

(1) Number of pages 18

(2) Date of repair Sept 1982

(3) Initials of the Referencer long

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No.	475	Press.
B.P. No.		Mis.—
Dated	18.3.1868	197

Not to be folded or roughly handled

4759 517

*Proceedings of the Madras Government, Judicial Department,
13th March 1868.*

No. 194. Read the following letter from the Acting Magistrate of Cuddapah, to the Chief Secretary to Government, Fort Saint George; dated Cuddapah, 2nd March 1868, No. 6.

With reference to Proceedings of Government, dated 20th January 1868, No. 92, directing that the trial of one Mari Muthoo for the theft of a watch, the property of Captain J. Lidderdale, of the 38th Regiment Madras N. I., should take place before me, I have the honor to inform you that the prisoner was produced before me this morning, but on the examination of Captain Lidderdale, he distinctly affirms that he saw the watch in his portmanteau in the town of Bombay a day previous to his embarkation for England. I have the honor to enclose copy of this Deposition. The Proceedings of Government were under Act I. of 1849, which provides for the trial of British Subjects for offences committed in foreign States. Had it appeared that this offence was committed in the Nizam's country, or had it been committed on a journey, but remained doubtful where, I should have proceeded to trial in the one case under the Order of Government, and in the other, under that Order and Section 39 of the Code of Criminal Procedure which seems to apply; but as the case now stands, I have manifestly no jurisdiction.

2. Under these circumstances, I venture to submit the matter for the orders of Government. Captain Lidderdale wishes to withdraw the case if the watch is returned to him, but I have no power to permit this to be done, as the case is not one of those coming within the scope of Section 271 of the Procedure Code. If the case must go to Bombay for trial, the inconvenience and expense to all parties must be very great, and it is rendered still greater by the fact that Captain Lidderdale and most of the witnesses are now expecting orders to embark for Birmah with the Regiment.

The Deposition of Captain James Lidderdale, taken on oath before me this 22nd day of August 1867.

Q. What is your complaint?

A. In September 1864, I went from Secunderabad to Bombay en-route to England, taking with me a servant called Mari Muthoo. He had charge of all my kit and my keys. I had a gold Geneva watch and chain which he packed up in one of my portmanteaus. On the 28th of September of the same year, the day previous to embarkation, he gave me the keys of my boxes. On the morning of the 29th, when I arrived in England, I opened the box for the purpose of taking my watch to Dent, and found it was missing. On rejoining my Regiment on the 18th of March 1867, I was told by my Jemadar Shaik Cauder that Mari Muthoo, on his return to Secunderabad, offered a watch and chain for sale in the Lines, and then stated I had made him a present of it before leaving for England. The Jemadar refused, because he knew it had been mine, and had doubts about his statement. I wrote to the Superintendent of Police at Vizagapatam, and laid a complaint against Mari Muthoo who has been apprehended on a charge of stealing my watch and chain. Its value is about 180 Rupees.

Q. Are you sure you never gave the watch and chain to Mari Muthoo?

A. Yes.

Q. Are there any other persons in the Regiment who saw your watch and chain in Mari Muthoo's possession?

*Proceedings of the Madras Government, Judicial Department,
18th March 1868.*

A. Yes, and amongst them are Syed Mohadeen and Havildar Shaik Molan.
Read over to complainant in the English language which he understands, and acknowledged to be correct.

(Signed) J. LIDDERDALE, Captain,
38th Regiment Native Infantry.
(Signed) H. G. SMITH,
Magistrate.

Complainant—James Lidderdale.
Residence—Cuddapah.
Occupation—Captain, 38th Regiment Madras Native Infantry.
Sworn.

The watch now before the Court and the chain attached to it are my property. It is the watch and chain that I lost at Bombay. Prisoner before the Court is Mari Muthoo. He was in my service at the time the watch was stolen. I charge him with the theft. I do not remember whether I gave prisoner a tin box at Bombay. I gave him a number of articles, but the watch was not one. The last time I saw the watch was the day before I embarked in the town of Bombay, the watch was then in one of my portmanteaus.

Read over to deponent in the English language which he understands, and acknowledged to be correct.

Cuddapah,
2nd March 1868.

(Signed) F. B. MOLONY,
Acting Magistrate.

No. 195.

ORDER THEREON, 18th March 1868, No. 475.

As it appears from the foregoing papers that the possession of stolen property at Secunderabad, within the limits of a foreign State, did not so immediately follow the theft alleged to have been committed at Bombay, as *prima facie* to necessitate the framing of a charge of theft against Mari Muthoo, the man in possession, the Governor in Council, under the provisions of Act I. of 1849, orders that the accused be tried before the Magistrate of Cuddapah for such illegal possession.

2. The Magistrate, with reference to such facts as may be elicited during the inquiry, will of course eventually have to consider whether the graver charge of theft by a servant can be clearly established, in which event it would seem scarcely practicable to save the prosecutor from the trouble of proceeding to Bombay there to prosecute Mari Muthoo on such charge.

(True Extract).

Secretary to Government.

To the Magistrate of Cuddapah, with Deposition returned.

Ed. F. B. Bantleman.

1
Cuddapah Magistrate
N. 6
Office 2. March 1868.
517
From J. B. Molony Esq. to
Acting Magistrate
of Cuddapah
The Honorable R. S. Ellis C.B.
Chief Secretary to Government
and the Judicial Department
St. George
Sir
With reference to Proceedings
of Government dated 20th January 1868
No. 92, directing that the trial of one Mari
Muthoo for the theft of a watch, the
property of Captain J. Lidderdale of the
38th Regiment M. D. I., should take
place before me, I have the honor to in-
form you that the Prisoner was pro-
duced before me this morning, but on
the examination of Captain Lidderdale
he distinctly affirms that he saw the
2 watch

watch in his portmanteau in the town
of Bombay a day previous to his embark-
ation for England. I have the honor
to enclose copy of this deposition. The
Proceedings of Government were under
Act I of 1839. which provides for the
trial of British subjects for offences
committed in Foreign states. Had it
appeared that this offence was committed
in the Vizam's Country, or had it been
committed on a journey, but remained
doubtful where, I should have pro-
ceeded to trial, in the one case under
the order of Government, and in the
other under that order and section 30
of the Code of Criminal Procedure which
seems to apply, but as the case now
is so I have manifestly no juris-
diction.

