

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 543	Press ~~Mis.~~
Dated 3 . 4 .	1867.

Not to be folded or roughly handled

10/11

*Proceedings of the Madras Government, Judicial Department,
3rd April 1867.*

No. 25. Read the following Proceedings of Government in the Revenue Department, dated 20th March 1867, No. 668.

Communicating, for consideration, the }
question whether, under Section 252 }
of the Criminal Procedure Code, the } (Vide Proceedings, Revenue Depart-
accused in a case may be prohibited } ment, dated 20th March 1867, Nos.
from cross-examining the witnesses } 338 & 339.)
against him, until the closing of the }
case for the prosecution. }

No. 26. To the Honorable Sir C. H. SCOTLAND, Kt., Chief Justice of the High Court of Judicature, Madras; dated Fort Saint George, 3rd April 1867, No. 543.

I am directed to transmit, for the consideration of the Honorable the Judges of the High Court, and for such notice as they may deem called for, the annexed copy of the Proceedings of Government in the Revenue Department, in which are recorded, among other papers, the proceedings of the Session Court of Cuddalore upon a petition presented to that Court, appealing against certain sentences passed by the Acting Head Assistant Magistrate of North Arcot, and in which, among other grounds adduced in support of the appeal, it was urged that the Acting Head Assistant Magistrate did not permit the first prisoner's Counsel to cross-examination the witnesses for the prosecution, until the case for the prosecution had been closed.

2. As it appears from the 3rd paragraph of the proceedings of the Session Court that the Session Judge considered that, in adopting this course, the Head Assistant Magistrate acted in accordance with the provisions of Section 252 of the Criminal Procedure Code, the Governor in Council thinks it desirable that the point should be brought under the consideration of the Honorable the Judges of the High Court.

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

Kd. J. Tulloch.

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*Proceedings of the Madras Government, Revenue Department,
20th March 1867.*

No. 338. Read the following Proceedings of the Board of Revenue, dated 8th January 1867, No. 100:—

Read again Govt. Order, dated 7th August 1866, No. 1,988, Revenue Department.

Do.	do.	3rd September „	„	2,315	do.
Do.	do.	4th October „	„	2,650	do.
Do.	do.	8th November „	„	3,044	do.

Read also the following letter from the Collector of South Arcot, to the Secretary to the Board of Revenue, dated Cuddalore, 3rd December 1866, No. 250.

As requested in the Proceedings of the Board, dated 30th ultimo, No. 7,851, I have the honor to forward, as per list,* the whole of the records in the case of the late Salt Superintendent and Shroff of Mercanum, tried by my Head Assistant.

* From my Head Assistant.

Read also Petition from C. BASHICARLOO CHARLOO, dated 5th December 1866, No. 4,387.

1. Ordered that the foregoing letter from the Collector of South Arcot, with its enclosures, be submitted to Government, with reference to the previous correspondence above cited.

2. In the Government Order of 7th August 1866, Mr. Reade was directed to submit a full report on the case of embezzlement of Government salt at Mercanum, therein referred to, together with the record of the case, and information as to the antecedents of the defendants.

3. The latter information was submitted with the letter recorded in Government Order, dated 4th October 1866. The record of the Session Court's Proceedings was submitted with the letter recorded in Government Order of 8th November. The record of the proceedings before the Head Assistant Magistrate accompanies the present letter.

4. Mr. Reade in his letters of 7th September and 1st October has observed that he has his "own views" on the trial and its result before the Head Assistant, "and that there are reasons which seem to support the conclusion at which he has arrived that Bashika Charloo was guilty rather of great negligence than of criminal connivance at the offence attempted by the Shroff;" but he has not fully stated these views, or the reasons which induced him to adopt them, nor has he furnished the full report on the case desired by Government.

5. The Board regret that they are unable to concur in the general opinion which the Collector has expressed on the case, as it affects Bashika Charloo.

6. The Proceedings of the Session Court of Cuddalore, dated 20th September 1866, contain a full and clear *resume* of the facts of the case, and are printed at foot of these Proceedings for facility of reference.

