M.R.O. 1—50,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 821 Press Mis.

285-280

Dated 26 - 5 - 19 1866

16/17

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
26th May 1866.

No. 285. Read the following Petition :—

To

THE RIGHT HONORABLE LORD NAPIER, K. C. B.,
Governor in Council, Fort Saint George.

The humble Petition of ALAGASOONDRUM PILLAY, Prisoner in Case No. 29 of 1865, on the File of the Deputy Magistrate of Tinnevelly, by his son, and authorized Vakeel PARIANAIGUM PILLAY.

MY LORD,

1. Under Section 54 of the Criminal Procedure this is an appeal against the Proceedings (A) of the High Court at Madras, on Criminal petition No. 27 of 1866, " confirming the one (B) passed by the Session Court of Tinnevelly, partly modifying and partly confirming the sentence" (C) passed by the Deputy Magistrate, who awarded to the prisoner rigorous imprisonment for one year.

2. The High Court Proceedings containing nothing than simply dismissing the appeal against the Session Judge's orders, your petitioner has therefore to submit that all what he has to dwell upon, is to comment upon the legality or otherwise of the Deputy Magistrate's sentence.

3. The Case No. 29, for which this appeal is made, having originated from the ones (Cases Nos. 100 and 101 of 1865, which were disposed of by prisoner in his capacity of Sub-Magistrate) it is most necessary to put your Lordship in full possession of the basis of the present case, for, otherwise it cannot arrive at a right conclusion in disposing of the case now under appeal; and therefore your petitioner is necessarily compelled to prepare this petition embodying the adventures of the cases Nos. 100 and 101, which your petitioner, as Sub-Magistrate of Colasakarapatam, has tried and disposed of according to the proofs therein obtained; and then the case No. 29 now under appeal, because the complainant and certain of the witnesses in the two first mentioned cases being the complainant and witnesses in the case under appeal, as follows :—

One Swayemboolinga Cone complained before prisoner (Sub-Magistrate)
Case No. 100 of 1865. against the defendants, viz.,

1st. Arnachella Taven (12th defendant in No. 101.)
2nd. Yeenamoottoo.
3rd. Aroomapermal.
4th. Mayel (2nd defendant in No. 101.)
5th. Savarimoottoo (13th defendant in No. 101.)
6th. Viyagopen.
7th. Paricavalen.

setting forth that he erected huts in his own land and let them to the defendants for rent, and charging them to have, on the night of the 5th June 1865, and by the aid of the 1st defendant, Arnachella Taven, pulled down the huts, and plundered and carried their materials; and to have threatened the complainant that they

would see him no more if he were to prevent them. And the same complainant on the 12th of the same month has made another complaint before the prisoner (Sub-Magistrate) against 13 individuals including some ones in No. 100, viz.,

Case No. 101 of 1865.

1st. Amarapen.
2nd. Mayel (4th defendant in No. 100.)
3rd. Anthony.
4th. Kittary.
5th. Savooriappen.
6th. Rasapen.
7th. Mayel.
8th. Anthony Mookoondun.
9th. Soosay.
10th. Moottoo.
11th. Malapen.
12th. Arnachella Taven, (1st defendant in No. 100.)
13th. Savarimoottoo, (5th defendant in No. 100.)

charging them with having pulled down the huts which he erected in his own land, plucked out young coco trees, gathered cocoanuts, and plundered all, valued at Rupees 16-6-8, and that the 12th defendant and one Sevasoobramonia Taven (not yet seized) have respectively threatened the complainant on pain of cutting and breaking his leg, and came to stab him with a pruning knife, if he were to impede their doings.

The witnesses examined in the above two cases are, viz.,

1st.	Soobramonia Cone.....	Witnesses in No. 100.
2nd.	Ramasamy Caveroyer.....	
3rd	Masanum.....	
1st.	Paramanunda Vathy.....	Witnesses in Case No. 101.
2nd.	Narainen.....	
3rd.	Iyacunnen.....	
4th.	Samoovaloo.....	
5th.	Nurgoonatan Catechist (witness in the case under appeal.)...	
6th.	Ganodiem Catechist	
7th.	Durmacunnoo Nadan.	
8th.	Curnum Alogianumbee Pillay.	
9th.	Curnum Soobramonia Pillay..	
10th.	Sodalamoottoo Cone.....	
11th.	Sodalamoottoo Cone.....	
12th.	Boomipermal.....	
13th.	Yeenamootoo.....	

