Scott. II.27—46,00 —15-11-35.

1881

Judicial ~~(193~~) Department.

Ordy SERIES.

G.O. No. 180

DATED 26-1-1881

Confidential

[Despatch Abstract.]

Reporting on the moral unfitness of Mr. Sharkey, the Dy Magistrate to exercise magisterial powers —

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Proceedings of the District Magistrate of Salem dated 9th November 1880.

Read Criminal appeal petition No 50 of 1880 presented by Nunja Pillay by his Agent Vijaiyaraghava-charr~~y~~i appealing against the decision passed by the 2nd Class Magistrate of Namakal Taluq in Calendar Case No 103 of 1880 on the file of his court convicting him of an offence punishable under Section 174 I.P.C. and sentencing him to pay a fine of Rs 15, commutable to 5 days simple imprisonment.

Read the Calendar and the records connected with the above.

Heard the Agent for the Appellant.

The facts of the case are as follows:—

The appellant was summoned on the 1st September 1880 to appear before the Deputy Magistrate at Tattayyangarpettai on the 6th September to answer a charge under section 186 I.P.C. On the 6th the defendant did not appear. On the 10th an order was sent to the 2nd class Magistrate of Namakal Taluq sanctioning the prosecution of the appellant for this disobedience; and the Sub-Magistrate has convicted him accordingly under section 174. I.P.C.

The Sub-Magistrate took no evidence for the prosecution, but recorded a statement from the accused, and examined for the defence, Mr. Pritchard Barrister-at-law, who was engaged for the appellant in the case before the Deputy

Deputy Magistrate. That gentleman produced a letter from the Deputy Magistrate dated 6th September in answer to one of his dated 4th idem, (which is also on the record) and granting an adjournment of the case from the 6th to the 10th September. The Deputy Magistrate's takid dated 10th September states that the appellant though summoned and verbally ordered to appear on the 6th had not done so, then or since until he was brought up on the date of the takid, (10th September) in custody under a warrant issued in consequence of the default on the 6th. The appellant in his statement before the Sub-Magistrate has told a story which is obviously false. He says that having started from Salem on the 5th he was disabled by a fall from his horse and returned to Salem late at night, whereas it is clear from Mr. Pritchard's evidence that he must have gone to Madras on that night by the mail train leaving Salem at 8 p.m. as he was seen by Mr. Pritchard on the morning and afternoon of the 6th at Madras.

The appellant thus admitted before the Sub-Magistrate that he had not appeared in pursuance of the summons, but the Sub-Magistrate ought I think to have taken some evidence as to the default, on the 6th or subsequently. The takid is not evidence of the facts stated therein.

The proceedings of the Deputy Magistrate in the case were in my opinion harsh. It does not appear when Mr. Pritchard's letter, which was sent by a relative

of

of the accused, reached the Deputy Magistrate whether before or after the calling on of the case; but it was answered on the 6th from Yerumaiputti and adjournment granted till the 10th as stated above. Why then, having granted an adjournment did the Deputy Magistrate issue, or allow to remain out, if already issued, a warrant for the appellant's arrest for default in appearance? Considering that the adjournment had been granted, the harm resulting from the appellant's default was of the slightest, and the direction that he should be prosecuted for it altogether uncalled for in the public interest. The accused, even though he had appointed Counsel, and Counsel had applied before the day fixed for an adjournment, ought not to have absented himself as the orders of the Court on the application had not been obtained; but the case is one which often occurs and did not call for notice, though his disobedience might be technically an offence. The Sub-Magistrate dwells on the disobedience of the Deputy Magistrate's verbal order as an aggravation of the offence. But the fact of the verbal order is denied by the appellant and was not proved otherwise than by the Deputy Magistrate's takid; and the purport of the order does not appear. A verbal order is at any rate not a recognized or a binding mode of procuring attendance except on an adjournment; and

the

the 6th September was, it seems, the first hearing of the case. I dismiss this alleged verbal order from consideration.

There is one point however which is not clear from the papers before me viz: where the Deputy Magistrate held his Court on the 6th September. His letter to Mr. Pritchard is dated from Yerumaipatti and it does not appear whether it was written before or after the case was called. If the Court was held at Yerumaipatti which is 10 or 11 miles from Tattayyangarpettai, the place specified in the summons, the prosecution must in my opinion fail, notwithstanding the admission of the accused, and the evidence that he was in Madras on the 6th. The summons was to appear before the Deputy Magistrate at Tattayyangarpettai and if the Deputy Magistrate was not there, there would be no default and the appellant cannot be held liable. It also appears to me that in the circumstances of the case, section 95 I. P. C. might fairly be applied.

But before finally disposing of the case I resolve to call upon the Deputy Magistrate to report when, where and from whom he received Mr. Pritchard's letter; when and where summary trial No 3 of 1880 was called on, upon the 6th September, and when and why he issued a warrant for the appellant's arrest. He is also requested to send an extract from his diary showing all entries relating to the said case. It is stated to me that Mr. Pritchard applied for and obtained a further adjournment on

on the 10th. Mr. Sharkey will report whether the order for the prosecution of the appellant was made before or after this application.

(Signed) W. E. Stokes
Ag Dt Magistrate.

(True copy)

W. Stokes
Ag Dt Magistrate.

Cmpd
M.

In a letter from the Ag Dt Magistrate of Salem to the Chief Secretary to Government Judicial Department Madras dated 16th December 1880 No 407

Encl I

Proceedings of the Ag Dt Magistrate of Salem dated 9th November 1880

In Judl. 4248/80

Proceedings of the Court of the District Magistrate of Salem
Dated 9th December 1880.

