

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1296	Press ~~Mis.~~
Dated 22-8-1918	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
22nd August 1866.*

No. 219. Read the following letter from G. BANBURY, Esq., Officiating District Magistrate, Tanjore, to the Chief Secretary to Government, Fort Saint George; dated Vallam, 8th August 1866.

In accordance with the instructions conveyed in paragraph 3 of the Government order, dated 24th November 1865, No. 1679, I have the honor to forward, for the Orders of Government, the decision arrived at by Mr. Hutchins, in the Nagore Moodelliar's case. I beg also to submit the covering letter, which explains the delay. As I apprehend Mr. Hutchins has not yet made his decision known, I forward the papers in his own hand-writing, as received.

No. 220. ORDER THEREON, 22nd August 1866, No. 1296.

The Governor in Council directs that the property of Tiagasammuntha Moodelly be released from attachment, and restored to him.

2. The Acting Magistrate will inform Mr. A. R. Hutchins that the Government consider his dilatoriness in disposing of this case highly reprehensible, and his excuse for it wholly inadmissible.

3. The Acting Magistrate will also point out to Mr. Hutchins the very objectionable character of the remarks in which he has indulged in the postscript to his decision.

4. Mr. Banbury has not met the requisition contained in paragraph 2 of G. O., 14th October 1865, No. 1401. Mr. Banbury will now do this, and will also report whether any and what steps have been taken in the suit referred to in G. O., 24th November 1865, No. 1679.

(True Extract).

Secretary to Government.

To the Officiating Magistrate of Tanjore.

Ed. J. H. Burns.

objectionable character

No

REGISTRAR'S OFFICE
MADRAS
AUGUST 8, 1865

Negapatam

Joint Master of Appeals

August 6th

Officiating Magistrate
Tanjore

Sir,

Adverting to para 3 of Government Order dated 24th November 1865 No 1679 I have the honor to state that I have completed the case therein alluded to and beg herewith to forward a copy of my judgment.

You will observe that I have found, with reference to the procedure of Section 185 of P. Code, that he has not proved to the satisfaction of this Court that he did not abscond to

Quade the warrant issued
by Mr. Plummer, the property
thereof of H. Ryaga him.
The matter is now
under attachment under Sec
184 C.P.C. is at the disposal
of Government.

I await the orders of Gov.
With regard to the charge of an
officer under Section 174 I.O.
Code. The Calendar is being
forwarded in due course to
the Sessions Court.

I regret the delay in this case
and have no other excuse to

offer than the exceptional
heat of the weather during
the last three months and
the pressing nature of the
household work of the office.

I have the honor to be
Sir
Your most obedient servant
A. M. S. S. S.
Smt. M. S.

To the Magistrate's Office
Punjab.

1/2 - Admiral (1824)

Before proceeding to pass judgment
in that case it is necessary to review
the principal facts as they stand
upon the records of the Court, various
Government proceedings, oral and
documentary evidence.

A box containing Rs. 277.7.8 was stolen from the Police Station of Nagore on the night of the 2d of October 1864 and the occurrence was reported on the following day. The case was for some time wrapped in mystery; a Police Inspector, Mr. Green was brought to Nagore to make inquiries into the case. The result was that on the 29th October a charge sheet was presented to the Acting Joint Magistrate by Inspector Green charging Enayya Sumantha, Madolana and 5 other persons with the commission of the offence. The Madolana was charged under Sections 380 and 109, and 411,

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 Forwarding for anti
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 copy of the
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that is for abetment of theft
in a building and for receiving stolen
property. Statements on solemn
affirmation were taken from 3
persons cited as witnesses in the
charge sheet and warrants were
issued for the arrest of Rajya S.
Mashetty and three others.

This was on 29th October. It was
reported by the Police to whom the
warrants had been endorsed for
execution that Rajya Mooldeen
had left Nagore, where he resides,
and also called to Pondicherry.
Accordingly, following the procedure
of Sec 183, 184 C.P. Code, a procla-
mation was issued on the 14th of No-
vember 1864, and also a warrant
of attachment of the property of the
absconding party, which was duly executed.
This proclamation was not obeyed
and the property attached has been
under attachment ever since and up

to the present time.