4. As soon as the above two complaints were lodged, the prisoner (Sub-Magistrate) referred the matter to the Station Police Inspector for inquiry and report, and the same Officer submitted a report that it appears upon enquiry that there was not such heinous act as plunder excepting that the defendants who lived in the complainant's land had taken away their own materials with which they had erected the huts. As, however, the defendants and witnesses were in attendance, the Sub-Magistrate (prisoner) has thought it proper to examine the parties and dispose the matter as the proofs may permit him to do. He has accordingly examined

all the defendants and witnesses for prosecution. The cases not being proved as alleged in the complaints, and also it having appeared that the matter was not in the least criminal, but a quite civil nature, he (prisoner) has accordingly dismissed the two Cases Nos. 100 and 101. These decisions on appeal have been confirmed as just and right.

5. This being the case now under appeal, your petitioner respectfully takes leave to submit that before dwelling upon the grounds of his appeal, it is necessary to give a succinct cause which gave rise to the invention of the charge against him, that is, the Reverend Mr. Schaffter and his disciple Nurgoonatan, 3rd and 5th witnesses in this case, are, as would appear from their own depositions, friends to the complainant Swayemboolinga Cone, and consequently in bad terms with Arnachella Taven, defendant in the said two cases. They therefore set up the said cases (100 and 101) against Arnachella Taven; but knowing since that the cases set up were nothing but groundless, and, thinking that their friend (the complainant) will be dealt with for false accusation, have, it would appear by their depositions, respectively attempted to compromise the Cases (Nos. 100 and 101) without being tried by the Sub-Magistrate (prisoner), but to no effect, as the Sub-Magistrate examined and disposed them of as being civil nature. Whereupon the above Missionary and his disciple Nurgoonatan, with a view to injure Arnachella Taven and impugn the Sub-Magistrate's (prisoner's) character, have determined to bring a false charge against the prisoner "as if he had received a bribe of Rupees 300 from Arnachella Taven (1st defendant in No. 100 and 12th in No. 101), and let him unpunished in those cases." To establish this their ideal story, they (Mr. Schaffter and Nurgoonatan) invented "as if one Permanaigum Pillay had told them both that he and two other individuals (1st and 2nd witnesses in No. 29) were present when Arnachella Taven gave a bribe of Rupees 300 to the prisoner (Sub-Magistrate) to get him acquitted of the charges against him in Nos. 100 and 101," and then made known the circumstance as such to the Deputy Magistrate, upon whose influence they caused the complainant Swayemboolinga Cone to lodge a complaint (No. 29) to that authority against the prisoner (Sub-Magistrate) as above stated.

Case No. 23 of 1865.

The Deputy Magistrate, for reasons hereinafter mentioned, not examining the said Permanaigum Pillay, has only examined the 1st and 2nd witnesses as also Mr. Schaffter and Nurgoonatan, and sentenced the prisoner (Sub-Magistrate) to one year's rigorous imprisonment.

Although the Session Judge, to whom appeal was made, has arrived at a reasonable conclusion, that the Deputy Magistrate's sentence was altogether loose or incorrect in its regularities, yet at last erred in coinciding in the principal part of that authority's sentence, as regards the simple imprisonment for one year, without weighing the inadmissibility of the hearsay or secondary evidence of Mr. Schaffter and his disciple Nurgoonatan for prosecution—Vide B.

The High Court at Madras too not having weighed the passage of the Session Judge's Proceedings, (B) your petitioner can legally claim that therefore it now remains for your Lordship to weigh the integrity and soundness of the evidence of such hearsay or secondary evidence, and reverse the sentence (C) passed

by the Deputy Magistrate, Mr. Underwood, and order the acquittal of the prisoner (Sub-Magistrate) declaring him to be entitled for re-instatement, for the following, among other reasons.

Of 12 witnesses examined in this case, the statements of only four are taken by the Deputy Magistrate to found his decision, leaving untouched the statements of other witnesses who diametrically disprove those of the said four witnesses, that is,

The complainant shews the names of three witnesses, in his complaint, and in his deposition shews nine other witnesses, in all 12. The first mentioned three are alleged to be eye-witnesses for the payment of the bribe, and the others for collateral circumstances, *i. e.*, threats which the Sub-Magistrate is said to have shewn to the defendants in the former Cases Nos. 100 and 101.

The 1st witness Permanaigum Pillay, who is said by the 3rd and 5th witnesses to have given information to them, that he and two others were present at the time the bribe was given, has not been examined by the Deputy Magistrate, nor has that authority examined the giver of the bribe, Arnachella Taven.

The complainant Swayemboolinga Cone and 3rd and 5th witnesses, Nurgoonatan and Mr. Schaffter are not eye-witnesses except (inventers of the false accusation) confiding in the information said to have been given by Permanaigum Pillay to them respectively.

