M.R.O. 1—89,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 471 Press ~~Mis.~~

243-244

Dated 31 - 3 - ~~19~~ 1866

4/4

Not to be folded or roughly handled

675

No. 243. Read the following letter from the Magistrate of Malabar, to the Chief Secretary to Government, Fort Saint George; dated Calicut, 15th March 1866, No. 29.

I have the honor to submit the correspondence noted, for the consideration and orders of Government.

From Cantonment Magistrate of Cannanore, dated 31st January 1866, No. 15, with the records of Case No. 5 of 1866 on his file.
From Magistrate to the Registrar of the High Court, dated 5th February 1866, No. 461.
Proceedings of the High Court, dated 15th February 1866.

* 1 Tholun Moidin.
2 Mullatil Peragayil Ermolon.
3 Munniah Ebrahim.

† Section 265, Indian Penal Code.
‡ Section 266, do.

2. It would appear that the Acting Cantonment Magistrate of Cannanore, in Case No. 5 of 1866 on his file, sentenced three* parties to a fine of 50 Rupees each, one for having used† false measure of capacity, and the other two for having been in possession‡ of false measures, knowing them to be false.

3. In his letter of the 31st January 1866, No. 15, the Acting Cantonment Magistrate informed me that after recording his decision, certain other facts came to his knowledge, which led him to believe that the variation between the measures declared to be false and the stamped one in the Magistrate's office was not the consequence of any desire to defraud. I, in consequence, addressed the High Court for authority to cancel his decision in the said case.

4. The High Court having declined to interfere in the matter, I am led to make the present application, under Section 54 of the Criminal Procedure Code.

5. I have the honor to request, therefore, that the orders of Government may be obtained for remitting the sentence passed by the Cantonment Magistrate.

Proceedings of the High Court of Judicature at Madras, 15th February 1866.

Read letter from the Magistrate of Malabar, to the Registrar of the High Court of Judicature at Madras; dated Calicut, 5th February 1866, No. 461.

I have the honor to forward an original letter from the Acting Cantonment Magistrate of Cannanore, with enclosures, and to request that, under the circumstances explained by Captain Stansfeld, the authority of the High Court be obtained for cancelling his decision in Case No. 5 of 1866 on his file, and remitting the fine of 50 Rupees imposed on each of the three defendants, the 1st under Section 265, and the 2nd and 3rd under Section 266 of the Indian Penal Code.

Dated 31st ultimo, No. 15.

1. Tholun Moideen.
2. Mullatil Peragayil Ermolon.
3. Munniah Ebraham.

From Captain T. W. STANSFELD, Acting Cantonment Magistrate of Cannanore, to the Magistrate of Malabar; dated Cannanore, 31st January 1866, No. 15.

I have the honor to request you will be good enough to forward my application for authority to cancel my decision in Case No. 5 of 1866 (Proceedings enclosed), and to remit the fine of 50 Rupees, each, to the three parties; as, after recording mydecision on the evidence adduced, certain other facts came to my knowledge which led me to believe that the variation between the defendants' measures and the stamped one in the Magistrate's office was not the consequence of a desire to defraud.

2. I requested the Sub-Magistrate of Cannanore to forward to me a measure from the Cannanore bazaar which he did, and I found that the measures which I had concluded to be false, corresponded exactly with this one, and I have reason to believe that all, or at any rate, most of the measures in use in the Cantonment vary in the same degree from the Magistrate's office standard, which is a very old one.

5. The Standard measure has a hole drilled in the neck about an inch and a half from the top, and its capacity is estimated thus, instead of by filling it to the brim. All the other measures I have examined are on the same plan; most of them have a longitudinal slit instead of the round hole—a very objectionable arrangement apparently, as nothing is easier than to prolong the slit downward, and so reduce the capacity of the measure after it has been duly stamped.

4. I am informed that this mode of regulating measures has always been customary here.

5. In the instance of the three men who have been fined, I believe, on re-consideration, that the punishment was not deserved by them, and I should have applied at once for permission to cancel my decision, but I have only now succeeded in ascertaining the correct mode of doing so. At the same time, in order to avoid cause for similar complaints, I propose fixing a certain date, before which all measures in use in the Cantonment bazaars should be brought for examination and regulation by the Magistrate's office standard.

CASE No. 5.

Decision of the Acting Cantonment Magistrate in Calendar No. 5 of 1866.

PLAINTIFF.	*versus.*	DEFENDANTS.
Regina.		1. Tholun Moideen.
		2. Mullatil Peragayil Ermelon.
		3. Munniah Ebrahim.

Charge.

First.—That the first defendant, on or about the 6th day of January 1866, at Cannanore, did use false measure of capacity, and that he has thereby committed an offence punishable under Section 265 of the Indian Penal Code, and within the cognizance of this Court.

