

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1886	Press
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Dated	22-11-	1887

261-282

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Not to be folded or roughly handled

21/11/20

22nd November 1867.

No. 261. Read the following letter from W. S. LILLY, Esq., Acting Judge of the Small Cause Court of Combaconum, to the Chief Secretary to Government, Fort Saint George; dated Combaconum, 24th October 1867, No. 264.

I have the honor to request that Government will be pleased to sanction the payment of a fee of Rupees 25 to Verasawmy Aiyar, a pleader of this Court, under the following circumstances.

2. At the hearing of the case of Parattai Padayachy *versus* Makabelan, on the 19th September 1867, certain facts were elicited which afforded grounds for suspecting that an instrument, on which the defendant had brought a former action, was a forgery, and that the most iniquitous personation had been resorted to in connection with it. Further inquiry disclosed a good *prima facie* case against the defendant, who had appeared in the character of assignee of the forged obligation, and I considered it my duty to order him to be sent to the Magistrate, under the authority given me by Section 19 of Act XXIII of 1861. In making the order, I expressed my regret that the Court appeared to possess no power of entrusting to professional hands the task of prosecuting an offender who had used it as an instrument for perpetrating the grossest fraud, when the abovementioned pleader represented his willingness to attend at the preliminary inquiry and conduct the case against the accused. I accepted the offer, remarking that I should represent the circumstances to Government, and request that a sufficient fee might be sanctioned for the pleader's remuneration. After a prolonged investigation before the Assistant Magistrate, the accused has been committed for trial before the Session Court, a result which the Magistrate informs me is in no small degree due to the diligence and ability with which the prosecution was conducted.

3. The salutary effect of a successful prosecution for an offence against public justice in a town like this can hardly be over-estimated. Combaconum is notoriously the chief nursery of fraudulent arts in Southern India, and its name is in common use throughout the whole Madras Presidency as an epithet denoting high proficiency in chicanery. It is a well known fact that an extensive trade in the concoction of false evidence is carried on with scarcely an attempt at concealment by a body of Native Attorneys, under the designation of petition writers. The ostensible business of these persons is the drawing up of pleadings and petitions, and possibly a few of them confine themselves to that occupation; but most of them give their attention to the more lucrative practice of forgery and subornation of perjury, in the perpetration of which offences some have attained a high degree of skill. There is a well understood scale of charges for forged documents, the price being determined by various considerations, such as their apparent antiquity, the number of attesting witnesses, whether they are on a stamp or not, and the value of the property to which they relate. The act of imitating hand-writing is carried to such perfection that I have seen a most intelligent witness, on a signature purporting to be his, but which was most clearly proved to be forged, being shown to him with several genuine ones, quite unable to say, without looking at the body of the documents, which of the attestations was really his; and as the profession has now been practised for several generations, ancient stamp cadjans are procurable without great difficulty, so that a document, apparently executed fifteen or twenty years ago, may, in truth, have been only a few days in existence.

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22nd November 1867.*

4. While the fabrication of false evidence is so common, it will, of course, excite no surprise that perjury is largely practised. I do not indeed think that the giving of false evidence is resorted to as a means of livelihood by many: the constant appearance of the same persons in the witness box would excite the suspicion of the Judge, and would be used to their discredit by the cross-examining pleader. Moreover, no special skill is thought to be necessary for mere perjury. Half an hour's tuition by an experienced suborner is deemed sufficient in most instances to teach a quick-witted inhabitant of this district the story he has to tell the Court. In important cases, where several witnesses are to be called to establish a fictitious transaction, a rehearsal is held in which everything takes place as if it is to be represented in evidence, the only difference being that the part of the unfortunate man against whom the fraud is concocted is sustained by a third person.

5. The consequence of this frightful corruption is that false evidence, both documentary and oral, is presented to this Court to an extent which, if I may be permitted to say so, is a great public scandal. I am satisfied that one-fourth of the documents filed in evidence are forgeries, and that the statements of thirty per cent. of the witnesses who are examined are totally false. The proportion whose testimony is deliberately false in part, although in the main correct, would, I fear, be very large indeed: it is extremely rare to find a witness who will say neither more nor less than what he actually knows, but cross-examination generally winnows evidence of this kind pretty satisfactorily. As a rule, all evidence, whether true or false, has to be paid for: even persons who are generally reputed to be men of worth and honesty decline to give their testimony to facts within their knowledge without an honorarium, although they are willing to accept considerably less than the other side offer them to perjure themselves.

6. I have ventured to submit these representations, because I believe the remedy is to a certain extent in our own hands. The causes of the evil are patent enough. They may be briefly summed up in the proposition that the great mass of the people have no motive to restrain them from practising any deceit, however iniquitous, which their subtle intellects may devise. Public opinion, which in most countries brands fraud as infamous, here rather regards with admiration a successful cheat; and the word liar is scarcely an epithet of reproach. No man among the poorer classes sinks in the esteem of his fellows for swearing falsely, or fabricating a document; and among the higher classes, whose conventional morality is thought to be loftier, it is not considered disgraceful to employ the forgery or perjury of others. In truth, the only check upon these offences which we possess is the fear of punishment; but, unfortunately, that fear scarcely exists. It is matter of common notoriety how extremely difficult it is to bring home such crimes to their perpetrators: how seldom, in fact, the attempt is made, and in what a large proportion of cases the attempt, if made, fails.

