

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1563	Press
		~~Mis.~~
Dated	5-10-1918	

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,

5th October 1866.

No. 59. Read the following letter from the Magistrate of Tinnevely, to the Chief Secretary to Government, Fort Saint George; dated Tinnevely, 28th August 1866, No. 247.

I have the honor to forward, herewith, a petition from the Deputy Magistrate, Mr. W. Underwood, whose Proceedings in the case of the Sub-Magistrate of Colasakarapatam, were lately severely commented on by Government.

To

THE RIGHT HONORABLE LORD NAPIER, &c., &c., &c.,

Governor of Madras in Council.

The humble petition of W. E. UNDERWOOD,
Deputy Collector and Magistrate of Tinnevely,

SHEWETH,

That your petitioner has read with the deepest regret the Proceedings of the Madras Government, Judicial Department, dated 10th August 1866.

2. That your petitioner, with due submission, requests your Excellency in Council will be pleased to receive petitioner's explanation. Your petitioner has for nearly eight years honorably and faithfully served your Government in different Districts, and has, on several occasions, been favorably reported on by the Collectors of the District under whom your petitioner has had the honor to act.

3. That your petitioner has not the documents of Case No. 29 of 1865 now before him, but your petitioner, relying on the integrity of his conduct, is desirous of at once submitting an explanation.

1st.—That your petitioner, after a long and patient inquiry, honestly believing that the Sub-Magistrate was guilty of the charge preferred against him, found him guilty, and sentenced the Sub-Magistrate to one year's hard labor.

2nd.—Your petitioner heard the case on both sides with impartiality; and with the evidence before him, conscientiously believing the Sub-Magistrate guilty, passed, with regret, but without any hesitation, the severe sentence he did.

3rdly.—That the Sub-Magistrate was committed under warrant by your petitioner to Jail, but was, within a day or two, admitted to bail, pending the hearing of the case on appeal by the Session Judge of the District.

4. The prisoner was admitted, your petitioner believes, to bail in the month of October. The Session Judge, after calling for the documents and hearing for the parties, concurred in the justice of the sentence passed; but, from the length of service of the prisoner, and taking into consideration that the defendant had lost his post, and all claims to pension, the Session Judge mercifully commuted the sentence to one of simple imprisonment for the same period as that passed by your petitioner; and the defendant was re-committed to Jail in December by the Session Judge.

5. Your petitioner observes that the defendant appealed against the sentence of the Court in the 1st instance, and that the Appellate Court confirmed the decision, but mitigated the severity of the sentence; that the defendant appealed to the High Court of Judicature who rejected the appeal, "there being no error in point of law."

6. Subsequently, the defendant appealed to your Excellency in Council.

7. That your Excellency in Council deemed it necessary to refer the petition to the Judges of the High Court, "with a request that they would favor the Government with their opinion as to the expediency of remitting the sentence."

8. Three Judges of the High Court concur "in considering the case against the Subordinate Magistrate a pure concoction," and that the sentence passed may very properly be remitted.

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9. That your Petitioner begs respectfully to observe, with reference to paragraph 6, that your Excellency in Council remarks that your Petitioner "committed a grave error in omitting to mention in his decision the evidence given by the witnesses for the defence." Your Petitioner humbly observes that, on a re-perusal of your Petitioner's decision, he thinks Your Excellency will find that more comment was made on the evidence of the witnesses for the defence, than on that of those summoned by the prosecution, the evidence of the former appearing to this Court to become more prejudicial to the defendant's case than was that of the latter.

10. That your Excellency in Council charges Petitioner, in the same paragraph, with omitting to examine the alleged payer of the bribe.

11. Petitioner respectfully begs to observe, for your Excellency's information, that Petitioner tried the man for giving the bribe; that he confessed the offence; and that Petitioner sentenced him to pay a fine of Rupees thirty, or, in default, Petitioner thinks, six months' imprisonment, and suspended him for one year from his office of Village Magistrate.

