joint Magistrate of Cochin previously issued.

5. That a mere reference to these dates will be sufficient to satisfy your Lordship in Council that the arrest of Mr. Bass took place at Madras before the judgment of the High Court was definitively pronounced, and consequently at a time when he had no probable conception of the nature of that judgment, and could not have positively anticipated the necessity of surrendering himself to a sentence of imprisonment ; whilst he, on the other hand, felt confident of a total reversal of the original sentence.

6. That your Memorialist, therefore, respectfully submits that the presence of Mr. Bass at the High Court of Madras, at the time of his arrest, did not arise from a criminal intent to abscond or conceal himself, with a view to defeat the ends of justice (his wife and a numerous family being then permanent residents at Cochin), but simply with a view to give his attendance at the said High Court during the hearing of his appeal, that thus he might be enabled to insure that degree of proper representation of his case necessary to secure him full justice.

7. That your Memorialist, therefore, earnestly but humbly prays your Lordship in Council will be graciously pleased to take a liberal view of his case, and accord to him the indulgence solicited, namely, the re-payment to him of the penalty of Rupees one thousand, recovered from him as a forfeiture to Her Majesty's Government.

And your Memorialist, as in duty bound, shall ever pray.

COCHIN, 12*th June* 1866. (Signed) F. T. LLOYD.

Forwarded to the Magistrate of Malabar, in continuation of the reference made to him under date the 22nd May last.

FORT SAINT GEORGE, 2*nd July* 1866. (Signed) J. D. SIM, *Acting Chief Secretary.*

No. 151. From the Magistrate of Malabar, to the Acting Chief Secretary to Government, Fort Saint George; dated Calicut, 3rd July 1866, No. 87.

* Dated 22nd May 1866.

† Dated 4th June 1866.

Adverting to the Chief Secretary's endorsement* on the Memorial addressed to Government by one Mr. Lloyd, of Cochin, I have the honor to submit a memorandum† from the Joint Magistrate of Cochin, and copy of the High Court's sentence in the case of J. M. Bass.

2. It would appear that the late Joint Magistrate of Cochin sentenced J. M. Bass to twelve months' imprisonment, on a charge of defamation brought against him as proprietor of the *Malabar Mail.* This was commuted, on appeal to the Session Judge at Calicut, into five months' imprisonment, which was again reduced to two months by the High Court.

3. The recess of the Session Court having commenced simultaneously with J. M. Bass' appeal, he was released on bail; Mr. Lloyd, of Cochin, the present Memorialist, standing surety in Rupees 1000 for Bass' appearance, when required, before the Court of the Joint Magistrate of Cochin.

4. J. M. Bass having proceeded to Madras soon after the sentence of the Session Court, to prefer his appeal before the High Court, without appearing before the Joint Magistrate to undergo the modified sentence of the Session Judge, the penalty was enforced.

5. The sentence of the High Court was, however, subsequently carried into effect, as J. M. Bass was arrested in Madras on the Warrant of the late Joint Magistrate of Cochin, and imprisoned in the Jail at Cochin for two months.

6. The Memorial and its enclosures are herewith returned.

P. S.—The second Memorial (received after the above was written) with your endorsement, dated 2nd July 1866, is also returned, as the information now conveyed is all that is required for its disposal.

No. 128.

MEMORANDUM.

The Joint Magistrate of Cochin has the honor to state, in reply to the Memorandum of the Magistrate, under date the 30th ultimo, that Mr. J. M. Bass was sentenced by the High Court, to two months' simple imprisonment, and that he was imprisoned for that period in the Jail at Cochin, after having been arrested at Madras, on a warrant issued by the late Joint Magistrate, Mr. Cullin.

2. A copy of the High Court's sentence is herewith forwarded.

JOINT MAGISTRATE'S COURT, COCHIN, 4*th June* 1866. (Signed) S. R. DAWES, *Joint Magistrate.*

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Saturday, the twelfth day of August, one thousand eight hundred and sixty-five.

Present.

The Honorable Mr. Justice Holloway,

and

The Honorable Mr. Justice Innes.

CRIMINAL PETITION, No. 87 OF 1865.

J. M. Bass..... ... Appellant.

(*Defendant.*)

Application, under Section 404 of the Criminal Procedure Code, for revision of the order of the Session Court of Calicut, dated 1st July 1865, modifying the sentence of the Joint Magistrate of Cochin in Case No. 16 of 1865.