The 1st and 2nd witnesses, who are said to be eye-witnesses are near relatives to the prosecutor, and it is no surprise that they would have acceded to their tuition, and stated that each had accidentally happened to be in the Sub-Magistrate's house at 2 or 2½ Indian hours in the morning of the 25th July, and witnessed the payment. In their statement a particular point is most necessary to be considered, and their proofs relied on or rejected, that is, 2nd witness, Sodalayadoompermal Cone, is (as both admit) that had first entered into the house, and the 1st witness, Valasoobramonia Nadan is that had after the 2nd Sodalayadoompermal Cone states that as soon as he entered in, Arnachella Taven, the bribe giver, seeing at him, presently wrapped up the handkerchief with Rupees and gave it to the Sub-Magistrate who instantly took it and went inside the house; whereas the 1st witness who gone in after the 2nd, states that on his going in, Rupees were kept in heaps before the Sub-Magistrate, that Arnachella Taven was placing and counting the rows of Rupees at 10 per heap, and then Arnachella Taven wrapped up the handkerchief and gave it to the Sub-Magistrate. In such an apparent contradictory evidence it is highly lawful for the authorities to think that how could it be possible for the 1st witness who entered in after the 2nd, to have seen the rows or heaps of Rupees on the floor, and counted the Rupees in each heap whilst the second, who gone in first speaks the Rupees were instantly wrapped up and given to the Sub-Magistrate; and to discredit such evidence as evidently tutored ones.

Permanaigum Pillay, who is alleged by the 3rd and 5th witnesses, and the complainant to be the eye-witness, has totally denied that such had ever been the case. When the principal man, upon whose information the said 1st and 2nd witnesses and the complainant found their assertions, has not been examined in this case, nor did he admit in any where that the bribe was given in his presence, and that the 1st and 2nd witnesses were also present at the time, any other story however strong by reason of the respectability of the 3rd and 5th witnesses Nurgoonatan and Mr. Schaffter must fall to the ground, for they are mere hearsay or secondary evidence, which, it is submitted, would appear to be inadmissible under any law, for Permanaigum Pillay, the foundation stone, has denied the recurrence in toto.

The 3rd and 5th witnesses, Nurgoonatan Catechist and Mr. Schaffter state in their depositions a very skilful and a great invented story "as if the complainant and Permanaigum Pillay had on their way to Cootalum, where the Deputy Magistrate's Office is, come to their village and slept in the school-room, as if Permanaigum Pillay had confessed before Mr. Schaffter that Arnachella Taven and himself had paid the bribe to the Sub-Magistrate, and as if in the night time, the brother of Arnachella Taven had enticed Permanaigum Pillay, &c. &c. A circumstance plain enough to conclude that the witnesses who were authors of this case have respectively invented such a row of story.

The 4th, 6th, 7th, 8th, and 9th witnesses' statements having reference only to the date on which the decisions were declared in Nos. 100 and 101, it is needless to account for it at this place as the same decision had been confirmed in appeal by the Deputy Magistrate.

The 10th witness is the Circar Goomastah—states that the Sub-Magistrate had neither said in the office that he will commit the Cases Nos. 100 and 101 to the Session Court, nor dismissed those cases on the 25th, but actually on the 27th as the records shew.

The 11th witness (Curnum) states that the 1st witness Valasoobromonia Naden (who accounts his going to the 9th witness was to pay him his Circar dues, with whom the Sub-Magistrate was in a Bungalow, and that the Sub-Magistrate gave 2 Rupees to the 1st witness for sugar candy) has never come thither to pay his dues to the 9th witness at all, that if he had really paid his dues the 9th witness would have given him the collection Chitta accounts, but such is not the case. By this the statement of the 1st witness, that his taking sugar candy to the Sub-Magistrate's house, became quite false, but an invented cause adopted to account for his having had business to go to the Sub-Magistrate's house at the time of the payment of the alleged bribe.

The Deputy Magistrate's relying on the contradictory statements of the 1st and 2nd witnesses, and on the hearsay statements of the 3rd and 5th witnesses (Nurgoonatan and Mr. Schaffter) and without weighing the integrity of the 10th and 11th witnesses and further not respecting the office records which shew the final disposal of the cases Nos. 100 and 101 to have been on the 27th, has sentenced the defendant (Sub-Magistrate) to one year's rigorous imprisonment. This sentence being most unjust, the petitioner (Sub-Magistrate) respectfully submits that he is entitled to have the benefit of the legislation quoted above by ordering his acquittal and re-instatement for reasons, viz.,

I.—Because the Session Judge, who in a portion of his Proceedings (B) says that he sees no reason to interfere with the Deputy Magistrate's decision, observes in the other place that the evidence upon which that authority founded his decision is loose or defective. The Session Judge ought to have set aside the said sentence for that reason alone, but his modifying it and awarding simple imprison-

ment is altogether inconsistent with any law whatever. It is, therefore, now incumbent on your Lordship to reverse the sentence awarded by the Session Judge.