From the report of the Deputy Magistrate called for in Proceedings of this Court dated 9th November 1880, it appears that the verbal order to appear at Yerumaipatti was given to the appellant two or three days before the 6th September; that the case was called on at Yerumaipatti at 12 o'clock on that day; that warrant was then issued, on appellants non-appearance; that the messenger with Mr Pritchard's application reached Erumapatti at 2 p.m; and that the adjournment was then granted.

2. The facts thus ascertained are sufficient to enable me to dispose

of the appeal. The verbal order, even if proved, which it is not, was in my opinion invalid, for although it was a Summons case, the first hearing was set down for the 6th and the verbal order was therefore not such as is referred to in Section 208 Criminal Procedure Code. I consider that the man was not legally bound to attend at Yerumaipatti, as the Summons directed his attendance at Tattayyangarpettai; and I therefore quash the conviction and sentence appealed against, and direct the refund of the fine, if levied

3. It is now clear that the Deputy Magistrate when he granted the adjournment allowed the warrant he had issued not two hours before,

to

to take its course; and this I consider to have been unnecessarily harsh. I think also that the prosecution was harsh and oppressive, and I regret that I find grounds to believe that in ordering it the Deputy Magistrate was influenced by personal vindictiveness, and that he has in his letter, attempted to throw a false colour over the whole transaction.

4. He states that on the 10th, Mr. Pritchard appeared and applied for a further adjournment till the 16th; that on Mr. Pritchard's stating that none of the defendants were present and that he had made arrangements to start for Salem at once, the adjournment asked for was granted; that when Mr. Pritchard

had left Namkal, the appellant and two other defendants appeared, the appellant being in custody on the warrant issued on the 6th; and that the defendants then stated that they did not appear because Mr Pritchard had instructed them not to do so, as he would have the case adjourned.

5. He represents that he granted the adjournments unwillingly as he could not help himself owing to the conduct of the parties, and that his process had before this especially in cases in which Mr Pritchard was engaged been treated with indifference; and he gives it to be understood that he believes the absence of the defendants to have been deliberately planned by Mr Pritchard. He further urges

that

that the practice of treating process with contempt is rife in his division; that it was necessary to make an example, and that he thought this was a suitable case.

6. I have not noticed any special prevalence of adjournments in the Courts of the Namkal division, and it is, I think, silly to suppose that Mr Pritchard should have deliberately and repeatedly planned insult to the Court as alleged. As regards the occurrences of the 10th it appeared to me advisable to question Mr Pritchard, and I have taken a memorandum, which he has signed, of what he stated to me. He gave me two further letters, written to and by Mr Sharkey at Yerumaipatti on the 9th September regarding the adjournment; from

the 10th. The Deputy Magistrate in his letter agreed to grant the adjournment and says that he would be in Naumkal in the morning and that they could then arrange a convenient date. Mr Pritchard says that he met Mr. Sharkey at the cutcherry early on the morning of the 10th and said that as he had to appear in the Munsif's Court on that day, and had arranged to leave for Salem at 2 p.m, and as he had cases before the Deputy Magistrate on the 16th he wished the case to be adjourned till that date. The Deputy Magistrate consented and said that he would call up the defendants and tell them. On his way to Salem, Mr Pritchard met the appellant — (whom he had left in Madras on the 6th) on the road, about six miles from Naumkal, and told him the case was adjourned. This must have been about 3 p.m and the man must have reached Naumkal late in the afternoon, when he was arrested and brought before the Deputy Magistrate who must then have issued his order for the prosecution.

7. Mr Sharkey says that on the 10th when Mr Pritchard appeared and asked for adjournment he was much astonished. But on the previous day he had written a letter consenting to grant it. He goes on to say that before granting the request he called up the parties in the usual manner, implying that the affair took place in Court; and that it was found

that the witnesses were present but no defendants. Contrasting his account with Mr. Pritchard's, it will be seen at once that they are utterly irreconcilable; and in the face of Mr. Sharkey's astonishment at the application, which is belied by his own letter of the 9th, I have no hesitation in giving credence to Mr. Pritchard's statements. If Mr. Sharkey had believed, as he says, that Mr. Pritchard had been, in respect of the default on the 6th, and in other cases, guilty of deliberately planning repeated contempts of the process of his Court, it is scarcely conceivable that he would have written as he did on the 6th and 9th. The tone of these letters is friendly, and in the first of them he winds

up

up with a request to Mr. Pritchard regarding a tent as to which it appears they had been corresponding.

8. I believe that Mr. Sharkey's account of the reasons which influenced him in this case is altogether an afterthought; and I think that the motive which induced him to order the prosecution was that he learnt in the course of the day on the 10th that the appellant and Mr. Pritchard had been to Madras to move the High Court to review his proceedings in a case in which he had punished the appellant's brother.

9. Mr. Sharkey's letter contains some distinctly false statements of facts, and a disingenuous accou of his proceedings in the matter.

I

I therefore invite him to record, within five days, after which I shall submit the papers to Government, anything which he may wish to have sent with them.

(Signed) H E Stokes
Ag Dt Magistrate

(True copy)

H E Stokes

Ag District Magistrate.

Compd

In a letter from the Ag
Dt Magistrate of Salem
to the Chief Secretary to
Government Judicial
Department Madras
Dated 16th December
1880 No 407

Encl II

Proceedings of the Dt
Magistrate of Salem
dated 9th December
1880.