The Police now bring a charge
against Rajya Mooldeen for not obeying the proclamation,
for not obeying the proclamation,
an offence punishable under Sec 174
I.N. Code; and, the property being
under attachment the Mooldeen
has, with reference to Sec 185 C.P.
Code, to the satisfaction of
the Court that he did not abscond
to avoid the warrant originally is-
sued by Mr. Plumer & Mr. J. H. H. H.

6. These two cases then are now
before this Court, in the one case a
formal trial has been instituted of
an offence under Sec 174 I.N. Code
and in the other the Defendant,
actually being from the facts of the
case in the position of a man whose
property has been legally & that is by
a competent Court and as provided
that Court sufficient to that Court
attached for absconding to avoid a
warrant that he had was about to be

ipsum against him, — has before
the satisfaction of the Court that
he did not so abscond, failing which
he loses all claims to restoration of
his property now under attachment,
see 185. C. P. Code.

7. In the former case the owner
probanded interest with the Proseutors
the Police & in this latter, this owner
evidently acted with the party whose
property is attached.

8. It will always be presumed
and accepted till shown to the contrary
that a Magistrate to whom Justice
has entrusted certain powers has, legally
used those powers. It is then for the
Prosecution to show that Mr. Plummer
acted on insufficient grounds in at-
taching his property — the burden of
this proof rests with him and it is
clearly not only incompetent, but the
duty of this Court to examine for its
satisfaction (see 185 C.P.C.) any person

2) who may be able to give evidence which
would rebut the imputation of having
wronged the party whose property has
been attached for absconding may
choose to offer in regard to the fact
of his disappearance.

9. The case of the Prosecution under
Sec. 174 I. P. Code rests upon the state-
ment on oath of witnesses who depose
that a warrant having been issued
on a certain date and the party
being reported to have left the place
under circumstances that led the
Joint Magistrate to suspect that he
had absconded to avoid the warrant,
a Proclamation and warrant of attach-
ment were duly and regularly issued
under Sec. 183, 184 C. P. Code and
that the Proclamation was not obeyed
within the time. (10) The facts of the
Prosecution are not disputed by the
Defendant but he sets up in his defence
the plea that having gone on private

Matter of Pondaberry. He was here
- took for two weeks to Pulokan
- that this he produced several wit-
- nesses and a Medical Certificate,
to prove which latter he cites the
French Government's Native Surgeon
who painted it. He further states
that on learning of the Procla-
mation he took steps by addressing
various authorities, where his case
remained from Mr. Munier's per-
- dition on the ground that that Mr.
Heman was prejudiced against him
and that he could not expect justice
at his hands. Defendant pleads
- justification of his not obeying the
Proclamation on the ground that he
was appealing against the jurisdiction
of the Magistrate who had issued it.
This plea can never be admitted.
Defendant's duty, even if the plea
of sickness be allowed, was, immediately

that he was sufficiently recovered, to have
- gone direct to the Saint Magistrate
and have surrendered himself
up under Sec 185 C.P. Code.
That he was afraid of Mr. Munier
is no excuse; the fear he professes
to entertain of that Magistrate
- points to the conclusion that he
left home purposely to escape from
the pressure which by his conduct
he had brought upon himself and
which Mr. Munier had it in his power
to inflict.
The defense which the hoodlums
- set up in answer to the charge of
not obeying the Proclamation, an
offense under Sec 196 C.P. Code, is
to closely and intimately mixed up
with the attempt to satisfy the
Court (under Sec 185 C.P.C.) that
he did not originally abscond to
avoid the warrant that it is impossible
and unnecessary to separate the two
issues. I will now notice in detail the

Idea of Pickups above referred to, in connection with the procedure under the latter Section 185 C.P. Code more especially, but applicable as far as it goes to both issues.

12. With reference then to Section 185 C.P.C. ^{(it is convenient hence for the case to call the} the Defendant states that he left ^{Madurai} Mayore two days before the Depavalee festival and arrived in Pondicherry on the Depavalee. — That the cause of his journey was that a relation of his was sick in Pondicherry and he was sent for, and that soon after his arrival there his relation died.

