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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No.	346	Press.
B.P. No.		Mis.
Dated	2. 3. 1968	197.

B.D.

Not to be folded or roughly handled

2nd March 1868.

No. 6. Read the following letter from the Acting Magistrate of Nellore, to the Chief Secretary to Government, Fort Saint George; dated Nellore, 8th February 1868, No. 60.

With reference to the Proceedings of Government, dated 5th February 1868, No. 199, Judicial Department, I have the honor to submit a copy of the Calendar in Criminal Cases, No. 142 of 1867, on the file of the Joint Magistrate of Nellore, and a copy of the summary of the evidence, as the accused was discharged under Section 250 of the Code of Criminal Procedure.

2. In this case the Overseer, Arcot Iyaswami Moodelly, was charged with cheating, inasmuch as he paid the contractor for 440 cubic yards of gravelling on the first mile of the Ongole and Cumbum road, while the Superintending Engineer deposed that the heaps were under size, and did not contain more than 373 cubic yards. Colonel Winscom stated further in his deposition, "I think it only fair to state that he (the Overseer) has (not?) been properly supervised in his work by his immediate superior. His measurements, generally, I have found incorrect. I must say from fraud I believe." This evidence was supported by that of the Range Officer and the Head Accountant. The documentary evidence produced was (1) the Cash account of the Taluq Overseer, and (2) the contract certificate up to 9th December 1867, with entry 440 cubic yards collecting stone jelly at Ongole hill at 4 Annas per yard, Rupees 110. This is distinctly signed by the Overseer, as well as a stamped receipt for the money paid on the back. I am, therefore, unable to say what the Joint Magistrate meant by writing in the statement of his grounds for dismissing the case—"Iyaswami also produced a certificate up to 9th December not yet signed by him, and his cash book with a copy not yet finished or submitted to his superior." Colonel Winscom informs me that he is confident he saw this certificate already signed at the trial.

3. The Joint Magistrate has dismissed the charge of cheating, on the ground that though the Overseer paid away money to the contractor for more work than was actually done, and was thereby grossly culpable, yet his fault might, for anything before the Court to the contrary, have been simply carelessness. There was no evidence of fraud, no evidence of intentional deception by which he profited.

4. The case was dismissed under Section 250, Code of Criminal Procedure, the Court holding that there was no evidence to justify placing the accused on his trial. Of course, therefore, if *any fresh evidence is forthcoming* the accused may be put on his trial at any time, without any reference to the High Court, under Section 434, Code of Criminal Procedure. In the present inquiry he was only discharged, not acquitted. I may add that I am informed that the Overseer Iyaswami has quitted the District and proceeded to Madras.

Calendar of persons tried before F. R. H. Sharp, Esq., Acting Joint-Magistrate of Nellore.

1	2	3	4	5	6	7	8	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 complainant.	Names of witnesses for the prosecution.	Names of witnesses for the defence, if any.	Statement of evidence and grounds of conviction.	Finding and sentence.	Date of complaint.	Date of appearance.	Date of commencing trial.	Date of sentence.	Explanation of delay.
145 of 1867.	Iyaswami Moodelly, of Moodelly caste, and Overseer, Department Public Works.	Cheating, under Section 417 of the Indian Penal Code.	Duppali Kristna Rao.	1. Duppali Kristna Rao. 2. George V. Winscom. 3. Lewis Albert Sayce.	...		The Acting Joint-Magistrate has taken down the evidence for the prosecution, and finding that no offence has been proved against the accused person directs, under Section 250 of the Code of Criminal Procedure, that he be discharged.	13th December 1867.	16th December 1867.	16th December 1867.	18th December 1867.	

JOINT MAGISTRATE'S OFFICE,
PODILE, 21st December 1867.

(True Copy).

(Signed) F. R. H. SHARP,
Acting Joint-Magistrate.

(Signed) J. A. BOSWELL.

Proceedings of the Madras Government, Judicial Department,
2nd March 1868.

Proceedings of the Madras Government, Judicial Department,
2nd March 1868.

Case of Iyaswami Moodelly.

Second witness had some of the heaps on the first mile of the Cumbum road measured a few days ago. They measured from 3½ to 4½, and there were 1358 heaps, containing, he is able to judge on an average, 4½ paras in the mile; there should be 15 paras to the cubic yard, according to a custom existing in the District from 1862. Then according to this calculation there could be only 373 cubic yards.

Third witness confirms second witness as to the measurement of the heaps and their position on the mile.

First witness produces and calls for certain accounts, from which it appears that Iyaswami has twice certified that 286 cubic yards have been carted up to the 16th November. In Iyaswami's cash book of the 9th instant is also a payment for 154 yards of gravelling in the same place, which must be presumed to be an addition to the 286 yards, as that was paid for, it appears, from the receipt on the 16th November. Iyaswami also produced a certificate up to the 9th December not yet signed by him, and his cash book with a copy not yet finished or submitted to superior. It appears that he has paid money to a contractor, and got a receipt on the back of the certificate alluded to for the total amount entered as the value of the work; one of the items is 154 yards of gravelling on to the first mile of Cumbum road. This is certainly suspicious, but I can find no intentional deceiving of any one, or fraudulent or dishonest inducement to the deceived person to do himself an injurious act or to suffer an injurious omission, neither am I satisfied of any attempt to commit cheating. The utmost that can be laid to defendant's charge is that he has paid for work not done.