In Judl: 4248/80

Memorandum

Mr. Pritchard went to Madras on the evening of the 4th and returned on the 7th, leaving his client Nanja Pillai at Madras. On the 8th Mr. Pritchard went to Namkal in Connection with other Cases. On the 9th he wrote to Mr. Sharkey who was at Yerumapatti a letter, Copy marked A, asking him to adjourn the Case to some date after the 16th. On the same date Mr. Sharkey replied by letter marked B, stating that he would be in Namkal the following morning and that "we can then arrange - - for a conveni

Convenient day for the trial of the case". On the 10th morning at about 7. A.M. Mr. Pritchard saw Mr. Sharkey at his Office and asked that the case might be adjourned till the 16th or 17th. when he had other Cases in the Court and as he had to appear before the District Munsiff on that day, and was to leave Namkal at 2. P.M. Mr. Sharkey said the defendants had all come, and it would be inconvenient. Mr. Pritchard Said he believed some were there but that Nunja Pillai was at Madras. Mr. Sharkey said very well, well, I will adjourn the case to the 16th or 17th and will call up the defendants to tell them so. Mr. Pritchard thanked him and left. He did not then call up any of the parties. Mr. Sharkey followed Mr. Pritchard out of the Cutcherry and said, Nunja Pillai was at Yeramaputty last night, and so asked a Telugu peon of his whether this was not the case. The man answered that he had seen the him in the street. Mr. Pritchard said the peon was mistaken and must have taken his brother who resembles him for him. Mr. Pritch started from Namkal for Sale-

at

about 2. P.M. with Krishnasami Ayyar and about six miles out met Nunja Pillai and others, who were returning from Madras. He produced a letter from Mr. Mitchell in connexion with the case of resistance in which his brother and the Mittadar were defendants, and said he was going to Namkal. Mr. Pritchard told him that the case had been adjourned to the 16th or 17th. To the best of Mr. Pritchard's recollection the letter was dated 8th September. Mr. Pritchard had not seen him from the time he left him in Madras till then. The man had gone to Madras to get motion made in the High Court to

Note. Mr. Pritchard has since found and sent it to me. It is dated 8th September as stated
(Sd) H.E.S.
15. 2. 80

Case
case

to revise Mr. Sharkey's sentence on his brother in the resistance. Mr. Pritchard went with the same object. Mr. Sharkey did not express to Mr. Pritchard any intention of sanctioning the prosecution of Nunja Pillai. Mr. Pritchard did not tell Mr. Sharkey what the object of the journey to Madras was. Mr. Pritchard was engaged for all the defendants in the case. He saw some of them after the interview with Mr. Sharkey and told them that the case was adjourned. Mr. Pritchard never instructed them not to appear on the 10th.

(signed) Charles Pritcha

9th December 1880

(True copy)

H Ellis

Ag District M

Compd

In a letter from the Ag Dt Magistrate of Salem to the Chief Secretary to Government Judicial Department Madras Dated 16th December 1880 No 407

Enc II

Memorandum referred to in the District Magistrate's Proceedings dated 9th December 1880.

In Judl: 4248/80

General Dy Magistrate's Office
No 99
20th November 1880.

Enc: Anc.

From, The General Dy Magistrate
of Salem District,

To, The District Magistrate
of Salem District.

Sir,

With reference to your proceedings dated 9th Instant, in Criminal Appeal No 50 of 1880, I have the honour to submit the following report.

2. On the 6th September, I received a letter from Mr Pritchard while I was at Yerumaipatti, asking for an adjournment in the case in question. This letter was brought by a man at 2 P.M., who, as far as I remember, told me, that he was the Bélucurchy Mittadar's servant, and that he had come from his master. After reading Mr Prit's

letter, I asked the man where Nunja Pillai was. He replied that he had accompanied his master to Salem and was with Mr. Pritchard at the time. I had a reason to ascertain this fact from the bearer of Mr. Pritchard's letter, which I shall assign as I proceed with this reply.

At 12 noon, and prior to the receipt of Mr. Pritchard's letter, I fully believing and expecting that the parties in the case would be present in obedience to my summons as well as verbal orders to Nunja Pillai, called up the case for trial. To my great annoyance, not a single defendant appeared in the case, whereas all the witnesses were present. I had reasons then to think, that the defendants, and especially Nunja Pillai, had, wilfully disobeyed my summons and verbal orders, in order to obtain an adjournment in the case, and neither was I wrong or hasty in forming this opinion, for the facts

I

I had elicited from the bearer of Mr. Pritchard's letter, had confirmed this opinion beyond all doubts.

Finding myself in such a predicament, I had, much against my will, and no other alternative being left, to grant, what was so well planned by all the interested parties, an adjournment in the case, as requested by Mr. Pritchard, Counsel for the defendants. This was not the first time either my summons was treated by this apparent indifference by parties especially when Mr. Pritchard appeared as counsel. This will be apparent from the several instances on record prior to this event, and even subsequent to it. I will point out one instance in this very case, and will leave you to decide whether or not the facts I urge, supports the conclusion I have come to, though with much reluctance, I am constrained to allude to the sam