7. The remedy which I propose to apply is to employ the best professional skill available in every prosecution which the Court may order to be instituted in respect of an offence against public justice. As I have before remarked, it is most difficult to bring home a charge of such an offence to the guilty parties with sufficient distinctness to warrant the Magistrate in committing them. The windings of fraud are so tortuous, the links in the chain of evidence which connects the accused with the crime are often so difficult to find, the devices employed to defeat the ends

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of justice are so ingenious, that it is hopeless to expect a Magistrate, overburdened generally with other duties, to devote the necessary time and thought to the establishment of a case, even if it were desirable, and I would submit that it is in the highest degree undesirable that he should occupy the place of prosecutor. It may be said the case should be placed in the hands of the Police; but, with every respect for the acknowledged merits of that Force, I must take leave to submit my conviction that they are utterly unfit to conduct a case where the prosecution has to unravel complicated and will masked frauds, and the prisoner is protected by great natural cunning, and defended by an able professional advocate. My two years' experience as a Magistrate in Bellary leaves no doubt on my mind that Police Officers, even of the upper grades, are of little use as prosecutors, except in cases of a plain and simple nature; in others they may prove useful auxiliaries to the prosecuting pleader, but they are very bad substitutes for him.

8. I would ask then that Government will be pleased to authorize the Judge of this Court to appoint a pleader to conduct the prosecution in every case which the Court may send for investigation by the Magistrate under Section 16 or 19 of Act XXIII of 1861, and that orders may be given for the payment in each instance of such fee, not exceeding Rupees 30, as the Judge shall think a sufficient remuneration for the pleader's attendance at the preliminary inquiry. It may not perhaps be out of place to remark that the pleaders of this Court have been carefully selected by my predecessors, and that many of them exercise their profession with a degree of ability and self respect which I believe cannot always be found at the Mofussil bar, so that, apart from the fact that they are Officers of the Court and accountable to it, I should have no hesitation in placing a case in their hands with the assurance that it would be well conducted. I believe that the successful prosecution of a flagrant case occasionally would exercise a most wholesome influence, and I trust this application may receive the favorable consideration of Government.

No. 262. ORDER THEREON, 22nd November 1867, No. 1886.

Under the circumstances set forth by Mr. Lilly, the Acting Judge of the Small Cause Court at Combaconum, the Governor in Council sanctions the payment of a fee of Rupees 25 to Verasawmy Aiyar, Pleader, who was employed by Mr. Lilly to conduct before the Magistrate the prosecution of a case of forgery and false personation arising out of a suit filed in the Small Cause Court.

2. Mr. Lilly, in the letter above recorded, has represented very forcibly the extent to which false evidence, both oral and documentary, is tendered in his Court, and the low state of public feeling, in respect of these offences against public justice, which prevails at Combaconum.

3. He proposes, as a partial remedy, that he may be authorized to appoint a pleader to conduct the prosecution of every case which he may, as Judge of the Small Cause Court, think it necessary to send for investigation by the Magistracy under Section 19 of Act XXIII of 1861, and that he may be allowed to pay in each case such fee, not exceeding Rupees 30, as he may think a sufficient remuneration for the pleader's attendance at the preliminary inquiry. Mr. Lilly points out that the pleaders of his Court have been carefully selected, and are competent to conduct these cases.

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4. The Governor in Council resolves to sanction the course proposed by Mr. Lilly as an experimental measure and during one year.

5. The Judge of the Small Cause Court will report, at the end of this period, the number of cases which have been sent before the Magistracy, the result of these prosecutions, and the effect which may have been produced by bringing offenders of this class to justice.

(True Extract).

Chief Secretary.

To the Judge of the Small Cause Court, Combaconum.

„ Accountant General.

„ Magistrate of Tanjore.

Ed. J. H. Burns.

Memo for order.

*Instructions are requested on
Judge of the Small Cause Court, Combaconum
Mr. Lilly's letter. 1st for the payment
of a fee of 25 Rs. to a pleader
instructed to conduct a case of
forgery & false personation
before the Magistrate
and 2nd that as the crimes
of forgery & perjury are unusually
frequent at Combaconum,
that he, as Small
Cause Court Judge,
be permitted to instruct pleaders*

to conduct proceedings before
the Magistrate in such
cases. Pls.

~~In a late case: the - Res?
Magistrate were empowered
to select a competent ^{case} Pleader
for the conduct of a Com
mitted ~~case~~, to the Leprosy
Court. The order gave
them also, at liberty to select
any person who to be an
efficient Counsel for the
Prosecution who is not a
Pleader, but of good the
character & the fact.~~

~~have allowed the - Magistrate
to pay persons so employed.
See separate memo -
WV~~

2367/67 Ind. Sup.