CASE NO. 145 OF 1867.

Charge.

Cheating under Section 417, Indian Penal Code.

Finding and Sentence.

The Acting Joint Magistrate has taken down the evidence for the prosecution, and finding that no offence has been proved against the accused person directs, under Section 250 of the Code of Criminal Procedure, that he be discharged.

ONGOLE, 18th December 1867.

(Signed) F. R. H. SHARP,
Acting Joint Magistrate.

(True copy)

(Signed) J. A. C. BOSWELL,
Acting Collector.

No. 7. ORDER THEREON, 2nd March 1868, No. 346.

Ordered that the foregoing letter from the Acting Magistrate of Nellore, containing his opinion on the Criminal Case, No. 145 of 1867, on the file of the Joint Magistrate of that District, be communicated to Mr. F. R. H. Sharp.

(True Extract).

Chief Secretary.

To F. R. H. Sharp, Esq., Acting Joint Magistrate of Nellore.
To the Acting Magistrate of Nellore.
,, Public Works Department.

Ed. J. Tulloch.

No. 60

1. *Magistrate's Office,*
8th February 1868

From,

J. A. C. Boswell Esq.,
Acting Magistrate of Malacca.
To, The Honorable R. S. Ellis C. B.
Chief Secretary to Govt.
Judicial Department.

Sir, *Fort St George*

With reference to the Proceedings of Government dated 5th February 1868, No. 199, Judicial Department, I have the honor to submit a copy of the Calendar in Criminal Cases No. 145 of 1867 on the file of the Acting Magistrate of Malacca, & a copy of Mr. Sharp's Summary of the evidence which was not inserted in the Calendar as the Accused was discharged under Section 250 of the Code of Criminal Procedure -

2. In this case the Overseer Aroot Agaswami Mudaly was charged with cheating in as much as he paid the Contractor for 44th Cubic yards of gravelling on the first mile of the Ongole & Cumtum Road, while the Superintending Engineer deposed that the heaps were under six & did not contain more than 37th Cubic yards. Colonel Winscom stated further in his deposition "I think it only fair to state that he (the Overseer) has (not?) been properly supervised in his work by his

immediate Superior. His measures are
generally I have found incorrect. I must
say from fraud I believe. This evidence
was supported by that of the Charge Officer
& the Head Accountant. The documentary
evidence produced was (1) the Cash Account
of the Deputy Oversee & (2) the Contract
Certificate up to 9th December 1867 with
an entry of 450 cubic yards collecting stone jolly
at (Engle Hill) at 4 annas per yard (Rs 10.
This is distinctly signed by the Oversee
as well as a stamped receipt for the
money paid on the bank. I am therefore
unable to say what the Joint Magistrate
meant by saying in the statement of his
grounds for dismissing the Case. I saw him
who produced a Certificate up to 9th Dec
December not yet signed by him, &
his Case I took with a copy not yet
forwarded or submitted to his Superior.
Colonel Whistler informs me that he is
confident he saw this Certificate already
signed at the trial.

5. The Joint Magistrate has dismissed
the Charge of Cheating on the ground
that though the Oversee paid away
money to the Contractor for more work
than was actually done, & was thereby
guilty of culpable neglect his fault might
for any thing be set off to the

contrary have been simply carelessness.
There was no evidence of fraud, no
evidence of intentional deception by which
he profited.

4. The Case was dismissed under
Section 250 Code of Criminal Proce.
during the Court holding that there was no
evidence to justify placing the accused
on his trial. Of course therefore if
any fresh evidence is forthcoming the
accused may be put on his trial at
any time without any reference to the
High Court under Section 434 Code
of Criminal Procedure. In the present
inquiry he was only discharged, not
acquitted. I may add that I am
informed that the Oversee Iyaswami
has quitted the District & proceeded
to Madras.

I have the honor to be,
Sir,
Your most obedt Servt,

Wm. H. B. B. B.

As Magistrate

En. No 1

In a letter from Ag. Secy of
Hollon to the Chief Secy. to
Capt. East & Henry & dated
2nd Feb/68 No. 61.

Dated
Received

Copy of
Calendar in Case No 145 of 156
in file of Joint Map is-
trated of Hollon.

From Mr. Hollon to Mr. East
on Feb 2nd No 339/68.

20/10/1861

Circulated for the
orders of Government.

Attest: J. H. Colver. 28

1st February 1868.

The late A. Smith says, Mr. West, must
be informed that the Judicial Affairs
of the Union of the case recited in Mr.
Somers' letter. but nothing further can
be done until the P. M. West's first
statement in relation to service the
charge against the 12 persons submitted
by both witnesses.

