

(1) Number of pages 12
 (2) Date of repair 10/86
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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No. B.P. No.	617	Press. Mis.
Dated	16 - 4 - 1868	197

Not to be folded or roughly handled

A. Mani

Proceedings of the Madras Government, Judicial Department,
16th April 1868.

No. 139. Read the following letter from the Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, Fort Saint George; dated Madras, 18th March 1868, No. 494.

With reference to the Proceedings of the Madras Government, Judicial Department, dated 11th December 1867, and the Order thereon, No. 2039, I am directed to transmit to you, for the information of Government, the Proceedings of the High Court, dated 18th March 1868.

Proceedings of the High Court of Judicature at Madras, 18th March 1868, No. 489.
Read letter, dated 28th January 1868, from the Session Judge of Trichinopoly, referring, for the orders of the High Court, the proceedings of the Assistant Magistrate of Trichinopoly in cases numbered 50, 51, 52 and 53 of 1867 on his file, and the proceedings of the Subordinate Magistrate of Trichinopoly Taluq in case numbered 181 of 1866 on his file, as contrary to law.

The circumstances which gave rise to this reference are similar to those in which a report was transmitted to Government from this Court on 30th November 1867, which report was embodied in the Proceedings of Government, Judicial Department, dated 11th December 1867.

2. It appears that, in consequence of a complaint preferred before the Deputy Magistrate of Trichinopoly by one Narasimma Charry against Tatam Iyengar that the former had encroached on a public road and prevented him (complainant) from erecting a hedge on his own land, an order was issued by that officer on the 2nd November 1866 to the Subordinate Magistrate of Trichinopoly Taluq to dispose of the matter.

The Subordinate Magistrate appears to have taken a deposition from the complainant on 24th November, and on a personal inspection of the spot to have issued a verbal order to the defendant, Tatam Iyengar, to remove his hedge so as not to encroach on the public road. This order was not carried out, and on the 19th January 1867 a written order was issued by the Subordinate Magistrate to the Village Moonsiff to enforce its execution.

3. Thereupon Tatam Iyengar filed a suit on the 30th January 1867 in the Court of the District Moonsiff of Trichinopoly against Narasimma Charry and his brother, and included the Subordinate Magistrate and Village Moonsiff as defendants. The suit was to recover possession of certain land in the possession of the 1st and 2nd defendants, and to establish his right to the land, of which the Subordinate Magistrate and Village Moonsiff (3rd and 4th defendants) sought to deprive him.

On the same day he applied for an injunction to restrain the 3rd and 4th defendants from removing the hedge until the suit was decided.

4. The usual notice was served on all the parties to the suit and returned to the Court on the 9th February 1867. On 18th February 1st defendant alone appeared and stated that he had no objection to the injunction being issued.

Thereupon on the 19th February an injunction was issued to the four defendants to restrain them from removing the hedge.

5. On the 26th February the Subordinate Magistrate wrote an Urzi to the Deputy Magistrate in reply to the order of the 2nd November 1866, and with reference to the Court's injunction requested detailed instructions for his guidance.

This Urzee was forwarded to the Acting Civil and Session Judge by Mr. Banbury, the Magistrate, on the 28th February 1867, and the question raised whether a District Moonsiff had authority to stay Magisterial proceedings by the issue of an injunction. The Court, in the Proceedings of 10th April 1867, declined to express an opinion, as an appeal lay from the order of the District Moonsiff, but pointed out that the injunction did not prevent the investigation by the Subordinate Magistrate into any offence alleged to have been committed.

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16th April 1868.*

6. Accordingly on 26th July the Subordinate Magistrate reopened his inquiry into the complaint filed by Narasimma Charry against Tatam Iyengar and took a further deposition from the defendant. On the 12th August he ordered Tatam Iyengar to remove the hedge from the public road and to pay a fine of 50 Rupees. This was Calendar Case No. 51 of 1867 on the file of the Subordinate Magistrate.

7. On 26th August the Subordinate Magistrate issued an order to Tatam Iyengar, under Section 62 of the Criminal Procedure Code, to remove the hedge back seven feet within eight days.

On the 2nd September Tatam Iyengar wrote an Urree to the Subordinate Magistrate pointing out that the Subordinate Magistrate's order was in direct opposition to the District Moonsiff's injunction, which prohibited the removing of the hedge. But at the same time he offered himself willing to remove it on receipt of another order.