D

It is admitted, that the appellant was summoned to appear at Thathyangarpett on the 6th September last. The appellant appeared before me about 3 days prior to that date, to obtain copies of Judgment in a case in which his brother, I believe, was convicted by me. He then personally asked for an adjournment, pretending that he wished to engage Counsel, which I refused to grant, for he had lots of time long before that to employ counsel, and in fact Counsel was already engaged by his master Belucurichy Mittadar for him, and therefore I ordered him particularly to appear on the 6th at Yerumaipatti, where, I informed him I would try the case. He promised to attend as directed. He therefore deliberately starts for Salem, joins his master the Belucurichy Mittadar, and they both join Mr. Pritchard, and leave by the train of the 5th for Madras. Mr. Pritchard applied on the 4th September for an adjournment, and his letter is sent to me by the Belucurichy Mittadar's servant on the 6th; evidently detained on purpose, which reached me at 2 P.M. at Yerumaipatti. On this very day Mr. Pritchard, his clients the Belucurichy Mittadar, and Nunja Pillai (Appellant) are all snug at Madras, transacting their business and must have therefore left Salem a day or two before the letter reached me. Mr. Pritchard even does not wait for a reply, and what need he do so, so long as he made sure that I can't proceed with the case in the absence of his client, the appellant. If with these facts, which can't be denied, this man's absence can't be considered wilful, and the whole thing can't be said to be planned by all concerned in obtaining an adjournment in this case, then I am content, I am all wrong. But this did not end here. On the 10th Mr. Pritchard again appeared personally and asked for a further adjournment in the case, much to my astonishment. Before granting his request, I ordered the parties in the usual manner to be called up. Mr. Pritchard at once replies "not one is present, for I have not seen a soul up to this time here". I asked Mr. Pritchard to wait a little longer for they might turn up. His reply was that he had made every arrangement to start for Salem at once. The peon returned and stated that no defendants were present, but that all the witnesses were. Here again I was reduced to the pitiable condition of doing a thing, I was much opposed to, and was again constrained to grant the further adjournment so well planned and asked for.

Mr. Pritchard scarcely leaves Namkal for Salem, when the Appellant puts in an appearance with two of the other defendants. It was then only

he

he was arrested by the Constable, and all this time very carefully evaded the Warrant, which I had granted for his arrest on the 6th. On being asked by me where he and the rest of the defendants were all these days, and why they did not appear on the 6th, and at 11. a.m. on the 10th, they all replied, in open Court, that Mr. Pritchard had instructed them not to attend the Court, as he would have the case adjourned. Being possessed with these facts, it was very clear what my duty was, and I accordingly ordered their prosecution.

For the past six months I had been in Magisterial Charge of this Division I noticed — with much regret, that several such irregularities were permitted by the Magistrates of this Division, so much so, that it became the rule and not the exception, to treat the Lawful authority of the Court with utmost contempt and indifference by defendants and witnesses. I had patiently waited for a fitting opportunity to make an example or two of some such men, and I thought the present a proper case to bring to the front.

It is solely with an object of putting an end to such irregularities, that I ordered the prosecution of the Appellant and other defendants in the present case. The warrant for the Appellant's arrest was issued on the 6th before the adjournment was granted, and the facts elicited from the Mittadar's servant, fully satisfied me that I was justified in the action I had taken in the matter, and saw no cause for recalling it. Bail was provided for in the warrant and so there could be really no hardship to the defendant, and if he really meant to appear, he could have then at least come forward and shown that he did not mean to disobey summons wilfully

by

by granting bail and appearing in Court.

The Appellant was served with a summons to appear on the 6th September at Thattyangarpett. Three days prior to that, he was personally ordered by me to attend my Court, not at Thattyangarpett, but at Yerumaipatti, which is closer to his Village and more convenient for him to attend, if he had a will to do so. Therefore I submit, that disobedience to my personal order was an offence, because the order simply changed the place of attendance. If it were a general one, requiring the attendance of the Appellant when required, it would have no effect.

It is true the Sub Magistrate had failed to take down evidence to prove my verbal order to the Appellant, which was not admitted by the Appellant though made by me in Court.

Bu

But here I beg respectfully to submit, that it was unnecessary to take any evidence in the Case as my takid itself was a complaint under explanation to Section 470 C.C.P. Moreover this being a Summons Case, it was not binding on the Magistrate to take any evidence in support of the Complaint, but to convict the accused, if he had admitted the charge (which he did) under Section 206. C.C.P. and Section 324 C.C.P. extends this power of Criminal Courts, also to Warrant cases.

If you think it necessary, I beg that you may order the Lower Court to take evidence regarding the verbal Order under Section 228. C.C.P.

It is not always necessary that a verbal order must be given in the Course of a trial, or when an adjournment is made for under Section 174 C.C.P; it is enough, if the order directs the accused to attend at a certain place and time by a Competent Court.

I

I have written at length, but would not have done so, and would have confined myself to reply briefly to the conclusive part of your proceeding under reply, but that I regretted to find that you were of opinion that I had acted harshly towards the Appellant, and thought that the prosecution was not justifiable, and that the case would have been better dealt with, by bringing it under Section 95. I.P.C, You being of opinion that the Appellant's neglect to attend my Court, did no harm.

As regards the propriety of the Prosecution in question, I beg to submit that a prosecution for disobedience of Lawful Order, proceeds upon the idea of a legal obligation on the part of the defendant to comply with the order, and a breach of that obligation, to one's injury. To give rise then to such prosecution, there must be injury of some kind, and an injury is simply an act contrary to Law.

In this present case, it is not so much a negligent, but a wilful omission that constitutes the offence, and the offence punishable under the latter clause of Section 174 I.P.C. is aggravated, because, the Summons is, for attendance in a Court of Justice. The intention of the offender as well as the phraseology of the Code must be taken into Consideration when deciding whether an offence of this nature has been committed. If so, the circumstances under which this offence was committed by the Appellant, would evidently bring the case, not simply within the letter, but within the spirit of the Penal Law, and with all due deference and submission I beg most respectfully to point out, that I could not see my way for dealing with the

case

case under Section 95 C.C.P., for to pass such a Judgment, would be adverse to the principal ends of the Law in dealing with such offences, rather than promoting these ends and I would thus have violated the sound maxim, that the Law will not allow to be done indirectly, that which it forbids being done directly. I feel assured, that had you known, the circumstances under which the Applicant, had failed to attend my Court in obedience to my Summons and orders, you would have approved of my action in the matter throughout.

