

MADRAS RECORD OFFICE.

Government of Madras.

Jurial DEPARTMENT.

G.O. No.	605	Press
		~~Mis~~
Dated	17-4-1867	

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,

17th April 1867.

No. 114. Read the following Proceedings of Government, Military Department, dated 18th March 1867, No. 973.

Read letter from the Acting Superintendent of Pensions, Fort Saint George, to the Secretary to Government, Military Department, Fort Saint George; dated 7th March 1867, No. 3010.

With reference to paragraph 72 of the Revised Pension Regulations, published in G. O. G., No. 187, dated 29th August 1848, I have the honor to submit the following circumstance for the information and orders of Government.

2. Pensioned Havildar Munnaroo, No. 9774, of 2nd Class, was sentenced by the Cantonment Magistrate of Saint Thomas' Mount to rigorous imprisonment for six months, on the charge either of theft or of having dishonestly received stolen property, having reason to believe the same to be stolen.

3. He has been since released, having completed the term of his imprisonment.

4. By the Register of this office, he was pensioned from 1st June 1864, on Rupees 7 per month, his period of service being twenty-two years and seventy-three days, and his character very good.

5. A copy of the crime and sentence and summary of evidence in the case is herewith forwarded.

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Number of the Case.	Name and description of the accused.	Copy of the charge, or substance of the complaint.	Name of the complainant.	Names of the witnesses for the prosecution.	Names of the witnesses for the defence.	Statement of evidence, and grounds for conviction.	Finding and Sentence.	Date of offence.	Date of apprehension or appearance.	Date of commencing trial.	Date of sentence.	Explanation of delay.	
224 of 1866.	Munnaroo Naick, Pensioned Havildar, residing at Saint Thomas' Mount.	I, Charles Doxat Clementson, Cantonment Magistrate of St. Thomas' Mount, declare that there is made against Munnaroo Naick, the charge, 1st, that he, Munnaroo Naick, on or about the 1st of August 1866, at Saint Thomas' Mount, committed theft by dishonestly taking out of the possession of one Unniah Chetty, 6 banians, 10 belts, and has thereby committed an offence punishable under Section 379 of the Indian Penal Code, and within my cognizance; 2nd, that he Munnaroo Naick, on or about the 1st day of August 1866, at Saint Thomas' Mount, dishonestly received or retained 6 banians, 10 belts, and 4 pairs of gloves, these being stolen property, having reason to believe the same to be stolen property, and has thereby committed an offence punishable under Section 411 of the Indian Penal Code, and within my cognizance.	Regina.	1. Unniah Chetty. 2. Iyacuunoo. 3. Rungiah Chetty. 4. John Christian. 5. Moonesawmy Chetty. 6. Margaret Ebb. 7. William McDonald.	1. Nattalidsawmy Naick. 2. Sooboo Chetty. 3. Moonesawmy Chetty.	In this case it is doubtful whether the Prisoner committed "a theft or receiving," specified in the 1st head of the charge or of the 2nd head of the charge. The 1st witness deposes to missing certain articles about the 31st July 1866, and viz., that Munnaroo Naick from the information thereby committed an offence punishable under Section 379 of the Indian Penal Code, or he has dishonestly received stolen property, having reason to believe the same to be stolen, and has thereby committed an offence punishable under Section 411 of the Indian Penal Code; and the Court directs, under the provisions of the above Section 72 of the Indian Penal Code, that Munnaroo Naick be rigorously imprisoned in the Jail at Chingleput for (6) six calendar months.	The Court finds that Munnaroo Naick is guilty either of the offence "a theft or receiving," specified in the 1st head of the charge or of the 2nd head of the charge, viz., that Munnaroo Naick committed the offence specified in the 2nd head of the charge, and has thereby committed an offence punishable under Section 379 of the Indian Penal Code, or he has dishonestly received stolen property, having reason to believe the same to be stolen, and has thereby committed an offence punishable under Section 411 of the Indian Penal Code; and the Court directs, under the provisions of the above Section 72 of the Indian Penal Code, that Munnaroo Naick be rigorously imprisoned in the Jail at Chingleput for (6) six calendar months.	1st August 1866.	2nd do.	8th do.	8th do.	15th do.	

searching the Prisoner's house, there were found 6 banians, 10 leather belts, and four pairs of silk gloves; these were found, not in a Hawker's box, but in one or two private boxes along with the Prisoner's clothes. Prisoner then said: "If they are yours, you had better take them, and not trouble me." The witness recognizes all the property as his. He points out the peculiarity of the belts and certain damage in the gloves. His identification appears satisfactory. The 2nd witness has evidently been tampered with. It was on information that the prisoner was suspected, and on which the Police acted. The 3rd witness, who was the actual purchaser of the banians, and was present when the others were bought, states that he knew that 1st witness had these things

on or about the 22nd July 1866; that he has not seen them since. He minutely describes the banians and belts, and points out marks which, on examination, are found to be there, and completely identifies them. He states that he has never seen such articles for sale in the Gugily near the Thieving Bazaar. Fourth witness states he found the stolen property in two private boxes, with the prisoner's clothes and underneath them; that the keys of the boxes, as well as of the door of the room, were on the Prisoner's waist string; and that all these were locked—thus making the possession by the prisoner exclusive—and also states that in the Hawker's box there was no property claimed by the 1st witness.

The 5th witness knows nothing materially. The 6th witness' evidence is very important, she being a respectable woman, totally unconnected with the case, and was sent for to the Court without any notice. She picks out one pair of gloves from those found on the prisoner, which she identifies, and swears to, as a pair she bought of the 1st witness some time ago, and returned because they were damaged. She points out the damage.