On 6th September the Subordinate Magistrate wrote an Urree to the Deputy Magistrate stating that Tatam Iyengar had failed to comply with his order, and that he had ordered him to be imprisoned before the Deputy Magistrate for disobedience. A copy of a charge sheet was framed by the latter under Section 188 of the Penal Code against Tatam Iyengar and submitted to the Deputy Magistrate. The case was heard by Mr. Gribble, the Assistant Magistrate, who had the presence of a Subordinate Magistrate, and Tatam Iyengar was convicted and sentenced to pay a fine of 50 Rupees. This is Calendar Case No. 51. Against this sentence Tatam Iyengar appealed to the Acting Magistrate, Mr. Vans Agnew, who rejected it on 10th October.

8. Meanwhile, on 21st September an order was issued under Section 63 of the Criminal Procedure Code, to Tatam Iyengar by Mr. Gribble to prohibit the continuance of the nuisance.

On 3rd October an order was issued by the District Moonsiff, Mr. Gribble, directing that Tatam Iyengar had not carried out the order of the Subordinate Magistrate. Tatam Iyengar was convicted by Mr. Gribble under Section 441 of the Criminal Procedure Code for continuing a nuisance after being ordered to discontinue it, and sentenced to pay a fine of 50 Rupees. Tatam Iyengar's defence was that the order had been carried out. This is Calendar Case No. 53. Against this sentence an appeal was preferred to the Magistrate, Mr. Vans Agnew, who rejected it on 11th November.

9. While these proceedings connected with the hedge were in progress an appeal was also taken against Tatam Iyengar in the matter of certain houses in Sreenivasa. The circumstances are detailed in the letter from this Court, dated 13th November 1867, on the file of the Proceedings of Government of 11th December.

10. In these cases Tatam Iyengar being called on by an order, dated 10th August 1867, to remove certain houses in Sreenivasa filed a writ in the Court of the District Moonsiff against the Deputy Magistrate and others on 10th September 1867, and at the same time applied for injunctions to restrain the Deputy Magistrate from carrying out his order. The writ notice was given and the hearing fixed for 21st September, but on the 14th September the houses were demolished by order of the Deputy Magistrate.

11. On 21st September Tatam Iyengar appeared before the Assistant Magistrate to answer a charge of disobedience to the Deputy Magistrate's order of 10th August. On 18th September he was convicted by Mr. Gribble and sentenced to pay a fine of 50 Rupees. This was Calendar Case No. 50 of 1867. Against this sentence an appeal was presented to the Acting Magistrate, Mr. Vans Agnew, who rejected it on the 20th October.

12. Similar proceedings were taken against four other persons, who were also convicted in Calendar Case No. 50 of 1867 on the Assistant Magistrate's file, and sentenced to pay the same fine, and against three others, who were convicted in Calendar Case No. 52 of 1867 on the Assistant Magistrate's file on 21st September, and sentenced to pay the same fine. Appeals to the Acting Magistrate met with the same fate as their predecessors.

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16th April 1868.*

13. From the foregoing abstract it appears that Tatam Iyengar has been fined 200 Rupees, and has undergone four months' imprisonment with respect to the hedge, and has been fined an additional 50 Rupees in respect of the houses; also that seven other persons have been fined 350 Rupees in the aggregate in respect of these same houses.

14. The High Court on a careful consideration are of opinion that the conviction in Case No. 181 of 1866, on the file of the Subordinate Magistrate, is bad in law. Section 447 of the Penal Code has clearly no application to the case of an encroachment on a public road and the defendant, if an offender at all, was only guilty of a public nuisance and punishable under Section 283 or 290. But upon the evidence the conviction under this Section is unsustainable. The effect of the District Moonsiff's injunction, though improvidently issued, was to sanction the continuance of the hedge as it stood, and whilst that injunction remained in force the defendant ought not to have been convicted of a nuisance in continuing it.

At the time when the Subordinate Magistrate re-opened his inquiry into Narasimma Charry's complaint on the 26th July the defendant was warranted by the order of a competent Court in delaying the removal of his hedge, and Section 78 of the Penal Code ought to have protected him from further criminal proceedings. The Subordinate Magistrate was fully informed of the injunction that had been issued, for he himself reported the fact in his Urree of 26th February. The conviction of the Subordinate Magistrate must, therefore, be set aside and the fine remitted.