The record of this case having been called up from the Court of Sessions, upon perusal thereof, the Court made the following order :—

Order.—It appears to us that the offences charged under the 3rd and 5th counts, for which distinct sentences have been awarded, are really parts of the same transaction, and, therefore, upon the principle laid down in a former ruling of the Court, not separately punishable. The same remarks apply to the 4th and 6th counts.

With regard to the 7th count, we think that, although in common speech a man is said to write an insulting letter or article insultingly, defamation is not within the purview of the Section under which the count is laid, and this view is confirmed by the fact that defamation has been dealt with at large in the previous sections. The conviction and sentence under this count must, therefore, be reversed.

The result is that the sentence, as modified by the Court of Session, must be still further reduced to two months, one under the 5th and one under the 6th count.

It is accordingly ordered that the sentences of the Court of Session, under the 3rd, 4th, and 7th Counts of the charge be, and the same hereby are, reversed.

(By the Court.)

(Signed) T. WILKINS,
Deputy Registrar, Applt. Side.

No. 152. ORDER THEREON, 16th July 1866, No. 1107.

The Magistrate will refund to Mr. Lloyd, of Cochin, with as little delay as possible, the amount levied from him as security for the appearance, when required, of Mr. Bass, who has undergone his sentence.

(True Extract).

Acting Chief Secretary.

To the Magistrate of Malabar.
To. Mr. F. T. Lloyd, Cochin.

Exd. J. H. Burns.

No. 87.

Malabar Magistrate's Court
Calicut 3d July 1866.

From

G. A. Ballard Esqr
Magistrate of Malabar

To

J. D. Sim Esqr
Acting Chief Secretary to Government.

Sir,

Adverting to the Chief Secretary's
1866 endorsement on the memorial addressed to Government
by one Mr Lloyd of Cochin, I have the honor to
66. submit a memo: from the Joint Magistrate of
Cochin & copy of the High Court's sentence in the
case of J. M. Bass.

It would appear that the late Joint Magistrate of Cochin sentenced J. M. Bass to twelve months' imprisonment on a charge of defamation brought against him as Proprietor of the "Malabar Mail". This was commuted on appeal to the Sessions Judge at Calicut into five months' imprisonment which was again reduced to two months by the High Court.

The proofs of the Session Court having commenced simultaneously with J. M. Bass's appeal, he was released on Bail, Mr Lloyd of Cochin the present memorialist standing surety

in

in Rupees 1,000 for Bap's appearance when required before the Court of the Joint Magistrate of Cochin.

I. M. Bap having proceeded to Madras soon after the sentence of the Sessions Court to prefer his appeal before the High Court, without appearing before the Joint Magistrate to undergo the modified sentence of the Sessions Judge, the penalty was enforced.

The sentence of the High Court was however subsequently carried into effect as I. M. Bap was arrested in Madras on the warrant of the late Joint Magistrate of Cochin, and imprisoned in the Jail at Cochin for two months.

The memorial & its enclosures are herewith returned.

I have the honor to be
Sir,
Your most Obedient Servant,

Sd/ Sullivan
Magistrate.

Sd/

The second memorial (received after the above was written) with your endorsement of 2nd July 1866. is also returned as the information now conveyed is all that is required for its disposal

Sd/ Sullivan
Magte

Cochin

Jet. 1035—1372.

List of 21st July.

Judicial 1866 No 1107

From
The Magistrate of Malabar
To
The Chief Secretary to Govt

Dated 3d July 1866
Rec'd 16 July 1866
Nº 1107
Nº 1453 Encls. Papers ret.

With an Order

Submitting, with reference to the Chief Secretary endorsement dated 22d May 1866, this report in the case of S. M. Bapu who was sentenced to imprisonment on a charge of defamation

The money should be refunded I think with a little delay as per the Wor N.

10 July 1866 149 to 152.

16 July 1866 Nº 1107.

The Magistrate

Will report to Mr. E. S. Lloyd Police Master with the delay as possible the amount levied from him as security for the appearance when required of W. Bapu, who has undergone his sentence. VB.

The Magistrate of Malabar
Mr. J. T. Lloyd Calicut — Jet. Dispd. 20/7/66.