

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1417	Press ~~Mis.~~
Dated	3 - 9 - 1918	

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Not to be folded or roughly handled

25-10-30

No. 1417.

To

THE HONORABLE SIR C. H. SCOTLAND, Kt.,
*Chief Justice of the High Court of Judicature,
 Madras.*

HONORABLE SIR,

I am directed by the Right Honorable the Governor in Council to request that you will direct the submission to Government of the records connected with Case No. 103 of 1866 on the file of the Session Court of Calicut, together with the proceedings of the High Court on appeal, and on review of judgment.

2. I am also to request, with reference to the statement made in the 4th paragraph of Mr. Ouchterlony's memorial on behalf of the prisoner Bomma, that the Honorable the Judges will favor Government with any remarks they may have to make as to the desirability of remitting the remainder of the unexpired sentences passed on the several prisoners in the case in question.

I have the honor to be,
 Honorable Sir,
 Your most obedient Servant,

FORT SAINT GEORGE,
 3rd September 1867.

Acting Chief Secretary.

From Messrs. BOYSON, BROCKMAN, & PRICHARD, Solicitors, Madras, to the Acting Chief Secretary to Government, Fort Saint George; dated Madras, 28th August 1867.

Under instructions from Mr. James Ouchterlony, of Ootacamund, and on behalf of our client Duffadar Bomma, we have the honor to forward, herewith, a petition by Mr. James Ouchterlony, and to beg the favor of your submitting it for the favorable consideration of His Excellency the Governor in Council.

To

THE RIGHT HONORABLE FRANCIS BARON NAPIER, K. T.,
Governor of Madras in Council.
 The humble petition of JAMES OUCHTERLONY,
 of Ootacamund, Proprietor of the "Suffolk"
 Coffee Estate near Goodaloor,

SHEWETH,

That, in the month of December last, a petition was addressed to your Excellency in Council by Mr. Coates, the Superintendent of the above named "Suffolk Estate," on behalf of one Bomma, a Duffadar on the Estate, who had been convicted of complicity in the plunder of the Goodaloor (open) Bazaar on the 15th July preceding, and sentenced to ten years' rigorous imprisonment by the Session Court of Calicut; and that, by an endorsement of 21st December 1866 on the said petition, your Excellency in Council was pleased to observe that it was open to the prisoners in the case referred to, to appeal to the High Court.

2. That an appeal was, in consequence, addressed to the High Court, which ruled that it was presented too late, but the Court directed that the record should be sent for, with a view to ascertain whether the evidence warranted the extreme punishment inflicted in the sentence.

3. That the issue of such investigation of the record has been that the sentence of ten

years' rigorous imprisonment on three of the prisoners (the aforesaid Bomma included) was reduced to two years, and the sentence of seven years on five of the prisoners to eighteen months; the remaining prisoners having their sentence of one year undisturbed, they having, in fact, completed the full term within a few days.

4. That, at the first hearing of the appeal, the High Court was pleased to throw out that it was a case for appeal to your Excellency in Council, and that this had reference to the whole of the prisoners in the case.

5. That your petitioner, however, now submits this address to your Excellency in Council, more particularly on the score of his servant Bomma, for whom he appeals, not simply for mercy, but that justice may be done to an innocent man. That your petitioner craves leave to attach hereunto the petition of Mr. Coates above adverted to, in which is set forth the details of the plunder in the Goodaloor Bazaar on the 15th July 1866, and the circumstances connected with the said Bomma's arrest and committal. That, from the petition being presented too late, the High Court felt itself precluded from entering into the merits of this special case, or disturbing the finding of the Session Court.

6. That your petitioner, in now appealing on behalf of Bomma, desires to lay before the earnest consideration of your Excellency in Council the accompanying two affidavits—the one from Mr. Coates aforesaid, the Superintendent of the Suffolk Estate, and the other from Mr. Rohde of the adjoining Balmadies Estate; and he entertains a humble confidence that the perusal of these will satisfy your Excellency in Council that the unfortunate Bomma has now been already undergoing a whole year's rigorous imprisonment for an offence that he never committed; and that, in fact, the grain which he has been punished for stealing from the Goodaloor Bazaar was the actual property of your petitioner himself, and in the said Bomma's legal custody; and that, moreover, it is to be reasonably inferred that, had such facts, as those communicated to the Committing Magistrate by Mr. Coates and Mr. Rohde, been conveyed to the Session Court, the learned Judge presiding over it would have been led to view the charge against Bomma in a different light from that in which the unquestioned (save by the prisoner's bare denial) accusation appeared before him.

7. That the prayer of your petitioner is that your Excellency in Council may be pleased to order the release at once of the prisoner Bomma.