2 Under these circumstances, I venture
to submit the matter for the orders of
Government. Captain Lidderdale wishes
to withdraw the case if the watch is
returned.

returned ^{to him} but I have no power
to permit this to be done, as the case is
not one of those coming within the scope
of section 271 of the Procedure Code.
If the case must go to Bombay for trial,
the inconvenience and expense to all
parties must be very great, and it is
rendered still greater by the fact
that Captain Lidderdale and most
of the Volunteers are now expecting orders
to embark for Burmah with the
Regiment.

I have the honor to be

Sir,

Your Most Obedient Servant

M. M. M.

Acting Magistrate.

3

Memorandum

May I be permitted to
 suggest that this or-
 der may be practically
 imperative. — The
 facts are simple —
 we packed the watch
 a postmaster in Bombay
 Compt. saw it when the
 day before sailing — the
 key remaining with Capt.
 The key was given up on
 the day of sailing — &
 when Compt. got home the
 watch was gone. Shortly
 after Capt. had the watch
 offered it for sale at
 auction & said Capt.
 had given it. —

It is proposed that all the previous cotton being loaned by the Government

ca. 1800
1800

4

Dec 7 of 1849.

Feb 10 1859.

1868.
Wm. D. Eastall & Co. Agents
Hingham, Mass.

9

34

Wm. H. Hoag

9

11. The Chief Secretary
12/5/64
19

St. Louis

Chas. J. French 1868.
H. French / 68.

*ms. Acc
Dec 5/79
Confess. City of N. Br.*

position of the
the

Hept of her death by
her servant John Smith

and the influence of the
Crown with reference to

St. John's Island 20 March

Blank 194

139

10/11

at Secunderabad should
alone be looked at.

But this I think, is
impossible. The Magistrate,
who has to decide ac-
cording to the evidence -
must first take evidence
as to the property being
stolen, i.e. as to the theft.
and this will conclusively
point to the man before
him - and in the ordi-
nary exercise of his duty
he would charge theft -
But then would come
in the question of juris-
diction - and the point
is whether, finding he had
no jurisdiction, he could
then, instead of referring
the case to the Magistrate
having jurisdiction, pro-
ceed to try on the
secondary charge of
persecution. - The real

for each case of the
persecution must
immediately arise
after the theft.

as directing a

517/2

point is whether, if the
man appealed, & the High
Court had no power,
they could not challenge such
a mode of getting round
the difficulty.

A parallel case is
here a Sub Magistrate has
heard a case of theft -
quietly ignoring the fact
that it was in a building
(which take it out of his
jurisdiction) and convicted.
Such a conviction has
been quashed on the ground
that as the major offence
of theft in a building was
not, it should have been
charged, & the Sub Magistrate
could not charge such
an offence.

I fear the real true reme-
dy is for Capt. Zidda-
dale to steal his own
watch from his bag
when he gets out of

sent, and leave him.
 in remedy! - I mean,
 he does not wish to get
 thinking - which certainly
 he is not likely to wish!
 Affd.

The draft as I
 have put it in pencil
 will, I hope, do. We
 can issue no order
 about abandoning a
 possession - but may
 suggest. W.D.M.

15/5 Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
 Acting Magistrate of
 Cuddalore with one
 Enclosure
 (H. S. dated 2nd March/08.
 No 6)

Order.

As it appears
 from the foregoing papers
 that the offence of being
 in possession of stolen
 property at Secunder-
 abad, within the limits
 of a Foreign State, can
 be established against
 Muzi Muthoo, the Gov.
 ernor in Council direct
 order
 that the accused be
 tried by the Magistrate
 of

W.D.M.

did not communicate
 to the Magistrate
 of Secunderabad, as per
 the order of the
 Government, the
 name of a change of
 Magistrate Muzi-
 Muthoo, the name, in
 the order.

Judicial Department
57/1

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
Acting Magistrate of Cuddalore.
Recd letter 2 March 1868 No. 475.

Order thereon 18 March 1868 No. 475.

As it appears from
 the foregoing papers that
 the possession of stolen
 property at *Sindurabad*
 within the limits of a
 Foreign State, did not so
 immediately follow the
 theft alleged to have been
 committed at Bombay
 as prima facie to necessitate
 the framing of a charge
 of theft against *Mari*
Muthoo, the man in
 possession, the Governor
 in Council under the
 provisions

P.
W. H. L.

W. H. L.

186
Department

No.

PROCEEDINGS OF GOVERNMENT.

Dated 186

Receipts
allured by
W. H. L.

provisions of Act I of
1849, orders that the
accused be tried before the
Magistrate of Suddapah
for such illegal possession.

2. The Magistrate,
with reference to such
facts as may be elicited
during the inquiry, will
of course eventually have
to consider whether the
grave charge of theft
by a servant can be clearly
established, in which
event it would seem scarcely
practicable to save the
prosecutor from the trouble
of proceeding to Bombay
then to prosecute Mani
Mather on such charge.

LB

To the Magistrate of Suddapah
and District Judge of the same

1941, 1951

Stolen property of
circumstances

End 1868. Deposition

1868

No. 175

PROCEEDINGS OF GOVERNMENT.

Dated 18 March 1868.

Council