7. Briefly it may be stated here that the Shroff at Mercanum was charged with attempting to defraud Government of the sale proceeds of certain salt, amounting to Rupees 84-6-0 or thereabouts, and that Bashika Charloo, the Superintendent of the Salt Pans, was charged with abetting the Shroff's offence; that both were found guilty by the Head Assistant Magistrate, and sentenced to imprisonment for nine and fifteen months, respectively; and that on appeal the Session Judge affirmed the

conviction of the Shroff, but annulled that of the Salt Superintendent, on the ground that though he had sanctioned and connived at irregularities, and thereby raised against himself grave suspicion of complicity in the Shroff's guilty attempt, the evidence was insufficient to establish connivance at, or abetment of, the attempted fraud. "The acts of the prisoner after the recall of the Shroff are compatible with an ignorance of the Shroff's attempt to misappropriate the Government money, though they are certainly not those of an upright public servant, whose duty it was to safeguard the interests committed to his charge."

8. The rules for the guidance of salt servants prescribe that—

"Parties desirous of purchasing salt shall pay the price to the Shroff, who, after entering it in his chittah with the necessary particulars, shall grant them a receipt." "The entries of the receipt will be filled up with reference to the chittah. The receipt shall then be attested with the signature of the Shroff and made over to the purchasers. This receipt shall be produced to the officer conducting the sale. After the salt is measured and delivered, the receipt shall be forwarded to the Huzur by each day's post. The account sale of salt shall be kept by the Navisendar, who, on the production of the receipt described in the previous paragraph, shall make the necessary entries in this account, and then deliver the quantity to the receipt-holder."

9. The suspicions of the Police had been roused by irregularities which had been observed, and on 28th June, they made arrangements for bringing the matter to a definite issue, and the course of events appears to have been as follows:—The Shroff noted down on a piece of loose paper the names of the intending purchasers, and the amount paid by each, instead of entering them at once in his chittah, as required by the rules, and gave this paper to the Superintendent who, with reference to it, ordered the salt to be weighed out and delivered to the parties. The Police had arranged to record the quantities delivered. The sales closed at 4 P. M., and the Shroff then took back the paper from the Superintendent and proceeded to prepare the chittah, receipt, and pass, which were taken to the Superintendent to be signed. The pass was made over to the Police, who found that it covered only 577 maunds of salt, while their notes shewed that 627 maunds had been delivered, the difference being 50 maunds of salt of the value, at the monopoly price, of Rupees 84-6-0, at Rupees 1-11-0 per maund.

10. The Shroff, meanwhile, was leaving the place of sale with the money that had been paid, and the chittah and receipt, when the Police called on the Superintendent to investigate the discrepancy which they had detected. The Shroff was recalled. The money and chittahs were examined, and it was found that only 577 maunds were entered in the chittah and in the receipt, corresponding with the quantity entered in the pass, while the amount of money corresponded with the price of 627 maunds, of which the price of 50 maunds, or Rupees 84-6-0, had been placed in a separate bag.

11. It was clear that an elaborate fraud, which would have robbed the Government of the price of 50 maunds of salt, had been detected; and there is no reason to doubt that this attempt was merely one of many which had proved successful.

12. The Superintendent's conduct after the detection, as detailed by the Police, was a prolonged effort to shield the Shroff, while admitting the grossly fraudulent irregularity to have been committed. He endeavoured to induce the Police to receive a second pass for the additional 50 maunds. He attempted to withdraw the chittahs which evidenced the fraud. He offered the Police money, if they would consent to hush the matter up. He complained to the Deputy Collector in charge of the Salt, as to the interference of the Police, and their attempt to convert into a criminal offence what was merely a clerical error. In short, as stated in the Proceedings of the Session Court, his conduct was anything but that of an honest public servant, anxious to guard the interest committed to his charge.

13. The case was forthwith brought by the Police under the investigation of the Sub-Magistrate on the spot; was in due course reported to the Magistrate, and by him was referred to the Head Assistant Magistrate for inquiry with the result already stated.

14. It is unnecessary for the Board to make any comments on the case as it affects the Shroff, who has been clearly convicted and sentenced.