8. That it is a sad reflection that, whereas, as the accompanying affidavits show, the grain supplied by Mr. Rohde to the Suffolk Estate was committed to the charge of the said Bomma for the express purpose of being served, when required, to the sick and starving in that season of famine, its removal by the Officers of Police, and detention by the Sub-Magistrate, may have accelerated the deaths of three human beings (two women and a girl) who died in their huts shortly after from the apparent result of starvation.

9. That, finally, your petitioner trusts he will not be considered intrusive in praying your Excellency in Council to extend your clemency to all the prisoners in the Case No. 103 of 1866, before the Session Court of Calicut. That he ventures to do so, in consideration of these men having been famine-stricken laborers in an extraordinary season of dearth; that none had previously been an offender; that the plunder was of food spread temptingly on the ground before them; that there was no evidence of any premeditation; and that, when viewed beside the punishments imposed by the High Court on the offenders in the Madras grain riots of last year (and where the above extenuating circumstances were, in a great degree, absent) the working out one long year of rigorous imprisonment (and that in an uncongenial climate) might teach a sufficient and abiding lesson, that no adventitious cause of temptation can forgive the appropriation of the property of others; and your petitioner will ever pray.

OOTACAMUND, 19th August 1867.

(Signed) J. OUCHTERLONY.

William Cotton Rohde, Superintendent and partowner of the "Balmadies" Coffee Estate, in the Ouchterlony Valley, in the Goodaloor Sub-Division of the Wynaad Taluq of Malabar, hereby deposes, on oath, that he recollects the plunder of the Goodaloor market, on which Bomma, a maistry on the adjoining Suffolk Estate, was committed—was well acquainted with Bomma. About ten or twelve days before the plunder of the market referred to, deponent issued, at the request of Mr. Coates, the Superintendent of the next (Suffolk) Estate, one hundred seers of raggy, and, at Bom-

ma's solicitation, added fifty seers, the whole being regarded as a loan to the Suffolk Estate, such loans being customary. Issued nothing but raggy. The ordinary issue to each man per week is eight seers. After Bomma was apprehended—cannot say how long after—deponent wrote to "the Tahsildar", at Mr. Coates' request, stating the fact that Bomma had received raggy from him.

(Signed) W. C. ROHDE.

Sworn to, before me, this tenth day of August 1867.

(Signed) J. ROHDE,

Justice of the Peace.

Henry Coates, Superintendent of the "Suffolk" Coffee Estate near Goodaloor, maketh oath and saith that he remembers the plunder in the Goodaloor Bazaar on the 15th July 1866, and that, on the 24th of the same month, certain Peons of Police came to the said Suffolk Estate and searched the residence of one Bomma, the Duffadar or Head Maistry, and that, finding a quantity of raggy and salt in the said Bomma's house, they took him into custody, and carried him and the raggy and salt away to Goodaloor. Deponent further saith, that, on this occasion, he lent the Head Police Officer, three bags to carry the grain, informing him that these and the raggy were Estate property, and must be returned; and he wrote the same to the Tahsildar at Goodaloor, which letter was sent by the Police Officers; and that, between that time and the 30th of the same month, he addressed the Tahsildar in writing to the same effect, but that no notice was taken of such letters. Deponent further saith that he fully expected to be summoned to give evidence in the matter, but that Bomma was sent to Calicut for his trial, without deponent knowing when this would take place; and deponent further maketh oath and saith that the raggy actually found in the said Bomma's house consisted, to his certain knowledge, of the remainder of 150 seers obtained in the beginning of the same month of July by deponent from Mr. Rohde, of the adjoining Balmadies Estate (100 being on the direct requisition of deponent, and 50 more given by Mr. Rohde at Bomma's request—and the price of all of which was subsequently paid to the said Mr. Rohde by the Suffolk Estate), the raggy being so obtained because of the Suffolk Estate store being empty, and a small supply being required to be kept on hand to meet the emergencies of sick and starving in that season of famine. That, further, the raggy so seized as aforesaid, and the bags so lent as aforesaid, have not, to this day, been returned to the Estate to which they belong, viz., the said Suffolk Estate, or to him, deponent, as representing the Proprietors thereof. Deponent further represents that he knows the salt taken from Bomma's house to have been the said Bomma's property, because it was purchased by the said Bomma in his, deponent's, presence, in the month of March 1866, and had been in his, deponent's, custody during Bomma's absence subsequently in the Mysore country, and restored to Bomma on his return to the Estates in the latter end of the month of May.

(Signed) H. COATES.

Sworn before me, at Ootacamund, this twelfth day of August 1867.

(Signed) W. R. CAMPBELL,

Justice of the Peace.

To

THE RIGHT HONORABLE FRANCIS BARON NAPIER, K. T.,

Governor of Madras in Council.