Mr. Kelly. As S.C. Judge Cambacorum.

When a Judge presiding at a trial
Court deems it necessary to vindicate
his position by calling in aid magis-
terial action for the punishment of
the offender which are so well de-
scribed in Mr. Kelly's letter, it must be
understood not inconsistent with the dignity
of the Bench, if the Judge further
charged himself with the duty
of preparing the charge through the
agency of a paid Pleader: No
doubt, Mr. Kelly has properly &
truth narrated the state of litigation
demonstration of the old Court at
Cambacorum, & I apprehend of the
single S.C. Court which has become
their substitute: but, for the reason

given, I would not caution as a
rule, the adoption of the course
for which he bitterly solicits caution.

It is unlikely that in a small
cause court with its present jurisdiction,
there will be many such calls for
transmission to the Supreme Court under
Section 19. Act 23 of 1881, which a man of
ordinary ability would not be able
to comprehend, especially if the record
be accompanied by a brief memo? such
as the S. C. Court itself would be likely
to prepare, & should prepare, setting
forth in concise terms, the points
of the case.

I do not, however, see that there would
be any objection to the transmission of
the decision, ^{at the suggestion} directing an attorney to
pleader of the S. C. Court to undertake the
direction of a case committed to

the S. C. Court when the case may
come for review & determination before
a permanent court other than his
own.

When such a course is adopted, the
heads might be enumerated of the
Supreme Court under the rules
passed some months ago, providing
that any person, as directed, may
be appointed to present a case
committed to a Special Court, the
hearer being allowed to disburse a
fee, the maximum amount of which
shall be fixed.

This would meet Mr. Lilly's praiseworthy
desire to repress perjury, perjury &
subornation of perjury at a public bar, and
applied to the districts in which there
are S. C. Cause Courts, would there answer
the same purpose.

Although not quite appearing to

Lilly's proposal, I would authorize
 the disbursement of the sum (25 Rs.) of
 which appears to have guaranteed payment
 to Pleader Virasami Aiyar.
Obvoby

W.D.

[Signature]

I should be disposed to try as
 an experiment on the Commission
 which (under) the Commission
 proposed by Mr. Lilly. It might
 be sanctioned for a limited
 time, say one year and the
 result reported at the end of that
 time. The case is remarkably
 well put in Mr. Lilly's letter.

Same with the
 spirit expressed by Mr. Arundell.

Legal Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
 Acting Judge of the Court of Small
 Causes at Combaroom
 (Dated 21 October 1867 N. 204)

ORDER THEREON 22nd November 1867 N. 1885-

Under the circumstances
 set forth by Mr. Lilly, the Acting
 Judge of the Small Cause Court at
 Combaroom, the Governor in Coun-
 cil sanctions the payment of a
 fee of Rs. 25 to Virasami Aiyar,
 pleader who was employed by Mr.
 Lilly to conduct before the Magis-
 trate the prosecution of a case of
 forgery & false personation arising
 out of a suit filed in the Small
 Cause Court.

2. Mr. Lilly, in the letter above
 recorded has represented very
 forcibly the extent to which false
 evidence, both oral and documenta-
 ry, is tendered in his Court, and
 the low state of public feeling in
 respect.

These considerations, which
 would very carefully since
 Mr. Lilly's case notes on Mr. Lilly's
 letter when first circulated
 and feel still more strongly
 is and did then that the
 measure proposed by Mr. Lilly
 is eminently more judicious.

W.D.

[Signature]
 I am, Sir,
 Yours faithfully,
 A. Arundell

respect of these offences against
public justice, which prevails at
Combaconum

3— He proposes, as a partial
remedy, that he may be authori-
-zed to appoint a pleader to con-
-duct the prosecution of every case
which he may, as judge of the
Small Cause Court, think it neces-
-sary to send for investigation by
the Magistrate under Sec. 19 of
Act XXXIII of 1861, and that he
may be allowed to pay in each
case such fee, not exceeding Rs 30,
as he may think a sufficient
remuneration for the pleader's at-
-tendance at the preliminary
inquiry.

4— Mr Lilly points out that
the Pleaders of this Court have been
carefully selected and are compe-
-tent to conduct these cases. ~~The~~
Governor and Council resolves to
sanction the course proposed, as
an experimental measure and
during one year.

5— The Judge of the Small Cause
Court will report at the end of
this period, the number of
cases which have been sent
before

before the Magistrate, the results
of these prosecutions, and the
effect which may have been
produced by bringing offenders
of this class, to justice. —

The Judge of the Small Cause Court.
Combaconum.

The Accountant General.

" Magistrate of Bangalore

desd 27/11

John
1867. Department.

No. 1886

PROCEEDINGS OF GOVERNMENT.

John
1867.

Dated 22nd January 1867

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