W. H. W. H.

Transferred to the Public Works
Department, in reference to the
proceedings in that Department
dated the 28th January 1868. L. 283.

R. Ellis
Chief Security

19th Feb 1868
1228-
b.

no 339 1868
28th Jan. 1868
Submitted to the
Hollon to the Chief Secy. to
Capt. East & Henry & dated
2nd Feb/68 No. 61.
at the same time the 12
persons for the first time
submitted by the Hollon to
the Chief Secy. to the
Capt. East & Henry & dated
2nd Feb/68 No. 61.
at the same time the 12
persons for the first time
submitted by the Hollon to
the Chief Secy. to the
Capt. East & Henry & dated
2nd Feb/68 No. 61.

Calendar of persons tried before *F. R. H. Sharp Esquire Acting Joint Magistrate of Odile.*

Calendar of persons tried before													
1	2	3	4	5	6	7	8	9	10	11	12	13	14
No. of case.	Name of accused person.	Nature of offence or title name of the complaint.	Name of accused person.	Names of witnesses for the prosecution.	Names of witnesses for the defence, if any.	Statement of the evidence and grounds of conviction.	Finding and sentence.	Date of					
								Order.	Complaint.	Appearance.	Commencing trial.	Sentence.	Days and delay.
125	Lepidami Moisa St. Modeste and and Overdun P. B. H.	Creating punishable the under section 117 of the Indian Penal Code.	Duphaili Christina Pros.	1. Duphaili Christina Pros 2. George W. Muscom. 3. Louis Albert Layee.			The Acting Joint Magistrate has taken down the evi- dence for the prosecution and finding that no offence had been proved against the accused person directs under Sec. 250 of the Code of Criminal Procedure that he be discharged.	13 th December 1897.	15 th December 1897.	16 th December 1897.	17 th December 1897.	18 th December 1897.	
Joint Magistrates Office Podile, 21 st December 1897. True copy								(Sd.) F. R. H. Sharp. Jy. Joint Magistrate.					

*Joint Magistrates Office
Podile, 21st December 1897.*

*(Sd.) F. R. H. Sharp.
Acting Joint Magistrate.*

*True copy
John M. Pringle*

Case of Aiyasami - Mutation

546
5

2^d Witness had some of the heaps on the 1st side of the Nambar Road measured a few days ago. They measured from $3\frac{1}{2}$ to $4\frac{1}{4}$ and there were 1368 heaps or, containing he is able to judge on an average $4\frac{1}{4}$ paras in the mile, there should be 15 paras to the cubic yard according to a custom existing in the District from 1862. Then according to this calculation there could be only $3\frac{1}{3}$ cubic yards.

3^d Witness confirms 2^d Witness as to the measurement of the heaps and this number in the mile.

1st Witness produces and calls for certain accounts from which it appears that Aiyasami has twice certified that 286 cubic yards have been carted up to the 16th November. In Aiyasami's cash book of the 9th instant is also a payment for 154 yards of gravelling in the same place which must be presumed to be an addition to the 286 yards so that were

Ludlow 1868. Department.

No. 348.

PROCEEDINGS OF GOVERNMENT.

Off. 1132.

Dated 2nd Decr. 1868.

paid for it appears from the receipt on the 16th
November. Nigisami also produced a certificate
up to the 7th December, not yet signed by him, and
his cash book with a copy not yet finished or sub-
mitted to Superior. It appears that he has paid
money to a Contractor and got a receipt on the
back of the certificate alluded to, for the total amount
entered as the value of the work, one of the items is,
15 1/2 yards of gravelling on to the 1st mile of Kambam
Road. This is certainly suspicious, but I can
find no intentional deceiving of any one or
fraudulent or dishonest inducement to the demand
person to do himself an injurious act or to suffer
an injurious omission, neither am I satisfied
of any attempt to commit cheating. The utmost
that can be laid to defendants charge is that
he has paid for work not done.

Case No 145 of 1887.

Charge.

Cheating under 417 I. P. C.

Finding and Sentence.

The sitting Joint Magistrate has taken down
the evidence for the prosecution and finding that
no offence has been proved against the accused
person directs under Section 250 of the Code of
Criminal Procedure that he be discharged.

Encl.

Signed/ F R H Sharp

18th December 1887.

Jt. Magistrate.

True my

John M. Broun
By illegals

Judicial Department.

346
3

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
Acting Magistrate of Nellore
(H. E. dated 8 Feb. /68 No 60)

Order. 2^d March /68 No 346.

Ordered that
the foregoing letter from
the Acting Magistrate
of Nellore, containing
his opinion on the Criminal
Case, No 145 of 1867 in
the file of the Joint Magis-
trate of that District

To F. R. H. Sharp Esq. Acting
Joint Magistrate of Nellore
the Acting Magistrate of
Nellore
the Public Works Department
be communicated to
F. R. H. Sharp.

37

L. 6011

Order from the
Acting Magistrate of
Nellore dated 8 Feb. /68
No 60.

177 631/68

Copy of the Order
communicated to the
Acting Magistrate of
Nellore.
In No 339/68.