15. In regard to the Superintendent, it is to be observed that his neglect to enforce strict observance of the rules which gave the opportunity for this fraud was in itself a most serious dereliction of duty; and as the breach of rules was evidently systematic, it is not to be credited that he failed to perceive the facilities which it afforded for speculation and embezzlement of public revenue. The Board agree in opinion with the Court, that there is no direct proof of complicity before the fact on the part of the Superintendent; but they conceive that it was incumbent on the Superintendent to rebut the strong presumption of connivance which rested on him from his neglect to enforce adherence to that course of proceeding which was laid down to prevent fraud. Had he required the completion of the chittah before beginning the deliveries, the fraud could not have been perpetrated in the manner it was, and his neglect appears to the Board to be proof of connivance, unless he could shew the contrary, which he has not done. The other circumstances of the case strengthen the suspicion against him, and the Board are decidedly of opinion that he is unworthy to be retained in the public service.

Proceedings of the Session Court of Cuddalore, dated 20th September 1866.

Read Calendar in Case No. 52 of 1866, before the Acting Head Assistant Magistrate.

Read also records in the above case.

Read also Petitions presented by T. Chellapa Pillay and Janakeram Puntaloo, Vakeels on behalf of the prisoners in the case.

1. These are appeals from the sentence of the Acting Head Assistant Magistrate, convicting the second prisoner of attempting to commit criminal breach of trust, and the first prisoner of abetting the second prisoner in the said attempt.

2. Certain technical objections to the conviction of the first prisoner were taken "in limine" by his Pleader; they were—

First that the indictment was defective in not specifying the Section of the Penal Code under which the offence, the commission of which is alleged to have been abetted, fell.

Secondly that the offence, the commission of which the first prisoner is said to have abetted, had not been established; and,

Thirdly, that the first prisoner's Counsel before the Acting Head Assistant Magistrate was not allowed to cross-examine the witnesses for the prosecution.

3. A consideration of the very comprehensive indictment in the Calendar is, the Court is of opinion, a sufficient reply to the first objection; the second is disposed of by explanation 2, appended to Section 108 of the Penal Code; and the third, the Pleader for the first prisoner before the Session Court has qualified by stating that the prisoner's Counsel before the Acting Head Assistant Magistrate was not prevented from cross-examining the witnesses altogether, but that he was not allowed to do so, until the case for the prosecution had been closed. As the Acting Head Assistant Magistrate in conducting this case appears to have followed the course prescribed in Section 252 of the Code of Criminal Procedure, the Court is of opinion that this last is not a valid objection.

4. Before proceeding to consider the facts of the case, it is necessary to notice the course laid down in the Salt Manual, in regard to the sale of salt (the first prisoner being the Salt Superintendent, and the second the Shroff), this is contained in paragraphs 27 and 28 of the Manual, page "32. Parties desirous of purchasing salt shall pay the price to the Shroff, who, after entering it in his chittah with the necessary particulars, shall grant them a receipt which should be attested with the signature of the Shroff, and made over to the purchasers;" this receipt should then be produced to the officer conducting the sale; on the production of this receipt, the salt is ordered to be weighed out to the purchaser to whom a pass is then delivered specifying his name, the amount of salt sold, its cost, and the number of bandies in which it is being conveyed; on presentation of this pass to the police on guard at the Salt Depot, the salt thus purchased is allowed to leave the platforms. The above is a brief abstract of the proper course to be followed in connection with the sale of salt.

5. So far as may be gathered from the records in the case, the following are the facts elicited by the evidence:—

On the 28th June last, salt was being sold at the Mercanum Salt Pans; the first witness, a Deputy Constable, was on duty at the salt platform; having on the two preceding days noticed grave irregularities amounting, in his opinion, to actual fraud, he determined to watch narrowly this day's proceedings, and instructed the second and third witnesses (Police Constables also on duty at the platform) to remain near the Shroff, while the purchasers paid their money for the salt, and to note the amount each purchaser paid for, while the first witness would remain where the salt was being weighed out.