II.—Because Permanaigum Pillay (who is alleged by the complainant and the 3rd and 5th witnesses, to have been their first informant; that he and Arnachella Taven gave bribe, and two others were present at that time) no where states that he was present, nor did he give the information to the said witnesses of the kind they deposed to; the case against the petitioner (Sub-Magistrate, is therefore no case at all for, the foundation (Permanaigum Pillay) became nonentity, the wall (hearsay or secondary witnesses 3rd and 5th) raised thereon will never stand for a moment.

III.—Because the Deputy Magistrate not examining the said Permanaigum Pillay and Arnachella Taven in this case and examining them both in another case No. 35 of 1865 is accounted for thus: The 3rd and 5th witnesses, who caused the prosecutor to lodge the charge before the Deputy Magistrate against the petitioner, have properly desired and threatened Permanaigum Pillay and Arnachella Taven; the latter to speak as bribe giver, and the former as having been present and given information to them; but those two peremptorily declined to accede to the tuition. The witnesses made known the circumstance to the Deputy Magistrate. By this very reason the Deputy Magistrate has not examined those two, lest the case set up by Mr. Schaffter would become false. With this view the Deputy Magistrate issued warrant to place Parmanigum Pillay in confinement for 15 days to extort confession from him. The irregularity on the part of the Deputy Magistrate in confining Permanaigum Pillay is referred in the Session Judge's Proceedings which will make the petitioner's assertion true.

IV.—Because by the reasons stated in the above paragraph III, the Case No. 35 was tried six days after the disposal of the Case No. 29 now under appeal, that is, after the petitioner was sent to the Jail. Even then Permanaigum Pillay totally denied any knowledge, but Arnachella Taven alone, fearing the recurrence that happened to the petitioner unwillingly, in a few lines stated that he paid the bribe to the petitioner (Sub-Magistrate.) The Deputy Magistrate released Permanaigum and imposed a fine of 30 Rupees to Arnachella Taven, being 1-10th of the amount of the bribe said to have been given—a circumstance not consistent with law which require to punish the giver of the bribe. The object of the slight imposition is, it is submitted, the intentional indulgence shewn to Mr. Schaffter upon whose threats the defendant Arnachella Taven confessed falsely that he gave the bribe.

V.—Because any statement whatever which a prisoner will make against another prisoner (Sub-Magistrate) without the presence of the latter, is inadmissible under Kindersley's Law, Section 180, and that of Norton's, Section 237, page 116.

Having sufficiently stated above the looseness of the evidence for prosecution and the irregular proceedings of the Deputy Magistrate as remarked upon in the Session Court's proceedings, it now remains for the petitioner (Sub-Magistrate) to state that neither the Deputy Magistrate nor the Session Court has reasonably appreciated the evidence for defence which is as follows:—

VI.—Out of six witnesses examined for defence, 2nd, 4th, 5th, and 6th speak as regards the color and lender of the horse on which the petitioner gone to other village on the date on which the bribe is said to have been given, and prove most satisfactorily the petitioner's absence at that village at the hour and date of the payment as below:—

2nd witness, a respectable Merassidar of the Village of Coodaramolay and Manaud, states, that the petitioner (Sub-Magistrate) at 6 or half past 6 in the morning of the 25th (being the very hour,) very date on which the payment of the bribe is alleged to have been paid to the Sub-Magistrate at Coolasakarapatam) arrived at the said village to collect the arrears of revenue and remained there one English hour, *i. e.*, 2½ Indian hours.

4th and 5th witnesses, Curnums of the said village, also respectively proved in corroboration of the 2nd witness's statement, that the Sub-Magistrate was at that village at the hour and date mentioned above, and then at 2 or 3 Indian hours started from thence to Coolasakarapatam, which is six miles from that village.

6th witness, Curnum of Coolasakarapatam, states that at betimes of the 25th he inquired after the Sub-Magistrate if he was at home, and was told by the house people that he has gone to the said village, and was not at home.

The Deputy Magistrate is utterly silent in his sentence as regards the credibility or otherwise of the above-mentioned four witnesses; but dwelling upon the discrepancies which are in their speaking the color of the horse and his lender, &c., the Session Judge, too, limited his remarks, saying, that the Deputy Magistrate's finding, as regards the horse, lender, and his color, is mistake, but has not weighed the proofs of the said 2nd, 4th, 5th and 6th witnesses, as regards the petitioner's absence at other place on the date of the payment of the bribe.