Under these circumstances, I beg respectfully to request, that you will lend me your full support, if consistent with justice and thus enable me to put down the present gross irregularities, in my division, which not only very seriously retard the progress of Criminal work

th

the different Courts of this Division, but, is so calculated to bring disrespect to the Criminal Courts, and in a manner defeat the ends of Justice. The extract of Summary Register is herewith sent.

I have &c.

(Signed) W. C. H. Sharkey
Dy. Magistrate.

(True Copy)

H Eusby

Ag. Dt. Magistrate

Compd
R.

In a letter from the Ag
Dt Magistrate of Salem
to the Chief Secretary
to Government Judi-
cial Department
Madras dated 16.
December 1880 No 407

Encl IV.

Letter from Mr Sharkey
dated 20. November 1880
No 99.

In Judl: 4248/80

Salem General Dy. Magte's office
No. 111. Dated 10th December 1880.
Encl: one.

From
The Deputy Magistrate
of Salem
To
The District Magistrate
of Salem

Sir,

With reference to your proceedings, dated 9th December, just to hand, I have the honor to submit the following explanation for your favourable consideration.

In the 9th para of your Proceedings, you state, that my letter of the 20th November, contains some distinct false statements and a disingenuous account of my proceedings in the matter.

I feel assured, that you are led to make these remarks, beca you heard from Mr Pritchar

I heard it from
the Vakeel who

that I had learnt in the course of the day of the 10th Instant, that the appellant had been to Madras to move the High Court to review my proceedings, which circumstance had provoked me, and acting on the impulse of the moment, I was induced to order the prosecution of the appellant under Section 174 I.P.C, and that as my letter of the 9th to Mr Pritchard in your opinion had belied my own statements, therefore, all that I had stated in my letter in connection with this case was of course unworthy of credit, and Mr Pritchard's word was taken in preference to mine.

I deeply regret that you should have formed this very unfavourable opinion of e, though I can solemnly

who appeared for
the appellant, and
not from Mr. Pritchard.
Signed / H. C. S.

assure you, that every word of that letter is nothing but the whole truth, which I am in a position to prove.

This circumstance alluded to by you, certainly did not actuate me to order the appellant Sanjaya pillai to be prosecuted, which will be apparent for the following reasons.

It was rumoured all over the Taluq, that Mr Pritchard was to start for Madras, with the Pelukoorchy Mittadar and the appellant, to move the High Court in the case you allude to in your proceedings. This rumour was current shortly after I had passed my decision in that case, which was long before I took action wit reference to the appellant's prosecu in the present case under reference

This was not kept a secret until Mr. Pritchard appeared before me on the 10th of last month, as you are evidently led to believe by Mr. Pritchard, and I can easily prove this to your entire satisfaction.

It will be apparent then, that I did not act on the impulse of the moment, on hearing on the 10th September only, that the appellant had accompanied Mr. Pritchard to Madras to move the High Court, for I was all along aware of this, and cared no more about this circumstance, than I, or any other Magistrate would, if an appeal was made against any other decision, and which is being done in the ordinary course of business, in every criminal Court in this and other districts. On the contrary, this circumstance of the appellant being in Madras,

in spite of my summons, and in defianc of my verbal orders to him to appear in my court on the 6th September, being the very day he was to attend Court, confirm my belief, that he had intentionally and wilfully treated my lawful orders and court with contempt, and, therefore, the more justified did I feel in ordering his prosecution under Section 174 I.P.C., because, he evidently having an object in following his counsel to Madras, gave preference to his private work, than to obeying my summons, being confident evidently, that he can do so with impunity.

I therefore beg you will kindly consider, whether motives of malice could be attributed to a Divisional Magistrate, because he orders the prosecution of a person, who, (under the circumstances deta in my letter of the 20th November) had wilfully disobeyed his Summons, and treated his court with contempt, simply from the fact, that this person, happens also to appeal against a decision of that Magistrate. If so, then I beg to submit, no magistrate could safely put in force Section 174 I.P.C without endangering his own reputation, as being actuated by personal vindictiveness. I do again assure you, that the reasons I assigned, which influenced me in the case, are unreservedly and honestly given in my letter of the 20th November. All what you state in paras 4 and 5 of your proceedings is perfectly accurate. The defendants also stated, in open Court, that Mr Pritchard did order them not to attend as he would have the case djourned. I am quite prepared - substantiate my statements

He said he would if the parties did not appear
(Signed) W.C.S.

Should you still doubt the truth of them. With reference to Para 6, I wrote to Mr Pritchard on the 9th September, as far as I remember, to meet me the following day at Namakal to arrange for a convenient day for the trial of the case. I did not positively state that I would grant an adjournment. For I could have easily written to that effect and adjourned the case for the 16th, which was all that Mr Pritchard wanted, and I would have had no reason to ask him to meet me on the 10th at Namakal. I had a reason for this request, because I fully believed that the defendants would all be up before me by that date, as warrants were issued for their production for disobedience to my summons. Mr Pritchard also admits, that when he asked for an adjournm on the 10th I told him that the

Mr Pritchard had stated in his letter of the 9th that his client was in Madras.
(Signed) W.C.S.

This was [illegible]

defendants were all present and it would be inconvenient to grant an adjournment.