On consulting the Standard Native Panchangam or Almanack for the year Ractasi. 1864-65 it appears that the Depavalee feast falls on the 29th of October, Saturday, that the bathing eve of the festival, repeatedly alluded to by the witnesses for the Defendant, falls on Friday the 28th and that Sunday the 30th of October

3) — in that year was the Annamasi or feast of New Moon, that the 29th of October corresponds to the 15th Ashvin 1864. It will be remembered that the warrant was issued on the 29th of October. — Defendant therefore states that he left Mayore on Thursday the 27th of October, two days before the warrant was issued.

14. Now first in direct opposition to this statement there is before the Court a statement in voluminous affirmation made by the Palsidai of Rejapattam that, having gone to a place (which is four miles distant from Rejapattam) one day in October 1864 for a specific purpose, which he names, on his return at 9 PM he met the Defendant near Rejapattam and that Defendant spoke to him of his trouble with Mr. Munro that Defendant came to his house (Palsidai's) the next morning and the

he gave Defendant advice how to
act. The Palsidder keeps a private
diary or memorandum book which
he produces in Court; this he enters
up day by day; in this is entered
that he went to Nagore for that
specific purpose on the 27th October,
Thursday. It was therefore on Friday
the 28th that the Defendant
came to his house. The Palsidder
very naturally says that as their
talk was chiefly upon the case
the Police were getting up against
Defendant — when after two or
three days he heard that a warrant
had been issued for Defendant
but that Defendant had left Nagore
he at once fixed in his mind the
date on which he had met Defendant
as that on which he had been there
for the aforesaid specific purpose;
and he swears that he never went
to Nagore but once for that purpose.

the attempts of Defendant's Counsel
to impeach the fairness of the evidence
in the Palsidder's diary or to show
ill will on his part against the
Jury or the Court only to expose the
weakness of his client's case.

15 We will now consider the value
of the evidence of the witnesses called
by Defendant. He cites, seven wit-
nesses who saw him in Pondicherry
viz. witnesses 1. 2. 3. 4. 6. 10 and 11;
one witness who speaks to his passing
through Chelluram on his way,
wit. 6; and one who speaks to a
halt made by Defendant at Raud-
Gollu, Cuddalore, (wit. 7). Besides
these he cites also two witnesses who
journeyed with him from Nagore to
Pondicherry, namely witnesses 8 and 9.

16 It does not seem necessary to notice
the details of the statement of each witness.
It is not doubted that Defendant made
a journey about that time from Nagore
to Pondicherry and the Court is aware

that he must have gone through Chel-
lumburum and Cuddalore on his road
and it is most probable that those
witnesses who say they saw him or
travelling with him, did actually do
so as they describe; but the point
on which we want their evidence is,
when did they see Defendant and
go journey with him. Now, in describing
the date they all have one and the
same story; it was at or near the
Depavale; on the Depavale, on the
day before the Depavale.

17 In the face of the very full, clear
and simple statement of the Palsoldan
that he saw Defendant in Depavalem
on the morning of the 28th, the eve of
the Depavale, and that he then spoke
in fear of the case that was being brought
against him, is there anything what-
ever in the statement of the witnesses
that a Pakel in the interest of Defendant

could not have motivated them
to say with but half an hour's ^{interval}
And the Court has not far to
look for such a Pakel; for, after
seeing the Defendant daily in Court
was one Janapathi Aiyar, who is
also stated by two of Defendants
own witnesses to have accompanied
Defendant on his journey to Pondicherry,
and this man has shown to
be in Defendant's strictest confidence
has been ^{before} convicted of giving false evi-
dence and sentenced to imprisonment.

18 I say then, when half a dozen
witnesses swear that a certain event
took place the day before the Depa-
vale two years ago, there is nothing
or at least there is not enough in
that statement to break down such
and direct evidence to the contrary,
packed up as this case is by
universal report and by the deliberate
opinion shown by his acts at the

10
tune of the Joint Magistrate.

19 But there is one witness whose evidence it is necessary to examine more at length, the 10th witness.

This man is the French Government's Native Surgeon; he deposes that he was called in to see Defendant on the evening of the day on which he arrived in Pondicherry; that he found him very sick and that he attended him for 60 days; that on the 5th of January 1885, being applied to for a certificate of his sickness, he wrote out with his own hand the certificate produced before the Court; he has stated in the certificate that Defendant was suffering from 28th of October to the 28th of December.