As on the 25th and at 2 or 2½ Indian hours, (in which the 1st and 2nd witnesses for prosecution falsely stated that they were present and witnessed the payment of the bribe to the Sub-Magistrate at Coolasakarapatam) it is fully proved by four witnesses for defence that the Sub-Magistrate was at the other village and not at Coolasakarapatam, it is humbly submitted that the Government will have clemency upon this innocent petitioner, who is long servant as 25 years as admitted in the Session Judge's proceedings, and consider that as the lower authorities have never touched nor rejected the evidence for defence, the appellant (Sub-Magistrate) is lawfully entitled to acquittal and re-instatement than leaving him to suffer under the false and malicious evidence of the hearsay or secondary and contradictory witnesses mentioned above, as the evidence of the Clergyman in Criminal Cases is inadmissible under Section 347, page 176, Norton's Law.

Shall ever pray.

MADRAS,
30*th April* 1866.

(Signed) PARIYANAYAGUM PILLAY.

No. 286. To the Honorable the Chief Justice of the High Court of Judicature, Madras; dated Fort Saint George, 26th May 1866, No. 821.

I am directed to transmit to you the accompanying Petition* which has been presented to the Government on behalf of Alagasoondrum Pillay, late Sub-Magistrate of Colasakarapatam, who is now

* In original, with 25 enclosures, to be returned.

undergoing a sentence of imprisonment passed upon him by the Deputy Magistrate of Tinnevelly, on conviction on a charge of bribery, and to request that you will be good enough to call for the record of the trial, and to favor the Governor in Council with the opinion of the Judges of the High Court on the case.

2. The decision of the Deputy Magistrate and the evidence, as submitted by the petitioner, appear to the Government to be so unsatisfactory that the Governor in Council is disposed to view the case as one in which the Executive Government may with propriety interfere; but, before adopting this course, His Lordship in Council would wish to be informed whether the case is so regarded by the Honorable the Judges of the High Court.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. J. Tulloch.

Jud: Dept
No 1930

Please send me the original papers among wh: is probably a copy of Mr Underwood's Sentence -
They were circd with the Petrs address of 17 Feby 66. WDM

The whole of the depositions, together with W Underwood's Sentence are printed in the Govt Proceedings of 10 Aug 1866.

Copy of the Sentence in Md also submitted herewith -

Case No. 29 of 1865.

Complainant
Sooyamboolingacone.

Defendant
Alagoocoondrum Pillay.

I W. E. Underwood Deputy Magistrate of Trinivelly do hereby declare that the is made against the defendant the charge.

That he being a public servant that is to say, the Sub Magistrate of Coolasagara pattan accepted for himself from one Aroonachellathauan a gratification other than a legal remuneration as a motive for his the said defendant in the exercise of his official functions to favor the said Aroonachellathauan in a case then pending before him the said Sub Magistrate, such being an official act and that he has thereby committed an offence punishable under Sec 161 of the Penal Code and within my Cognizance.

And I hereby direct that the said defendant be tried on the said charge.

After a long and patient inquiry I consider the case fully proved against the Sub Magistrate. The Court has only briefly to review the evidence for the prosecution. Three different times have several of the witnesses been required to repeat their statements, from the manner the witnesses have given their statements, the severe examination they have been put

put to, their demeanour throughout; the Court is satisfied that they simply stated the truth.

The evidence of the Complainant is, that he brought a charge against a defendant and others, for removing certain houses off his land, and another charge against defendant and others, of having removed certain trees from off his land. The Sub Magistrate after an inquiry on the first complaint and after the Deposition given by the Complainant must have known that the inquiry was altogether of a Civil nature.

There could however have been no necessity for his going on with the 2d Complaint. The Complaint was merely, certain persons built on my land. I gave them permission to do so, Conditionally; if they left, the houses were to be my property. At the instigation of the 1st defendant, they are now removing on to his land, and the young trees they have planted they are also taking away. On the 25th the Complainant states the case was dismissed on this date the Complainant heard that the Sub Magistrate had been paid a sum of Rs. 300 by the defendants in the case. The 1st and 2d witnesses he heard, were present as well as one Beramanayagum. He asks these witnesses, they stated yes they