The humble petition of HENRY COATES, Coffee Planter, and Superintendent of the "Suffolk" Coffee Estate near Goodaloor,

SHEWETH,

That your petitioner has had in service under him, as a Duffadar on the "Suffolk Estate," one Bomma, who has so served for a period of about four years, but has been employed under other Superintendents for a very much longer period.

2. That the said Bomma has always borne a good character, and that your petitioner's four years' experience of him enables him to testify to his invariable good conduct, and to express his confident belief in his being one of the last men who would wilfully act in a disorderly or dishonest manner.

3. That, on the 15th July last, a disturbance took place in the open Bazaar at Goodaloor (on the weekly market day), when the property exposed in the streets was looted, but not a single shop was broken into, nor any personal violence committed.

4. That the circumstances of the occasion appear to have been these:—The 15th July was one of those weekly market days at Goodaloor when the laborers from all the Estates round about attend to make their seven days' purchases. Raggy, the regular food of this class of coolies, and which, in ordinary seasons, is sold at about 20 (Mysore) seers for the Rupee, had been gradually rising in price, until, on the said 15th July, the market opened at a rate demanded of 7 seers for the Rupee. The coolies, and especially, no doubt, their maistries, urged and entreated the bazaar-men to sell at 8 seers, which they refused to do. Mr. Swan, the Superintendent of an Estate adjoining your petitioner's, happened to be passing through Goodaloor, and the coolies urged him to intercede for them, which he did, but fruitlessly. Mr. Swan then sent his Assistant, Mr. Cowan, to the house of the Sub-Magistrate, to beg him to come to the bazaar; but he returned word that he was sick and sent a simple pcon. (Your petitioner takes leave to mention this fact, because Mr. Swan was afterwards sent ignominiously under arrest to Calicut, on a charge of having incited a loot.) The crowd in the bazaar had now got very excited, and, at last, by one of those ungovernable impulses which too often overtake masses, but which, at the same time, your petitioner is far from attempting to defend, (although he humbly observes that it might find some palliation when starving men see food temptingly spread before them, for which a price is demanded which they believe to be extortionate), a general loot commenced; but, even under the excitement of this loot, and although it must have been known that the Bazaar shops held grain in quantity, and other valuable property, not one was broken into or touched.

5. That, nine days after the loot, viz., on the 24th July, Police Officers came to search the house occupied by the aforesaid Bomma, from which they took a quantity of raggy and of salt, and carried it, with the said Bomma, to the Sub-Magistrate of Goodaloor.

6. That, thereupon, your petitioner wrote to the said Sub Magistrate of Goodaloor, informing him that the raggy taken from the said Bomma's house belonged to the "Saffolk Estate," having been shortly before received from Mr. W. C. Rohde, residing on an adjoining Estate "Balmadies," for the purpose of being issued to the "Saffolk" coolies; and that, as regarded the salt, your petitioner knew it to have been a long time in the said Bomma's possession. That the said Mr. Rohde wrote to the Sub-Magistrate to the same effect, as regarded the raggy; but that the Sub-Magistrate appears to have entirely disregarded these two communications.

7. That your petitioner here craves leave to observe that he is a comparative stranger to the country and to forms generally of judicial administration; that he fancied he would have been called upon to make good the assertions in his communication, and thus he remained passive and ignorant of what was going on, until he was one day startled by a report that the said Bomma had been tried and condemned as a party to the loot, and sentenced to the heavy punishment of "ten years' rigorous imprisonment," and all this within a space of 17 days from the day of his arrest.

8. That your petitioner begs to attach hereto a certified copy of the sentence passed on the trial in this case, which embraced ten prisoners, the aforesaid Bomma being numbered 3 in the Calendar.

9. That he asks leave to quote here the different passages in the Court's judgment which refer to the said Bomma, and which are as follows:—

"Paragraph 2. Against first prisoner there is the evidence of fifth and sixth witnesses, that he and third prisoner came with an European and a gang of 3 or 400 coolies, and wanted grain at a cheaper rate than fifth witness would consent to sell at, and that, shortly after, a rush was made, and fifth witness' grain carried off."

"Paragraph 4. Against third prisoner there is the evidence of fifth and sixth witnesses, that he came with the European as stated above. There is also, not only the evidence of second, third, and fourth witnesses, but also his own admission that raggy, &c., in an inordinate quantity, considering his station, were found in his possession. Fifth and sixth witnesses further identify the raggy, on satisfactory grounds, as being the looted property of the former."

10. That your petitioner would ask permission to make, with all respect, a few remarks on the above grounds of condemnation.