20 Now if this man's statement is true the entire case is

Defendant falls to the ground as far as the date of his leaving England is concerned; for the Native says he saw him at Rejapattam on the 28th.

Now how the Court has very carefully examined this certificate. It is a remarkable fact, and perhaps it is, that the figures in both places, 28, are not the original figures written. This is so apparent that no man of unbiased mind and good eyes could, for a moment, misreading the certificate, hesitate to say that in each case the original figures have been written over. Two original figures were written and five pen, the same pen. That is the contest; they were subsequently written over with a different pen. This is as clear as daylight. The back of the paper shows it beyond

all contradiction and what is more
the witness himself showed it
equally clearly to the mind of the
Court; for he said, of his own
accord, almost before he had seen
the document and stands, "I wrote
it as it is now - I myself wrote
in each case the figures 28 - when
I wrote them a hair or a thread
got into my pen and I wrote
them blunter than the contents -"
A most convenient and ready remark
truly, but more than open to suspicion,
conclusive rather of perjury; for
observe the unreasonableness of it -
a hair gets into the pen on making
two most important figures, gets
out of it for a few more words
and then gets into it again a
little further on when two other

3) most important figures have to
be formed
22 Besides the old writing, which
was probably, I had almost said verily,
30, is observable underneath the new
and blunter writing. The Court is
not here relying on its own unaided
opinion but has shown the document
to several impartial persons, and
one and all declare the figure 28
in each case of their occurrence to have
been written over certain other figures
23 When therefore this witness
boldly states on oath that he wrote
the figures 28 originally, as they now
stand, this Court says he is wilfully
perjuring himself and says so to all
the world. The Court rejects this evidence
totally; it is worthy of no credence
24 It is not, the Court would now
remark, contrary to the Law of Evidence
and to common sense to conclude that
if a document is shown to have been
altered or tampered with since it came

into the exclusive possession of the
party in whose interest it is subsequently
produced, it has been altered in favor
of that party. As the Court is convinced
that this certificate has been altered
by defendants or by his people and
for his interest the Court concludes
that the figures originally there
(for the words October and December
are genuine) were the 30th or 31st
that on some day later in October
than the 28th of course having
altered the figures before October
it became necessary to alter also those
before December, as the witnesses had
to swear to defendants being sick
6 or 7 days or two more than that they
have exposed themselves to a death
charge of detection.

25. The defendant was clearly
not in Pondicherry on the 28th October
but was in Nagasabai as the Salimian

has shown, & the case against him,
be it true be it false, was nearly ready,
the result of his conference with the
Talukdar and the Town Sub Magistrate
(see summary of evidence) showed him
that if he was a wise man he would
await the issue and prove its falsity.
Thus he was afraid to do or too proud
to do, he fled; the conclusion is in-
evitable; and left Nagore on the evening
of the 28th or 29th October; and
all that the witness Day took place
on the road and after his arrival at
Pondicherry may very well have left.
Guedes says that he and his
party came to Nagore that night
the day before the departure
and as the Court has from the cer-
tificate which speaks of defendant
being in Pondicherry on the 28th,
the day before the departure, found
evidence on its very face most conclusive
of its having been tampered with; the

judgment
deliberate ~~conviction~~ of the Court ~~is~~
is this - that Defendant, having ~~under~~
during the provisions of the 185 C. O. Code
appeared before this, a competent
Court, and having endeavoured to
bring to the satisfaction of the Court
that he did not abscond or conceal
himself for the purpose of evading justice
has altogether failed to do so and
has left the impression very strong
upon the Court that he did abscond
breach justice.

26 The Court has made had a
happy allusion above to the ministerial
report abroad as to the cause and
date of Defendant's sudden departure
from Nagore. Most abundantly was
the late Acting Joint Magistrate justified
in issuing his Proclamation and
in attaching the lands of Defendant and
most certainly has Defendant by his
own conduct brought upon himself the

14
6) result, that his lands should be
sold.