15. The convictions in the other cases, viz., 50, 51, 52, and 53, on the file of the Assistant Magistrate of Trichinopoly, present greater difficulty. The High Court have only the Calendars of those cases before them and there is nothing to show whether the existence of the injunction was brought to Mr. Gribble's notice. In Case No. 51, it is unlikely that he was in ignorance of it, for from a comparison of dates it appears that Tatam Iyengar on the 2nd September pointed out most clearly to the Subordinate Magistrate that his order of 26th August was in direct opposition to the District Moonsiff's injunction of 19th February, and it is improbable that he would not adopt the same line of defence on 18th September. If Mr. Gribble was cognizant of the injunction then the conviction in this case was illegal, and it would follow that his order of 21st September, prohibiting the continuance of the nuisance and the subsequent conviction on 14th October in Case No. 53, were also illegal.

16. In Cases Nos. 50 and 52 no injunction had been issued by the District Moonsiff before the conviction. The order of the Deputy Magistrate of 9th August was in force, and though the suits were filed and injunctions applied for on 6th September no injunctions were issued until the 21st September. The dates of the conviction were respectively the 18th and 21st September.

17. On the whole, the High Court are unable to say from the record that the existence of the injunctions was brought to the Assistant Magistrate's notice, and the Session Judge is decidedly of opinion that he was not cognizant of this fact; they are, therefore, unable to vary the sentences.

18. At the same time they are strongly of opinion that the defendants were most improperly and oppressively punished, but on that ground relief can be given by the Government only under the powers conferred on them by Section 54 of the Criminal Procedure Code.

19. The High Court have already in their letter, dated 30th November 1867, embodied in the Proceedings of Government, dated 11th December, expressed their views on the conduct of the Acting Magistrate and the Deputy Magistrate in defying the Civil powers. They have now further to remark that the transfer to Mr. Gribble of some of these cases savours strongly of an attempt to oust the jurisdiction of the Session Court in appeal, and if this is so is deserving of the gravest censure.

(True Extract).

(Signed) H. WIGRAM,
Actg. Registrar, Appellate Side.

*Proceedings of the Madras Government, Judicial Department,
16th April 1868.*

No. 133. Ombra ternox, 16th April 1868, No. 617.

A copy of the Proceedings of the High Court will be furnished to Mr. Gribble, Assistant in the South Arcot District, who was lately attached to the Trichinopoly District, and he will be desired to explain under what circumstances he became empowered to inquire into and determine Case No. 51, which had previously been on the file of the Native Sub-Magistrate.

2. The present Acting Magistrate of Trichinopoly, Mr. Langley, will furnish copies of the proceedings held by the late Acting Magistrate Mr. Agnew, showing the grounds on which he rejected the defendant's appeal in Case No. 51, and in Cases 50, 52, and 53 on which the High Court have remarked.

3. Mr. Langley will also submit, for the information of Government, copies of any correspondence that may be on his records relative to the withdrawal of these cases from the Court of the Native Sub-Magistrate and their transfer to the Assistant Magistrate's (Mr. Gribble's) Court, and he will furnish a statement of the number of cases withdrawn during the last six months of 1867 from the file of the Native Sub-Magistrate and transferred to that of the Assistant Magistrate.

4. The Acting Magistrate of Trichinopoly will obtain from Mr. Gribble, lately an Assistant in the Trichinopoly District, copies of any communications, official or confidential, between himself and the late Acting Magistrate Mr. Agnew, or, if no written communications passed, the tenor of any verbal instructions received from Mr. Agnew, in respect of Mr. Gribble's taking up Case No. 51.

5. The Governor in Council is pleased, under Section 54 of the Criminal Procedure Code, to remit the fines levied according to the sentences recorded in Cases 50, 51, 52, and 53 of 1867, on the file of the Court of the Assistant Magistrate of Trichinopoly. Such sums as may have been collected in these cases will be refunded to the parties fined.

6. The Acting Magistrate of Trichinopoly will inform the parties concerned that no impediment will be raised to the re-construction of the buildings at Sree-rungam, which were so arbitrarily demolished by the order of the Deputy Magistrate.

7. A copy of these Proceedings will be furnished to Mr. G. VansAgnew.
(True Extract).

Chief Secretary.

To the Honorable the Judges of the High Court.
" Acting Magistrate of Trichinopoly.
To G. VansAgnew, Esq.
" J. D. B. Gribble, Esq.

Ed. J. Talloch.

Jud. DEPARTMENT.

No. 676.

From *The Hon. Secy. of the High Court of Madras.*
Dated 18th March 1868.

FOR ORDERS.

The circumstances now represented by the High Court put the late proceedings at Trichinopoly in a worse light than that in which they have hitherto appeared.

The Deputy Magistrate - Kaganadha Nond - has been found but it is believed on reading this report that he was not acting in what was being done by his Sub-Magistrate.