The 7th witness proves to the date of search and finding of the articles; their exclusive possession by the prisoner. He corroborates in every material particular the evidence of the 4th witness, with slight variations regarding the banians being found in a Hawker's box; this is accounted for by his not being an actual examiner, but a looker on.

The prisoner, after making some remarks on the evidence, states that he bought these articles in the Gugily about two months ago, but does not know from whom, and that he showed the bundle to one Sheikh Natal, opening it and showing a small part of the banian. This, of necessity, would render it impossible to recognize the things, and he is not called, though the Prisoner has had ample time to summon any one he wanted.

The 1st witness for defence, son of the prisoner, states that the prisoner buys the things on his account, and gives them to him; that he has charge of all these things; but, on cross-examination, states he is only his father's Agent—that his father keeps the key. His evidence is quite contradicted by several witnesses for prosecution.

The 2nd witness states that he has seen such articles as the stolen ones for sale in the Gugily, but then only with the more respectable people whom there would be no difficulty in finding.

The 3rd witness states, when questioned by the prisoner, that he has never, in a course of ten years, seen such articles sold in the Gugily or Thieving Bazaar.

The identification of the gloves by the 6th witness, together with the finding all the property claimed together in a private box, and not with the other Hawker's articles, coupled with the prisoners' inability to account for the possession of the articles, and the fact that the 2nd witness has notoriously been tampered with, leaves in my mind no doubt of the prisoner's guilt.—15th August 1866.

Forwarded to the Officer in charge of Prisoners, Saint Thomas' Mount, with reference to his Memorandum, No.—, dated 26th February 1867.

SAINT THOMAS' MOUNT,
27th February 1867.

(Signed) C. D. CLEMENTSON,
Cantonment Magistrate.

*Proceedings of the Madras Government, Judicial Department,
17th April 1867.*

Order, No. 973, 18th March 1867.

Resolved that the pension of Pensioned Havildar Munnaroo be continued to him from the date of his release from imprisonment.

No. 9774, 2nd Class.

2. The papers connected with the above case will be referred for consideration in the Judicial Department.

(True Extract).

(Signed) R. HAMILTON, Colonel,
Deputy Secretary to Government.

No. 115. ORDER THEREON, 17th April 1867, No. 605.

It is observed from the Extract from the Calendar of the Cantonment Magistrate of Saint Thomas' Mount, referred for consideration in the foregoing Order, that Munnaroo Naick, a Pensioned Havildar, who is earning a livelihood as a Hawker, was charged—

1st, with theft; and,

2nd, with dishonestly receiving or retaining stolen property.

2. Adverting to the extraordinary terms of the sentence in which the Cantonment Magistrate has declared the prisoner to be convicted, not of a specific crime, but of one or other of two crimes, which of the two being left in doubt, the Government desire to be informed whether the Calendar of the case under reference has come under the notice of the Session Judge, and has been commented on by him, and, if so, what remarks were made on it.

(True Extract).

To the Session Judge of Chingleput.

„ Military Department.

„ Magistrate of the Madras District.

Exd. J. H. Burns.

*Note by the Honorable Sir J.
Pycroft, K. C. S.I., on Proceedings
No. 973 of 18th March/67.*

*I would not make any
stoppages.*

*The man has been
convicted of either one or the
other of two offences but of which
is not found.*

*This is a queer style
of dispensing justice.*

(Signed) J. P.

Note by the Honble H. D. Phillips.

*It is only one more of
the*

the gross cases which we have had from the Courts of Military Cantonment Magistrates.

I would call on the Magistrate of the District to report the extent to which the Proceedings of Cantonment Joint Magistrates are supervised.

He should report whether he pointed out to the Cantonment Joint Magistrate that beyond the bare assertion of the 1st witness, that he had missed certain articles, there was no proof that any theft, & receiving the produce of theft, ever took place - that in passing sentence the Cantonment Joint Magistrate admits himself to be

he in doubt as to what he is sentencing for - and that it is contrary to every rule of evidence and justice to allow the ignorance of a fact urged by a witness to be accepted as evidence affecting the accused and as aiding in establishing against him any charge made -

/Signed/ H. D. P.

Ans.

Judicial Department.

5

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following Pro-
ceedings of Government, Military
Department.

(Here enter 18th March 1867 No. 973)

Order thereon, 17 April 1867 No. 605.

It is observed from
the Extract from the Calendar
of the Cantonment Magistrate
of Saint Thomas Mount re-
ferred for consideration in
the foregoing order that Kun-
nara Raick, a Pensioned Canib-
dar, who is earning a liveli-
hood as a Hawker, was
charged-

- 1st With theft and
- 2^d With dishonestly receiving
or retaining stolen property

2 The Governor in Council
did see reason to question the
sufficiency of the evidence
for a conviction, and directing
to

N. J.

W. J.

to the extraordinary terms
of the sentence in which
the Cantonment Magistrate
has ^{ordered} the prisoner to be
convicted, not of a specific
crime but of one or other of
two crimes, which of the
two being left in doubt;
the Government desire to
be informed ~~to what extent~~
the Session Judge is in
the habit of reviewing the
Calendar of the Officer
in question, and whether
^{including in}
the case under reference
has come under his notice ^{the}
and been commented on
by him. and if so what
remarks may be made
on it.

To the Session Judge of Chingleput
Military Department. }
Magte of the Madras District }
desp 25/4

Ludlow 1837. Department.

No. 605.

PROCEEDINGS OF GOVERNMENT.

St. H. 946.

Dated. 17th March 1837.

114. 115.