In that case it can be fairly presumed that I thought, I could proceed with the case, and there would be no need for the adjournment, unless of course, it was actually necessary. For otherwise, what necessity could there be for arranging for a further adjournment, when Mr. Pritchard was already on the spot, and if all the witnesses for the prosecution and defendants, as I fully believed, were present. On the contrary, any Magistrate and Barrister having an eye to business, would be anxious to have done with it when an opportunity offers, instead of consulting his convenience, and my proposal to proceed with the case, and which Mr. Pritchard admits, would be rather to his advantage and the ends of justice; but Mr. Pritchard evidently wanting an adjournment of the case and urging as a reason, that he had work in the Munsif's court too that day, and had made arrangement to start for Salem by 2 P.M. that very day, sought for an adjournment, which I entirely would have objected to, had his clients been present.

He wanted an adjournment because his client was not present.
(Signed) H. C. S.

Moreover Mr. Pritchard is entirely wrong in stating to you, that he appeared before me early in the morning at 7 A.M. of the 10th September to ask for an adjournment. On that day, I did not reach Namakal until 9 A.M. from Yemmapatti, and at that time, a portion only of my records came to Namakal, and the other portion at 4 P.M., because there was delay in getting carts at Yemmapatti, so that my revenue Clerk did not appear before 2 P.M. that day.

The distance is only 9 miles.
(Signed). H. C. S.

My magisterial clerk was ordered by me to attend the office by 11 A.M. the latest, as I wished to go on with this case, as the warrants which were issued on the 6th were due that day, and I fully expected the parties would be placed before me by that time.

I did not hold cutchery that morning at all as stated by Mr. Pritchard[x], but attended the court at about 10½ in the day.

How comes then Mr. Pritchard to see me in the office at 7 A.M. He evidently is confounding some other day's transaction with that of 10th September, as he often had occasion to attend my court in the early morning at his request, for, when I saw my way to oblige, I was always ready to do so. Very shortly after I attended court,

[x] Mr. Pritchard does not say so. All he says is that he met Mr. Sharkey at the office which is next to his house. The magisterial clerk was ordered to attend at 11 A.M. Vide supra.
(Signed) H.C.S.

Mr. Pritchard entered, and asked me whether I could adjourn the case. He was evidently in a great hurry to go. I then told him, that as the defendants had all come it would be inconvenient to adjourn. He replied "not one is present, for I have not seen a soul up to this time here." I, then, in the usual manner, ordered the peon, to have the parties up, as there were several parties waiting outside under the trees. The defendants were reported to be absent, but all witnesses were present. This was done in open Court, and I can substantiate every word I have written, notwithstanding what Mr. Pritchard had, evidently through an oversight, stated in his memo to the contrary. From this, I trust it will be apparent to you that my lette to Mr Pritchard of the 9th September, does not in any way belie my statements made in my letter to you, of the 20th November; but on the contrary, those statements are fully corroborated, for my conduct in court on the 10th September in wishing to proceed with the case and being obliged to adjourn the same, because Mr Pritchard's clients did not attend, corroborate those statements, and my motives for the action I had taken are proved by this very letter.

Mr Pritchard writes to me on the 4th September for an adjournment. He does not wait for a reply to his letter, but starts for Madras that very evening by train, while his letter, which was given by him to the Mittadar's servant for delivery, reaches me on the 6th at Yernmapatty, and the appellant also

him to Madras. He is perfectly aware that his case was posted for the 6th, on which date his clients, the appellants and others must appear before my court.

Then again on the 9th, he asks for further adjournment, when business in Munsif's Court brought him to Namakal. He is told that I would be at Namakal myself on the 10th, when an arrangement can be made for the trial of the case. As I have already stated, I purposely withheld a positive promise, for reasons already alluded to. On the 10th Mr Pritchard appears and tells me in open court when asked, that not a single defendant had appeared, and asks for an adjournment, as he had business in the Munsiff's court that day, and had already made arrangements to start for Salem at 2 P.M.

In the face of all this circumstantial evidence, I beg most respectfully to ask, is it not natural that I should suspect Mr Pritchard, if not of deliberately planning, at least of having had a hand in so arranging with his clients, as to necessitate an adjournment, and also being cognizant of this fact, when asking for an adjournment on the 10th and thus gaining the object he had in view. This fact moreover was confirmed by his *own clients*, in open court in the presence of several, and I immediately recorded the same in my order to the 2nd class Magistrate No 37, dated 10th September, a copy of which I enclose, in confirmation of my statement.

This order was not an afterthought of mine, but was passed in court in the presence of the defendants, (Mr Pritchard's clients) the moment they made the statements.

In this order the defendants are stated to have said that they did not appear because Mr Pritchard had applied for an adjournment. In the previous letter Mr Sharkey states that they said they did not appear because Mr Pritchard had intimated them not to do so, as he would have the case adjourned. The difference is considerable.

Signed / H.E.S.

Could I be otherwise then than astonished, when my suspicions were in a manner confirmed as regards the planning of an adjournment, when Mr Pritchard deliberately tells me, not one of his clients had appeared that morning, and that he wants an adjournment, because he must attend Munsiff's court, & and had also arranged to start for Salem at 2 P.M. that very day. In other words, I must suit his convenience as I had no help for it, and then again to crown all, that Sanjay-pillai should so cleverly made the warrant which was ssued for his arrest some days before that, but contrived to meet Mr. Pritchard his counsel on his way to Salem, on the very day he was to appear in my court to be tried, and then turn up in court, after he had heard from Mr. Pritchard that he had got what he wanted from me, i.e. an adjournment. I beg most respectfully to ask again, whether after all the undoubtedly suspicious circumstances which had transpired, as above detailed, and which I am in a position to substantiate, I could be reasonably suspected of being actuated by personal vindictiveness, and had intentionally thrown a false colour over the whole transaction.