The late Assistant Magistrate, Mr. Gribble, now in South Arcot, should be called on to explain in what manner & under what circumstances he became empowered to inquire into & determine Case No. 51 which

had previously been on the tale of the Native
tribe & found the same copied off
my own hand many times. I therefore
burned the tale of the tribe - I know in
respect of taking of the tale. —

I would also call for copies of the proceedings of the late 2d Congress, showing the grounds on which the rejected the 2d appeal, in the above case & in Cases nos 50, 52 & 53.

The present Acting Judge in Hongkong should
also be required to send an extract of any
correspondence that he has in his records
relating to the withdrawal of these cases
from the Court of the District Judge, together
with a transfer to the Public Court.

Our order should at once be placed
with the bank under Section 51, C.O.D. the
first bank account, to the extent of the
in cash \$5, \$5, \$5 & \$5 each account.

c. Seed of *Patersonia* Linn. may have been used under them.

and course would be to send for the
² ~~examination~~ Consideration being that
 which that that formerly may be ordered
 with under the present circumstances, seeing how
 clear & strong is the opinion of the High
 Court; as given in Para 15 of their letter -

It will be an act of justice to declare that
no impediment be raised or objection made
to the total emancipation to the constitution
of the names of the House which appears to
have been so arbitrarily disturbed - but
that point does not arise in the paper now
circulated & I regret it and to make amends
for the acts of civil disobedience of which the
names have been injured -

I agree N

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I entirely agree in the foregoing remarks
a perusal of these papers has led
me to report extremely that I did
not much strongly urge the adoption

of the proposed amendment in the
 of the order that the
 have should be submitted
 to change of a section
 have been made a plan and
 a first instance has been made
 to the proposed amendment in the
 which I am not sure that
 permanent action has been taken
 would not have been the proper
 mode of proceeding with the
 same.

C. A.

Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the

Sp. Registrar, High Court Sec.
 (Received 18 March 1884)

Order thereon 18 April 1884: 67.

A copy of the Proceedings of
 the High Court will be
 furnished to Mr. Gribble,
 Assistant in the South Arcot
 District who was lately attach-
 ed to the Tichinopoly District
 and he will be desired to explain
 under what circumstances he
 became empowered to enquire
 into the detainers case No. 1
 which has previously been
 on the file of the Native
 Sub Magistrate.

2. Mr. Gribble will sub-
 mit copies of any communications
 or if the no written communications
 passed between of any verbal
 instructions

himself to the date of the order
and in respect of taking
up this case.

2. The present Assistant
of Trichinopoly Mr. Longley,
will furnish copies of the
Proceedings held by the late
Asst. Magistrate Agnew, showing
the grounds on which he
rejected the Defendants appeal
in case 51 and in cases
52 and 53 on which the
High Court have remanded.

3. Mr. Longley will also
submit for the information of
Government copies of any cor-
respondence that may be on
his records relative to the
dismissal of these cases from
the Court of the District and
Magistrate.

4. The Assistant Magistrate
(Mr. Gibble) Court.

5. The Government in Council
at Calcutta, under Section 54 of
the Criminal Procedure Code,
to permit the Judge, according
to the directions recorded in

and to be furnished
a statement of the number
of cases withdrawn during
the last six months of
1867 from the City of
the District and Magistrate,
and to be furnished to that of the
Assistant Magistrate.

6. The Assistant Magistrate
will obtain from Mr. Gibble
a copy of the original in the
District Court, copies of
any communications
official or domestic, or
between himself and the late
Magistrate, or any written communications
passed, the tenor of any
verbal instructions received
from Mr. Agnew, in respect
of taking up cases.

Agnew,

Gibble's

To the Hon. the Judge of the High Court
at Trichinopoly.
A. Lane Agnew Esq.
J. B. Gibble Esq.

cases 50, 51, 52 and 53 of 1867, on
the file of the Court of the
Assistant Magistrate of
Trichinopoly.

Such sums as may have
been collected in these cases
will be refunded to the
parties fined.

6. The Assistant Magistrate of
Trichinopoly will inform the
parties concerned that no
impediment will be raised
to the reconstruction of the
buildings at Cherrungam
which were so arbitrarily
demolished by the order of the
Deputy Magistrate.

7. A copy of these Proceedings
will be furnished to the
Att. Reg. of
the Hon. Mr. G. Sans
Agnew.

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Ephedra

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PROCEEDINGS OF GOVERNMENT. T.

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Dated 25/11/2018

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