6. These precautionary arrangements made, the proceedings of the day, as remarked by the Acting Head Assistant Magistrate in his summary of the evidence commenced, (as the summary referred to contains what the Court is of opinion is a correct account of what took place, a repetition is not necessary). It is sufficient to state that finally a pass (document A) for Maunds 577 of salt, after being signed by the Salt Superintendent, was given to the Shroff, and by him to the Deputy Constable, (first witness.) The Shroff then left, taking with him the chittahs, while a Peon (first witness for the defence) carried the money collected contained in two bags.

7. Inasmuch as the amount entered in the pass did not tally with the account kept by the second witness, the first prisoner was informed thereof by the first witness, who insisted on counting the proceeds of the day's sale; according to this witness' evidence, the first prisoner at first objected to this, but ultimately having consented, the Shroff was recalled, and was observed to be carrying a small bundle under his arm.

8. From the evidence for the prosecution, the inference has been drawn that the Shroff, second prisoner, endeavoured to give this bundle to the first prisoner in such a manner as to escape the notice of the Deputy Constable, and that the first prisoner connived at this endeavour. The bundle, after some contest between the first witness and first prisoner, was put into one of the money bags; the money in the larger bag counted and found to amount to 849 Rupees; the bundle was then untied, a rupee taken from it, and added to the sum of Rupees 849; (later in his deposition this witness says six Annas was also taken from the bundle by the Shroff and Superintendent;)

but the evidence in this point is not very clear, as to whether this was the joint act of one or of both the prisoners.

9. The Superintendent, first prisoner, then proceeded to examine the chittahs, (Clerk's and Shroff's,) and in both the sale of 577 maunds only was found to have been entered. The Shroff, second prisoner, on being called upon for explanation, stated that it was a mistake, and begged that he might be pardoned. The Superintendent is then stated to have requested the Police to desist from pressing the matter, and to have asked the Deputy Constable for the pass first given. He then, it is said, took two blank papers from a cover which, the witness says, were a receipt and a pass, and proceeded to write something on the pass, the Deputy Constable insisted on nothing more being written, and took away the ink bottle.

10. The second witness' account of this part of the transaction differs from that of the first, and in an important point, for, he states that the Shroff, second prisoner, took from out of a bag in which were passes and receipts a pass and a receipt, which he handed to the first prisoner, who wrote something in the pass, and asked the Deputy Constable to return the pass already given, which he (Deputy Constable) refused.

11. A report of what had occurred was then sent to the Police station; all parties left the salt platform; the chittahs, passes, receipts, and money were finally impounded by the Police, and produced before the Sub-Magistrate of Merkanum. On their way from the platform it is alleged that the Superintendent, first prisoner, and the Shroff offered bribes to the Police to hush up the matter, though all the three witnesses who speak to this differ as to the amount offered.

12. Amongst the documents in the record are A., B., C., D., and E.; A. is a pass for 577 maunds, signed by the first prisoner; B. is a receipt signed by the Shroff, shewing the amount of salt sold, and its value; C. is a pass for 50 maunds of salt, signed by the first prisoner; and D. is a receipt similar in its nature to B., but for 50 maunds of salt with its value, both C. and D. containing the name of Kadar Saib as the purchaser of salt. E. is a pencil Memorandum, kept by the second witness in obedience to the instructions of the first; it contains the names of the parties who that day paid money to the Shroff for salt. These parties, according to E., were ten in number; the Pass, Receipt, and Memorandum, Documents A., B., and E., are subjoined; that is, so much of each of them as contains the name of the parties to whom salt is said to have been sold:—

				Mds.	
A.					
1	Ausoor Mooroogapah Nynar	...	...	63	
2	Trecullore Rungapah Odyan	...	...	87	
3	Manapady Mookoo Pillay	...	...	171	
4	Mangalore Narraina Pillay	...	...	112	
5	Poodoopaliem Veerapah Chetty	...	...	142	
6	Areamoottoo Padiachy	...	...	1	
7	Appavoo Chetty	...	...	1	
				577	
B.				Mds	n. A.
	Ausoor Mooroogapah Nynar	...	...	63	106 5
	Trecullore Rungapah Odyan	...	...	87	146 13
	Manapady Mookoo Pillay	...	...	171	288 9
	Mangalore Narraina Pillay	...	...	112	189 0
	Poodoopaliem Veerapah Chetty	...	...	142	239 10
	Areamoottoo Padiachy	...	...	1	1 11
	Appavoo Chetty	...	...	1	1 11
				577	973 11