27 But that there may be no doubt
in any mind that this Court has
come to as correct conclusion it will
quote the following from a letter
written by Defendant himself to Mr.
Phumer - the letter is dated Pondi-
cherry December 8th 1874. That is,
one month and eleven days after
his departure from Nagore. He
writes "It was not with any consid-
eration about the case that I did not
come to you but I did so because I
should be disgraced at first."
Yes, that is it, was the case true
or false is not now before the Court
but Defendant knew a case was
pending and nearly ready against
him and for fear of disgrace he was
off to French Territory.

28 This Court has therefore to inform
Government with reference to its proceedings
21 to November 1875. Order No. 1679

That the Defendant whose Serv-
 ants has been declared to be at
 its disposal has failed to satisfy
 the Court under Sec 785.

A. M. Kautskine

Saint Mary

29. With reference to the charge against
Defendant, under Section 174, P. O. Code
although the Court has remarked
above that the charge is proved
by witnesses and admitted by
Defendant and that the justification
put forward by the hoodlums, namely
that he was appealing against the
Plumber's jurisdiction, cannot for
a moment be admitted. 30.
When the Court considers the
effect of the foregoing judgment
and that the ~~the~~ degree of the
Defendant has run out to its
legitimate ends under the Procedure
Code, in the loss of his property -

when the Court considers further that Defendant was actually encouraged, both by the French authorities and indirectly, and the Court must judicially remark on its opinion most unwarrantably by the Magistrate of South Arcot and, it is reported, by others even in higher authority still, in his disobedience of the Proclamation - when the Court considers all this, it is of opinion that it is not necessary for justice, in passing sentence, to inflict more than a nominal fine, the penalty incurred by Defendant being already sufficient under the circumstances of the case to vindicate the solemnity of the law and to give a lesson that its provisions cannot be trifled with with impunity.

W. H. K. K. K.

Soviet Union

August 1866.

~~The number of the~~

Handwritten notes in left margin:
 10/12/1957/68
 10/12/1957/68

Handwritten notes in center margin:
 6 sheets
 10/12/1957/68

160
 I do not see what then papers have
 to do with the GO 24 Nov 68. That
 order had reference from 2 to the
 suit instituted by T.M. in other
 against T.M. himself and the Act
 I'm - What has been done in the
 matter of that suit does not appear
 to me to be to ascertain but
 whether any order was passed by
 the Session Court on the conviction
 of T.M. under S. 174 IPC.
 I make little doubt that he did
 abscond - but he probably has
 suffered enough & his property
 in J.M. is returned to him in J.P.
 I cannot see where papers
 WDN

Handwritten notes in top right margin:
 10/12/1957/68

Sub: Dep't 1757/66. Tanyor

The judgment of the Agt. S. Magle, Mr. A. R. Hutcheon, is a confused, long, ignominious that may lead to the point.

This delay in disposing of this case for months that is from the date of his taking charge of the Sub Collectorate, under the Court, seems to me to be wholly unnecessary & most reprehensible.

From its unfortunate & the fact that property worth some lac of rupees had been attached & was still under attachment, the case was the one of all cases, & it should have been attached to & disposed of by the Agt. S. Magle on taking charge - and yet we find him saying that three months before he had been the main cause of this long delay!!!!!!

I agree with Mr. J. P. Agt. that the property should be released from attachment & restored to him - I am of opinion that it ought not to have been expropriated for reasons & in former when I have stated at length - The course of Mr. Agt. S. Magle is now taking of instituting a prosecution under S 174 of the I. P. Code is wrong in my opinion.

Sub: Dep't 1757/66
Tanyor

(Code) in the copy of the judgment

The Custom refers to persons "bound to attend
under a notice order or proclamation - & not
to a person for whose arrest & production
a warrant had been issued.

On this point there was a piece of the
High Court - very much circulated -
or many have seen it as one of the
Police weekly Circulars issued from Mr.
Robinson's office. -

20 Aug. '66 W.D.K.

I think Mr. Hutchinson should be
told that "judicially" or not he has
erred in permitting himself the imper-
missible comments on the French Govt & the
Magistrate of St. Aspid. w. appear at the close
of his report. - If the Govt. had thought
that the S. Aspid Magistrate's pro: called for
notice as improper or incorrect, they would
have been rebuffed by Govt. at the proper
time W.D.K.

Received by J. H. L. 2019
Aug 20 1866

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