By S. Crt

"By the evidence it is evidently
"appears that one Perama-
"-nayagam Pillai was sum-
"-moned as a witness, but
"there is no Summons or any
"thing else [on the record] to
"show that he was, it is
"an important point in the
"case"
"There is also a warrant
"directing this witness [?]
"Veramanayagam Pillai
"into custody for 15
"days: under what
"Section this was ordered
"does not appear"
Warrant returned to Dispr
Magr. for explanation

they had gone in suddenly on the Sub Magistrate on business, they saw the 1st defendant and Beramanayagum there, money was on the Cot, as soon as they went in this was huddled up, and to question, whether the sum was correct the answer is yes, there are Rs 300, and the Sub Magistrate retires with it. The witnesses did not go in with any intention of surprising the Sub Magistrate, they had no intention of informing against him, they were not doubted, they told the Complainant such was the fact, but had no idea they would be called as witnesses, after this the Complainant saw the Revd Mr Schaffter, Beramanayagum was with Complainant, he stated to Mr Schaffter that he was with Arunachellathanar, saw him pay the money, and that the other two witnesses were present. Mr Schaffter advised the Complainant to make a Complaint which he did, & Summonses were issued, again Mr Schaffter saw Beramanayagum who told him that before the summons was received, and even then Arunachellathanar and the Sub Magistrate were doing all they could to buy him over. The day the Complainant and witnesses were starting for Courtallam Mr Schaffter saw Beramanayagum and the witnesses, they said they were starting for Courtallam that night. It is clearly proved whilst in a school house, the brother of Beramanayagum enticed him away. If this witness had not been present

present why all this anxiety to get him away? If his statement was a false one, what had they to fear? Before proceeding to evidence for the defence, Complainant states the decission was given on the 25th but the records show the inquiry was finished on the 25th, but the decission in the Case on the 27th.

I have no doubt but that the Sub: Magistrate did decide the Case on the 25th but that he did not write his judgment until the 27th. Mr Schaffter states on oath he saw the Complainant in Palamcottah on the afternoon of the 28th and Complainant then told him that the Sub Magistrate had decided the Case on the 25th. The Complainant would not say the Case was decided on the 25th unless it was. After attending days and days for the inquiry he was not likely to leave just as judgment was to be given. There was no possible reason for Complainant to state the Case was decided on the 25th if it was on the 27th. I have no doubt that the evidence throughout is truthful. The demeanour of the Sub Magistrate throughout the trial was anything but dignified, continually interrupting the Court, exclaiming his innocence, and expressed anxiety that the Court would stay proceedings, that he could prove an alibi: The prevarication if nothing else in the alibi would prove this evidence to

By Secretary:-

"The Dr. Mag.te has misunderstood
"the Tamil words for the color
"of the horse; xxxx the two
"words used by the diff! Witnesses
"both describe the horse as a
"sort of chestnut or roan"

Remark by S. C.t.

"The prisoner nowhere in his
"defence mentions the person
"who lent him the horses."

"There is nothing against him
"the evidence, about the
"prisoner having come in a
"bandy to Mr Patton"

to be false, 1st one witness states he came there very early on a horse, cannot tell the color, 2d another states it was a bay or red horse, a 3d states it was a flea bitten grey, but lastly the man whom he states lent him the horse, most distinctly states that on the day he went to visit Mr Patton, he went in a bandy. That he saw him spoke to him, that he had never said he had been to Manaad and positively that on that day. The day (mind the only one) that he had gone to see Mr Patton, the Sub Magistrate had not the loan of his horse. The 1st witness also in Case on the question being put on what date the Sub Magistrate came to Manaad? said most distinctly first 26th and afterwards the 25th. There was no harm in correcting himself, but great suspicion that he should lie so persistently as to deny that he had made a mistake in saying 26th first, again Mr Patton sent for the Sub Magistrate a 1/4 before 8 or thereabouts. His peon as he states knew he was not in the best of tempers having been delayed in the sun and would have come back at once and told him if the Sub-Magistrate was not in the house. I have not the slightest

doubt

doubt of the guilt of the Sub Magistrate in having received a bribe.

The Court finds the defendant guilty of the offence specified in the charge viz That he being a public servant, that is to say, the Sub Magistrate of Coolasagarapatam accepted for himself from one Aroona Chellathanan, a gratification other than a legal remuneration as a motive for his the said Sub Magistrate in the exercise of his official functions to show favor to the said Aroonachellathanan in a Judicial proceeding then pending before him, the said Sub Magistrate such being an official act and that he has thereby committed an offence punishable under Sec. 161 of the Penal Code and the Court directs that the said Sub Magistrate of Coolasagarapatam be sentenced to one years rigorous imprisonment in the Zillah Jail of Tinnivelly.

19th October 1865. [Signed] W. E. Underwood
Deputy Magistrate.

N.B. 1st defendant in case No 35 of 1865 on the file of the Deputy Magistrate has confessed that he gave the bribe; and has been sentenced

The Sessions Court considers Simple imprisonment accompanied as it is by loss of Situation & claim to pension, sufficient punishment; & modifies Sentence accordingly.