	E.	Mds.
1. Moorogapah Nynar	...	35
2. Kader Saib	...	78
3. Rungapah Odyan	...	52
4. Mookoo Pillay	...	171
5. Ramasamy Couden	...	35
6. Narraina Pillay	...	36
7. Thatha Naick	...	76
8. Veerapah Chetty	...	142
9. Arcamootoo Padiachy	...	1
10. Appavoo Chetty...	...	1
		672

13. The Court does not hesitate to accept E. as the correct account of the day's sale; indeed, this may be said to be admitted by the first and second prisoners, from the fact of the preparation of the second pass and second receipt for 50 maunds of salt; the amount, according to the Memorandum E., was 627, which is just 50 maunds in excess of the quantity entered in the Pass A., the Receipt B., and the Shroff's and Clerk's Chittahs L. and K. The Pass C. is in the name of Kader Saib, and the Receipt D. corresponds thereto; the entry therein is to the effect that he had purchased 50 maunds of salt at a cost of Rupees 84-6-0 (the actual cost of 50 maunds). Kader Saib's name is also in the Memorandum E., but the quantity of salt sold, opposite to his name, is entered as 78 maunds.

14. A reference is made in the first witness' deposition to a piece of country paper, which the Shroff is said to have taken to the Superintendent, first prisoner, on receipt of which the first prisoner called out the names of the purchasers and the quantity of salt to be weighed out; whether this is document B., or not, does not appear quite clear, but the Court does not consider this a matter of material importance, nor is it to be gathered satisfactorily when the Shroff, second prisoner, prepared the Clerk's and Shroff's chittahs; both, however, were prepared by him, and this is accounted for by the prisoner's pleaders, who assert that the rest of the Office were employed in making up the monthly accounts.

15. As the first prisoner is charged with abetting an attempt made by the second prisoner, it will be more convenient to dispose of second prisoner's appeal first.

16. It is evident from the deposition of the fifth witness, the Deputy Collector in immediate charge of the Salt Department, and from the perusal of the rules contained in the Salt Manual, that the course taken by the second prisoner was in the first instance grossly irregular, and in fact a total violation of the rules laid down. His chittahs, that is to say, the Clerk's and Shroff's chittahs, receipt, and pass, all written by himself, set out that only 577 maunds were sold; that a figure or so might have been erroneously entered or omitted the Court can understand, but that the omission of the name, of Kader Saib, and the quantity afterwards said to have been purchased by him should be omitted in toto the Court cannot be brought to admit; but the Court is also unable to admit that the Pass C. and Receipt D. actually represented the quantity sold to Kader Saib, and looks upon the Memorandum E. as the true account of the day's sales, and that A., B., K., L., do not correctly represent the day's transaction.

17. The Pass C. and the Receipt D. are, as has been proved, not in the handwriting of the first prisoner, but are only signed by him. These, the Court is led to conclude, were prepared at some time of the day by the second prisoner, to be produced as occasion might require, and the pass was made to correspond with the amount that the second prisoner had determined upon by the intelligence of the second witness, the Court is of opinion that this misappropriation would certainly have taken place; that the attempt was made, the Court after giving the prisoner's case a close and careful attention, considers to have been proved.

18. The Court will now proceed to deal with the case of the first prisoner. He certainly can plead no ignorance of the rules in force, in regard to the procedure to be observed in the sale of salt; and if the second prisoner's conduct was in the first instance grossly irregular, and a violation of the rules, the first prisoner's conduct gave it the sanction of superior authority. This sanction of irregularity has certainly raised a grave suspicion of the prisoner's complicity in the second prisoner's guilty attempt; and had the Court been satisfied that the preparation of the pass and receipt for the 50 maunds of salt originated with the first prisoner, the Court would have formed a strong presumption of the prisoner's guilt; but though holding this view the Court is not able to concur with the Acting Head Assistant Magistrate, that the evidence for the prosecution is satisfactorily established the abetment by the first prisoner of the attempt by the second; there is the possibility, that though it may be said conniving at irregularities, he did not go so far as to connive at, or abet, the attempted fraud, and the evidence appears to the Court to fall short of this proof; the acts of the prisoner after the recall of the Shroff are compatible with an ignorance of the Shroff's attempt to misappropriate the Government money, though they are certainly not those of an upright public servant, whose duty it was to safeguard the interests committed to his charge.