He had no knowledge of the warrant, having been in Madras from the 6th as Mr. Sharkey was told on the 9th
(Signed) H.E.S.

You have observed in your proceedings in appeal case No 50 dated 9th November 1880, that appellant Sanjayapillai had told a story before the Sub-Magistrate which is absolutely false. That he had also admitted before that officer that he had not appeared in pursuance of a Summons issued by me. This will show what the man is capable of doing. His conduct moreover, in deliberately treating my Summons and verbal orders with the utmost contempt, by leaving for Madras the very day he was ordered by me personally, and in open court to attend, and then again failing to attend on the 10th also until he had heard from Mr.

counsel Mr Pritchard that an adjournment had been managed, is, I beg to submit, quite sufficient to induce any magistrate, who has any regard for his position and for maintaining the dignity of his court to take steps to have such refractory characters made an example of. There are several High court proceedings by which it will be apparent that convictions under Section 174 I.P.C; for disobedience even under ordinary circumstances, to summons issued by a *Tahsildar*, were upheld by the High court as proper.

If so, how much more justified I must be in ordering the prosecution of this Sanjaya pillai, especially, when he, in open disregard of my lawful orders, intentionally failed to attend my court.

In doing so, I honestly assure you, I fully believed that I was conscientiously discharging my duty, as such prosecutions are almost every day ordered by magistrates in the several Courts of the Presidency. Moreover, I did not only single out Sanjaya pillai for prosecution, but I ordered all the defendants to be prosecuted, and left them to take their chance to adduce whatever reasonable grounds they might have for their failure to attend, before the Lower court, and neither were they left helpless, for

Mr. Pritchard, this time also appeared on their behalf and you can see how interested he must be to secure Sanjayapillai's release in the appeal pending in your Court.

Mr. Pritchard was not engaged for Sanjappa Pillai before the Sub Magte. Hearing of the case he volunteered his evidence and put in the letter of the 4th September

(Signed) H.E.S.

Such being the case, I feel assured you will see, that I did not order this prosecution, because I was provoked that Sanjaya pillai had gone to Madras to move the High Court to revise my decision against his brother.

I was not at all partial in excluding the rest and singling out only this man for prosecution, which I would naturally be expected to do, had I been actuated by vindictive motives.

I will not take up your time any more on the subject, but I feel assured that you will, after a patient and impartial consideration of the facts I have faithfully laid before you, change your opinion, and acquit me of being actuated by all these dishonorable motives attributed to the action I had taken in the case in question, and will restore to me your good opinion, which I had the privilege hitherto to enjoy before this unfortunate circumstance. Your proceedings, which no doubt, it was incumben for you to pass in the conscientio discharge of your duties with the facts then before you had sufficiently humiliated me; and the more so, because I feel that I have done nothing to deserve the same. I therefore beg that you will not press the matter further, unless of course you still discredit my statements and adhere to your former opinion that I had acted from personal vindictiveness and misrepresented matters to you.

I have &c

Signed/ F. C. H. Sharkey
Deputy Magistrate

(True copy)

Offg District Magistrate.

In a letter from the Ag Dt Magistrate of Salem to the Chief Secretary to Government Judicial Department Madras dated 16th December 1880 No 407

Encl V.

Letter from Mr Sharkey dated 10th December 1880 No 111.

Judl: 4248/80

Salem
4th September 1880.

Dear Mr. Sharkey,

There are no tents here for sale. Should I hear of any will let you know. I am just off to Madras and will be there a few days. Would you mind adjourning the enquiry into the case against Nanjappan and 13 others to after the 16th? Where is the defamation case to be heard?

Yours truly

(Signed) Charles Pritchard.

(True Copy)

H Knolys

Ag. Dt. Magistrate

Compd

Camp Yarramapatty
6th September

Dear Mr. Pritchard

I am willing to adjourn the case against Nanja pillay to the 10th. I'll be at Valleapatty on that date. All the witnesses and Vakee appeared this day, and two defendants and were told to appear on that date. Try & get a tent for me please.

Yours truly

(Signed) W. C. H. Sharkey

(True Copy)

Ag. Dt. Magistrate

Compd
&c

(A) 9th September 1880

My dear Mr. Sharkey.

Your note posting my case to the 10th at Valayapatty duly reached me on the evening of 7th. but I have not been able to apprise my client of this fact. as he is in Madras. I am if necessary willing to bear the costs of adjournment and would ask you to be good enough to adjourn this case to some date after the 16th. Kindly let me know when the defamation case is to be heard.

Yours truly

(Signed) C. P.

(True Copy)

H Elioky

Ag. Dt. Magistrate

Compd

(B)

Yerumapatty
9th September

My dear Mr. Pretchard

I have just returned from Thattyengarpett, and hope to be at Namkal tomorrow morning, where I shall see you, and if the parties, who must appear tomorrow, will not turn up, we can arrange for a convenient day for the trial of the case. — Warrants have been issued for the defendants who failed to appear on the 6th Instant.

I hope to dispose of the defamation case at Namkal only. I hope to see you there tomorrow positively.

(Signed) W. C. H. Sharkey.

C. Pretchard Esqre.

(True Copy)

Ag. Dt. Magistrate

Compd

In a letter from the Ag Dt Magistrate of Salem to the Chief Secretary to Government Judicial Department Madras dated 16th December 1880 No 407

Enc VI.