By Sess: Crt.

"The pris.rs in calendar No
"35 shd have been tried
"by the Depy Magr. with
"the present case."

The 2nd Appt. however did not confess.

Sentenced.

24/10/65. [Signed] W. E. Underwood
Deputy Magistrate.

(True copy)

[Signed] W. E. Underwood
Dy Magistrate.

Filed on the 4th November 1865.

[Signed] J. S. Child
Session Judge.

By Sess: Crt.

"One of the witnesses was
"fined 20 Rs under sec.
"179 of the Code (Cal: 34)
"The Dy Magr will inform the
"S.C. whether he acted in
"that case as directed by
"the P.C. 192 & 193 and
"will inform the Crt whether
"he has any record stating
"the fact beyond the depos-
"ition of the case &
"accompanying the case &
"the Cal: 34: Letter depos-
"there is no question but
"down to which the witnesses
"refused an answer."

Abstract of Evidence.	How noticed by the Deputy Magistrate in his Decision	Remarks by the Sessions Court.
1st. Witness. Valasubramanya a Native, brought by order some Sugar Candy to the Sub-Magistrate, went in after (2d Witness) Soodalayadum Permal into Sub-Magistrate's house, & saw 300 Rs. on the floor, which the Sub-Magistrate took away. Arnachella Tavan & Ermanayagum Pillay were there.	This Witness is considered quite trustworthy by the Dep. Magistrate.	
2d Witness. Soodalayadum Permal. — on the 11th Augt, a Cavelgar ordered him to appear before the Sub-Magistrate, he went the next morning, went in with 1st Witness, & saw Arnachella Tavan & Ermanayagum Pillay giving 300 Rs. to Sub-Magistrate.	——Do.—— ——Do.——	
3d Witness. Nurseinatan Upadesi, a Catechist, heard the Sub-Magistrate say, on the 22d that the Case would be committed, on the 25th the case was dismissed. Ermanayagum Pillay told him that 300 Rs. had been given to the Sub-Magistrate. Witnesses were examined on the 24th & 25th. No recognizances were taken from any one.	3. Great stress is laid on the account of conversation had with Ermanayagum Pillay, by this Witness & Mr. Schaffter 5th Witness.	

4 Witnesses

4th Witness Maruniootter, heard the Sub-Magistrate say, that the case would be sent to Court; heard also Villagers talk about the bribe.

5th Witness Mr. Schafter, on the 20th August heard Permanayagum Pillay say, that he was offered bribe by Arnachella Tower if he would not give evidence, and they next night heard that Permanayagum Pillay had gone.

The Deputy Magistrate believes that Permanayagum Pillay was kept out of the way.

Calls for explanation, of a Warrant ordering Permanayagum Pillay into Custody for 15 Days.

6th 7th 8th } Witnesses. Depositions not sent — were examined to prove that Complainant was at home on the 27th — & that therefore decision would not have been given that day.

Believes that the decision was made known on the 25th but written on the 27th.

Remarks on the absence of Permanayagum Pillay an important Witness.

9th Witness. Davidoomen Pillay, states that the Sub-Magistrate on the 10th or 11th July was tatting at Tattan Madam with the 1st Witness, who paid him there. Collections were entered in account which is given to Kurnum.

No notice taken.

10th Witness Soobramania Pillay, Sub-Magistrates Gumasta, took deposition in those cases, the Sub-Magistrate never said that he would Commit to Court. depositions were ended on the 25th. — Sub-Magistrate away on duty on the 26th on the 27th decision was given, but Complainant was not there.

No notice taken, though it contradicts statements made by Complainant.

11th Witness Soobramanya Pillay, Curnum. received no account of rice paid by the 1st Witness from the 9th Witness.

Not noticed, Although it contradicts statements of the 9th & 1st Witnesses.

Defence. The cases were dismissed, because they were properly Civil Suits; on the Morning in question went to fetch an arrear at a Village 6 Miles off; immediately on arrival went to see Mr. Patton.

1. [illegible]
2. [illegible]

One of the Witnesses was fined 2 Pr. under Section 179 of the Code. In the deposition there is no question put down to which an answer was refused.

1st Witness, Mr. Patton, saw Sub-Magistrate at 9 on the 25th; he was late, but made no excuse about having been to another Village.

Knowing that Mr. Patton had been kept waiting he would have made the Expense of it really Expected.

2nd Witness Somasoondrum Pillay, Merasedar, saw Sub-Magistrate on the 25th 6 1/2 Miles away from Head Quarters 6 1/2 A.M. riding on a horse.