19. The Court, therefore, while giving to the Acting Head Assistant Magistrate full credit for an investigation, which, so far as can be gathered from the records, displays much care and attention, is constrained to differ in opinion with him as to the first prisoner's guilt, and considering the same not to have been proved, resolves to annul the conviction from which he has appealed.

20. For the reasons stated in paragraphs 15 and 16, the Court affirms the conviction of the second prisoner, who is accordingly remanded to Jail, to undergo the remaining portion of his imprisonment. The recognizances entered into by both prisoners are discharged.

Ordered that extract from these Proceedings be sent to the Magistrate and Acting Head Assistant Magistrate, South Arcot, for information, and that the records be returned to the latter Officer.

(A true Extract.)

(Signed) G. ELLIS,
Session Judge.

To the Magistrate of South Arcot.

(True Copy.)

(Signed) C. W. READE,
Magistrate.

No. 339.

ORDER THEREON, 20th March 1867, No. 668.

Miscellaneous.

1. The Governor in Council has carefully considered the papers submitted by the Board of Revenue with these Proceedings, and the arguments adduced by Bhasika Charloo in petitions Nos. 199 A and 364 of 1867.

2. He considers it proved beyond doubt that Vasudeva Pillai was detected by the Police in the act of defrauding Government, and that the conduct of Bhasika Charloo shewed a deliberate attempt to screen him from punishment.

3. He accordingly resolves to prohibit the re-employment of Bhasika Charloo and Vasudeva Pillai in any department of the public service.

4. The Government observe that Bhasika Charloo complains of the refusal of the Head Assistant Magistrate, who tried the case, to allow him to cross-examine the witnesses against him until after the case for the prosecution had been closed and

~~The nature of the subject is not suitable~~

Let it go to the High Court; but
on referring Section 252 I observe
that the course therein laid down,
is the course to be taken by a Magistrate
trying a case in which he himself passes
sentences, as Mr. Hughes does in the
one under notice. Section 194 relates
to the preliminary investigation of a
case to be committed to a Session
Court - and, with a few amendments
of complaint and papers, ^{as the case proceeds} is clearly
permitted. If the same practice had
been intended to be given by Section 252,
it is to be inferred I think that the

I adhere to the view of Sir J. Cresswell
as to the error committed by the H. A. M.
but in order to remove all doubt the
question may be submitted to the
High Court as proposed.

with 24 Copies of the Decree.

Sept. 5/44.

Indicial Department

N^o 543.

To
The Honorable Sir Colley Harman Scotland M.
Chief Justice of the High Court of Judicature,
Madras.

Honorable Sir,

I am directed to transmit for the consideration of the Honorable the Judges of the High Court and for such notice as they may deem called for, the annexed copy of the Proceedings of Government in the Revenue Department, in which are recorded, among other papers, the proceedings of the Appeal Court of Cuddalore upon a Petition presented to that Court, appealing against certain sentences passed by the A. Head Assistant

Assistant Magistrate of
North West and in which
among other grounds ad-
duced in support of the
appeal, it was urged that
the App. Head Assistant
Magistrate did not per-
mit the first prisoners
Council to cross examine
the witnesses for the
prosecution until the
case for the prosecution
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2. As it appears from
the 3rd para of the proceedings
of the Session Court that
the Session Judge con-
sidered that in adopting
this course the Head
Assistant Magistrate
acted in accordance
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section 252 of the Criminal
Procedure Code, the Governor
in Council thinks it
desirable that the point
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the consideration of the
Honorable the Judges
of the High Court.

Int. St. Gease.
3rd April 1867

by R. J. R.

9-10-14

Ludlow 1864 Report.

1863

of the Honorable

the Chief Justice of the
Supreme Court of the State

Madison.

Oct 11 1863

Dated 3^d April 1864