11. That, in the first place, there was no evidence whatever to identify the said Bomma with the actual loot; and that he is only found to have committed the every-day and quite legitimate act of asking a man who demanded a Rupee for seven seers of raggy to give him eight for the money.

12. That, next, when it is sought to mix him up with the loot through assumed identification of property found in his possession with what had been stolen, this is taken as proved in respect solely of a quantity of raggy (a species of millet), the most common, ordinary grain of the country. That the idea of any man swearing to the identity of a quantity of loose grain, such as this, is, your petitioner humbly submits, quite preposterous.

13. That, moreover, the fifth witness, the proprietor of the raggy that was looted at the bazaar, gave, in his evidence before the Court, no reason for such identification, but broadly asserted—"this raggy before the Court is mine, and is the same that was robbed from the Fair;" and the sixth witness, who was employed by the fifth to sell his raggy, alone pretended to urge a ground for this by saying—"the raggy belonging to the fifth witness is of reddish and blackish colour, nobody else had received grain of that sort at Goodaloor: the fifth witness alone received a supply of it." It is to be borne in mind that the raggy thus seized in the said Bomma's house was found in an earthen pot; and that there was absolutely nothing else whatever but the grain itself by which to associate Bomma with the loot; and thus that, because a witness could say that the colour of this particular raggy resembled that which he alone had at the Goodaloor bazaar on one particular weekly market day, and which raggy of his happened to have been stolen, therefore, what was found with Bomma was what the witness had lost!

14. That your petitioner has here alluded simply to what appeared as evidence before the Session Court, and which he humbly submits is utterly inconclusive as to any guilt resting with the prisoner Bomma; but he reiterates his assertion that, within his personal knowledge, the raggy found in Bomma's house, on the search of the 24th July, was a part of what he had very recently received from Mr. W. C. Rohde; and that both your petitioner and Mr. Rohde are ready to testify to the fact of Mr. Rohde having given such raggy to Bomma, in any manner that they may be called upon to do so. That the very defence of Bomma on his trial (when standing in his painfully helpless position, evidently not knowing how he could call your petitioner and Mr. Rohde down to remote Calicut, to support him with their evidence) was—"on the 15th July at 7 A.M., I went for the Fair at Goodaloor; the 5th witness was selling raggy, I asked him if he would give eight seers per Rupee; he offered to sell at seven seers. I started towards my house, and, on reaching a short distance, I heard that a robbery had taken place at the Fair. I did not join in the robbery. The articles numbered 4 and 5 found in my house are mine, the raggy No. 4 was sold to me by Mr. Rohde. I have nothing further to state."

15. That your petitioner cannot but feel an interest in this unfortunate prisoner, from his having been so long in his immediate employ, and from what he has already said of his experience during four years of Bomma's invariable good character and conduct, as well as your petitioner's conviction of his innocence of any participation in the crime that has been laid to his charge; and he, therefore, presumes to solicit your Excellency in Council to take all the circumstances of the case into your consideration, and he humbly hopes that your Excellency in Council will see reason to grant a pardon to this suffering man, who must now have gone through nearly four months of his heavy sentence of ten years' rigorous imprisonment.

16. That your petitioner, in conclusion, cannot help expressing his conviction, that, had the Sub-Magistrate of Goodaloor made the Session Judge acquainted with the fact of what had been represented to him by your petitioner and Mr. Rohde, and had he communicated that he (the Magistrate) had been sent for before any disturbance took place, and while a state of excitement was growing up in the bazaar under the famine rates demanded for food, the result of the trial at Calicut would have been very different; but he trusts he may now be allowed to offer an intercession, on behalf of all the prisoners in the Calendar No. 103 of 1866, for the merciful consid-

ration of your Excellency in Council, although he could alone claim the privilege in respect of the individual prisoner Bomma under the manner in which he has been connected with him.

And your petitioner, as in duty bound, will ever pray.

SUFFOLK ESTATE,
3rd December 1866.

(Signed) H. COATES.

No. 3411 of 1866.

The Governor in Council observes that it is open to the prisoners in the case referred to, to apply to the High Court.

FORT SAINT GEORGE,
21st December 1867.

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

Ed. J. H. Burns.

Judicial Dept.

Proceedings of the Madras Government.
Read the following letter from James Ouchterlong Esq. of
Orissamund. Dated 19th August 1867.

Dear Sir,

Resolved that the following letter be
despatched to the Hon. the Chief Justice
of the High Court of Judicature, Madras.

To the Hon. the Chief Justice of the High Court of Judicature, Madras.

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behalf of the Prisoner Bomma, that the Hon. the Judge
will favour Government with any remarks they may have
to make as to the desirability of remitting the remainder
of the sentences passed on the several Prisoners in the case
in question.

I have &c.

For the
3rd Dec 1867.