This Witness first said the 26th & then corrected himself.

3rd Witness, Soondrum Pillay, Police Inspector has sent his horse twice to Sub-Magistrate. Dont remember the dates.

"The man whom he states lent him the horse, most distinctly states that on the day he went to visit Mr. Patton he went on a bandy."

The prisoner nowhere in his defence names the person who lent him the horse. There is nothing in the Evidence about the prisoner having gone in a bandy to Mr. Patton.

Mem. for Orders.

Petition No. 1311 of 1865.

On July 1865. Arnachilla Tavon, & others were charged before the Petitioner who was then Sub Magistrate of Colaba Taluka with robbery. The Sub Magistrate, after partial enquiry, the charge was dismissed on the ground that no criminal offence had been committed, & the parties were referred to the Civil Courts for redress.

Sewayambhuga Hegde, the Complainant in that case, preferred a charge of bribery against the Petitioner before the Deputy Magistrate Mr. Underwood, who found the Sub-Magistrate (Petitioner) guilty and sentenced him to one year's rigorous imprisonment.

On

On Appeal the Sessions Court modified this sentence, awarding 4 years simple imprisonment, in consideration of the Prisoners Youth & services, & the heavy penalty involved in loss of his appointment & of his claims to pension. The Sessions Judge further remarked on the loose & incorrect way in which the Deputy Magistrate had recorded his decision, and pointed out some errors in fact, & some irregularities in procedure, into which the Deputy Magistrate had fallen, calling for explanation on one or two points. The Court did not notice that much of the evidence on which the decision was founded, is inadmissible, or that the Deputy Magistrate had failed to commit upon the evidence in favor of the Petitioner.

There being no appeal from the confirmation of the Sessions Court, the Sub-Magistrate's petition to the High Court was rejected.

The present appeal is under Section 54 of the Criminal Procedure Code: the Petitioner represents that the evidence on which the decision was founded is inadmissible, & wholly insufficient to prove the charge, & prays for reversal of the sentence, & reinstatement in his position; he alleges his innocence and says that the charge was brought through the instrumentality of Mr Schaffer, a Missionary.

The Complainant's story is briefly as follows:—

"I laid two complaints before the Sub-Magistrate, in both of which Arnachella Taven was a Defendant. The Sub-Magistrate refused to take up the cases, but on receiving an order from Deputy Magistrate Ramaya he did so, & held an enquiry from the 19th to the 22nd August — on which date he said, he should commit to Sessions Court. On the 25th he dismissed the cases. Ramaya then told me that he had seen Arnachella Taven give the Sub-Magistrate, 300 Rs. and that two others (1st & 2nd Witnesses) were present. On the 20th August the same

(Vermanayagam Pillay)

same man offered me 100 or 200 Rs. if I would compromise this matter. Mr. Chapman told Vermanayagam Pillay to speak to this in Court but he was enticed away by Arnachella Saven & his brother. 39

Arnachella Saven, one of the Vermanayagam Pillay, were not examined before the Deputy Magistrate; they were tried separately (35th Feby) and the Jury on his confession found guilty & fined 30 Rs. while Vermanayagam Pillay denied the truth of the whole story, and was acquitted.

A tabular statement is appended shewing the evidence of each Witness as far as it can be gathered from the papers submitted, together with the remarks of the Deputy Magistrate, and of the Sessions Court.

///

(Confidential)

Petn Petition & Enclosures

14*

Judicial

No. 821.

To

The Hon'ble Sir C. B. Cox Kt.
Chief Justice of the
High Court of
Judicature.
Madras.

Hon'ble Sir,

I am directed to transmit to you the accompanying Petition which has been presented to the Government on behalf of Alagacoondanna Pillay late Sub Magistrate of Colastanapatam, who is now undergoing a sentence of imprisonment passed upon him by the Deputy Magistrate of Tinnevelly, on conviction on a charge of bribery, and to request that you will be good enough to call for the record of the trial and to favor the Governor in Council with the opinion of the Judges of the High Court on the case.

The

2. The decision of the Deputy Magistrate and the evidence as submitted by the Petitioner, appear to the Government to be so unsatisfactory that the Governor in Council is disposed to view the case as one in which the Executive Government may with propriety interfere, but before adopting this course, His Lordship in Council would wish to be informed whether the case is to be regarded as by the Hon'ble the Judges of the High Court

Fort St. George
26th May 1863

Suit of 5 Issue.

Judicial Office Report

C. No. 221

To

The Honorable

The Chief Justice of the

High Court of Judicature

Madras.

F. No. 1481 - 1930.

Dated 26th January 1866

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