12. Your Excellency's clemency having been extended to the prisoner, your Petitioner is averse to say anything in disfavor of the Sub-Magistrate; but, in justice to himself, your Petitioner is bound to observe that, in Court, in the presence of many, after passing of the sentence, the prisoner petitioned the Court to remember the number of years he had been in the Service, acknowledged his guilt, pleaded the punishment was very severe, but that the sentence was just, praying, however, that the Court would reconsider its sentence, and to make it simple, instead of rigorous, imprisonment—this, not only once, but several times, whilst the Court was sitting and after it rose.

13. Your Petitioner prays that your Excellency in Council will reconsider the grave censure passed on your Petitioner, besides depriving him of the "Powers of a Magistrate," and prays that your Excellency in Council will take into consideration the number of years your Petitioner has been in the Service.

14. Your Petitioner respectfully begs to submit the foregoing to your Excellency in Council.

15. Your Petitioner as in duty bound, shall ever pray.

TUTICORIN,
22nd August 1866.

(Signed) W. E. UNDERWOOD,
Deputy Collector and Magistrate, Tinnevely.

No. 60. ORDER THEREON, 5th October 1866, No. 1563.

The Governor in Council has carefully considered Mr. Underwood's appeal, but sees no reason to modify the orders passed in his case.

2. The Governor in Council attaches no importance to the Sub-Magistrate's confession of guilt, after such a sentence as Mr. Underwood's had been passed on him, and while hope of its mitigation was not shut out.

(True Extract)

Secretary to Government.

To the Magistrate of Tinnevely.

Ezd. J. H. Burns.

No 1930/66.

It is to be regretted, I think, that Mr Underwood has not been content to accept as correct, his view of the high fault of the Govt in regard to the sentence passed by him on the unfortunate Sub-Magistrate.

That this person when he found there was no escape from the moral torture and bodily pain which to arise out of Mr. U's final magisterial award of rigorous imprisonment, did make the admission mentioned in para 13 of the memorial, is likely enough. But Mr. Underwood might reasonably conclude that it was drawn from him by the painful position in which Mr. U's sentence placed

a man of some legal talent
and good social condition. and
experience might have taught Mr.
Underwood that appeals of the
kind are not infrequently used as
a means of inducing a judge to
integrate a sentence once declared

The learned judge has noticed
the loose & inaccurate manner
adopted by Mr. U. in stating his
reasons for convicting the Sub-
ject, prefaced as these are by
Mr. U's own declaration that he
"has only to review the evidence for the
"persecution". On a fair perusal
these reasons do become ^{known} that at
this close, reference is made to parts
of statements made by some of the

Wife for the defense. But the fact
in no wise affects the main question.
Whether the Sub-ject, though Mr.
U. is incapable & (after 8 years service)
not capable of appreciating nature testimony
has not been a previous sufferer.

On this point then too he no
doubt whatever and I am satis-
fied that Mr. Underwood will
ultimately benefit by understanding
the proper limit. And he has
now determined he shall be satisfied.

It will teach him to be more
careful in trying his cases. It will
show him that he must make
his own judgment and not allow
it to be warped as I fear it was in
this case, by outside influence.

19 Sept 06

W.D.

I am inclined to doubt (without
inquiring in his behalf) whether
H. S. M. did actually admit his guilt
after sentence passed. It is only the
an appeal to the S. Court & then to the
the High Court and for? But if
he did his mind was probably that
suggested by Mr. Phillips. However
such admission after conviction in
no way excuses his conduct. If
Mr. H. in connection with the whole
case.

The order passed in respect
to Mr. H. was only that which
his proceedings warranted, and
with my Hon. Colleagues I trust
that they may have a salutary
effect upon him. 19/5/66. J.P.

Proc. 16, 131-133

5 October 1866 No. 1563.

The jail has completely
considered Mr. Underwood's
appeal. It sees no reason
to modify the order passed
in his case.

The jail attaches no im-
portance to the fact that
confession of guilt after
such a sentence as Mr.
Underwood's had been
passed on him, & while
hope of its mitigation, was
not shut out.

The Master of the Court

J. P.