Second.—That the 2nd and 3rd defendants, on or about the same date, at Cannanore, were found in possession of false measures of capacity, knowing them to be false, and that they have thereby committed an offence punishable under Section 265 of the Indian Penal Code, and within the cognizance of this Court.

Finding and Sentence.

The Court finds that the 1st defendant, Tholun Moideen, is guilty of the offence specified in the first head of the charge, viz., that he did use false measure of capacity, and has thereby committed an offence punishable under Section 265 of the Indian Penal Code; and the Court directs that the said Tholun Moideen pay a fine of Rupees 50, or, in default, suffer one month's simple imprisonment. The Court also finds that the 2nd and 3rd defendants are guilty of the offence specified in the second head of the charge, viz., that they were found in possession of false measures of capacity, knowing them to be false, and have thereby committed an offence punishable under Section 265 of the Indian Penal Code; and the Court directs that the said 2nd and 3rd defendants each pay a fine of Rupees 50, or, in default, suffer one month's simple imprisonment.

(Signed) T. W. STANSFELD,
Acting Cantonment Magistrate.

9*th January* 1866.

CASE No. 5.

COMPLAINANT.	DEFENDANTS.
Inspector of Police, on behalf of Government.	1. Tholun Moideen.
	2. Mullatil Peragayil Ermalen.
	3. Munniah Ebrahim.

Charge.

For having in their possession, and making use of, false measures.

1*st witness.*—Danien Chattoo, being duly sworn, deposes, "the day before yesterday, I brought "about 12½ coottees of oil. I took it to Tholun Moideen's shop. I agreed with him as to price. "He measured it with this coottee or measure. I found, on his measurement, there was only 12 "measures of oil, and I was a loser by this. I said I would go and report at the Station-house. "While I was going, he called out, the measure is not mine but a borrowed one. I took the "measure to the Station-house, to be examined by the standard. The Inspector got a measure

"from a shop in Barnachery, and found there was a difference between the two." The evidence has been read to all concerned; and 1st prisoner's Vakeel asks

Q. Did you ever sell oil to the prisoner and measure it in the same measure?

A. No.

Q. Is this measure not larger than shop measures?

A. Yes.

The standard measure kept in the Police office being produced and carefully filled with water the contents are poured into 1st prisoner's measure, the capacity of which is found to exceed that of the standard by about two drachms.

Head Constable Prubhoo states on oath

After 2 o'clock, on the 6th of this month, complainant came and made a complaint, that the 1st prisoner had cheated him by measuring his oil incorrectly. He brought the measure with him. I inquired, and found that the measure was the property of the 3rd prisoner Munniah Ebrahim. In order to see if it was right, I asked 2nd prisoner for the loan of his measure, I also got a stamped measure from the Barnachery bazaar. I measured also with the office standard measure, and found the three measure above referred to were of greater capacity. Two were unstamped. It is evident that loss has been incurred by the prosecutor on account of the measure used by 1st prisoner, and belonging to 3rd prisoner, being of greater capacity than the standard measure, by the capacity of which prosecutor supposed he was selling his oil. These large measures are used by the oil merchants when purchasing oil, which they subsequently retail to their customers by small measures. The measure belonging to 2nd prisoner is also unstamped, and exceeds in capacity the office standard, whereby its owner renders himself liable to punishment.

The decision is that the two faulty measures be confiscated, and each of the three prisoners fined 50 Rupees, in default one month's simple imprisonment.

(Signed) T. W. STANSFELD,
Ag. Cantonment Magistrate.

9*th January* 1866.

This case is not referred to the High Court on the ground of any illegality. The High Court have, therefore, no power to interfere. If the Magistrate is of opinion that the sentence should be remitted, he should apply to the Executive Government, under Section 54 of the Code of Criminal Procedure.

(True Extract).
(Signed) P. P. HUTCHINS,
Registrar, Appellate Side.

To the Magistrate of Malabar.

No. 244. ORDER THEREON, 31st March 1866, No. 471.

Under the circumstances stated, the Governor in Council is pleased, under Section 54 of the Code of Criminal Procedure, to remit the sentence passed by the Cantonment Magistrate of Cannanore in Case No. 5 of 1866 on his file.

(True Extract).

Chief Secretary.

To the Magistrate of Malabar (with eight original enclosures, returned).

Exd. J. H. Burns.

Order—Session 31st March 1866 No 471

Under the circumstances
stated, the Governor
in Council is pleased,
under Sec 54 of the Code
of Criminal Procedure,
to remit the sentence
passed by the Cantonment Magistrate of Cannanore
in Case No 5 of 1866
on his file.

To Magt of Malabar
with orig enclosure
returned

E. R 7/4