Copy of letters which passed between Messrs Sharkey & Pritchard.

In Judl. 4248/80

No 37

Tahid to the 2nd Class Magistrate of Namkal Taluq.

In Summary trial No 3 of the current year on my file, although Summonses were sent to the undermentioned defendants to appear in my Court on the 6th Instant and were duly served, they have not only failed to appear in my court accordingly but have also not appeared ~~in~~ before me up to date. They have been produced before me on this date in accordance with the warrants issued by me subsequently. I have sent them to you for enquiry under section 174 I. P. C. I have also sent herewith the Summonses served on them.

1. Vinaitheethän
2. Chinnappudayán
3. Móla Koundan
4. Vaira Perumal Pillai
5. Nanjappa Koundan
6. Véláyuda Udayán
7. Nanja Pillai

On my asking them personally as to the cause of their non-appearance, they say that they did not appear according to the Summonses as their Counsel Mr. Pritchard had applied for an adjournment of the hearing in this case. When the said Nanja Pillai No 7 appeared before me at Shendamangalam, I as directed him to appear before me on the 6th Instant.

16th September 1880. Namakal

(Signed) W. C. H. Sharkey
Dy Magistrate

(True Translation)

Agt Dt Magistrate

Compd

1

In a letter from the Ag
Dt Magistrate of Salem
to the Chief Secretary
to Government Judicial Department
Madras dated 16th
December 1880 No 407

Encl VII.

Translation of the Jt.
Dy Magistrate's order
to the second class
Magistrate Namakul
Taluq dated 16th September

Judl No. 4248/80

Salem District Magistrate's
Office. 16th December 1880.

No. 407

Encl 7

From
The Ag District Magistrate
of Salem

To
The Chief Secretary to Government,
Judicial Department,
Madras.

Sir,

I regret to have to bring to the notice of Government the conduct of Mr. Sharkey, Deputy Collector and Magistrate in charge of the Namakal Division. I address you direct, as the matters of which I complain have arisen out of Magisterial proceedings; and I trust I am right in so doing.

2 Mr. Sharkey appears to me to have used his powers with undue and unnecessary harshness towards certain parties. I should not have

consider that this alone would require me to call the attention of Government to the matter, but he has, as proved, it seems to me under his own hand, been guilty of falsehood in his explanation.

3. I forward for the perusal of Government copies of my Proceedings in appeal No. 50 of 1880, of letters from Mr Sharkey dated 20th November 1880 No. 99, and 10th December 1880 No 111; and of correspondence, consisting of letters which passed between him and Mr. Pritchard, Barrister at law, on the 4th and 9th September last; also translations of Mr. Sharkey's order to the Sub Magistrate in the case.

4. The circumstances are briefly as follows. Certain persons were charged with obstructing a public servant in the discharge of his public functions, (Section 186 Indian Penal code) and summoned to appear to answer the charge at Talayyangarpett, on the 6th September. On that date, at noon, the case was called on at Yerumaipatti, 11 miles from the appointed place; and the defendants not appearing warrants were issued for their arrest. Mr. Sharkey states that verbal orders changing the place were given, but this was not proved and is denied. At 2 P.M. a messenger arrived with a letter from Mr. Pritchard, who was engaged for the defence, dated 4th September and requesting adjournment of the case till the 16th. Mr. Sharkey replied at once granting the adjournment till the 10th; but did not recall the warrants which had been prepared, and issued. On the 9th while Mr. Sharkey was still at Yerumaipatti, Mr. Pritchard who was at Kamakal wrote requesting a

further adjournment till the 16th the date originally asked for. Mr. Sharkey replied that if the parties did not turn up a convenient day for the trial could be arranged when he returned to Namakal, the following morning.

5. Notwithstanding that Mr. Sharkey was thus prepared, he states in his first letter that he was much astonished when Mr Pritchard asked him on the 10th to fix the case for the 16th. This is shown by the production of his letter of the 9th to be false. He gives one account of what took place on the 10th and Mr. Pritchard gives another which I believe is entitled to credit. Mr. Sharkey in his second letter adheres to his statement as to what occurred n the 10th.

. I had arrived at the conclusion that Mr. Sharkey was actuated in rdering the prosecution of the appellant by revengeful feelings, on learning (probably on the 10th) that ~~is~~ appellant had been to Madras to move the High Court to revise his proceedings in another case. Mr. Sharkey says that the fact of this being intended was generally rumoured in the taluq shortly after he had passed the decision in question and long before he took action in this case. If this is so, I have only to remark that it explains the harshness of Mr. Sharkey's proceedings in the issue and continuance of the warrants of arrest for default of appearance on the 6th September notwithstanding that adjournment was granted.

7. The details of the whole matter cannot be set out more briefly than they are in the enclosed papers; and I think that after perusal of them Government will concur in the opinion which

[illegible] originally asked

I have expressed in para 9 of my Proceedings dated 9th Instant viz that Mr. Sharkey's letter of the 20th November contains some distinctly false statements of fact and a disingenuous account of his proceedings in the matter. I cannot trust him and I beg that he may be transferred elsewhere.

8. In conclusion, I beg to state that Mr. Pritchard was not engaged in the case before me. I of my own accord sent for and questioned him.

I have the honor to be
Sir
Your most obedient servant

H Stokes

Ag District Magistrate

Compd

Jud'l (1880) Dep'c.
(Mr W. C. A. Sharkey)

R. D.
2 DEC 80

From

The Ag Dt Magistrate
of Salem

To

The Chief Secretary
to Government
Judicial Department
Madras

No: 4248

Dated 16.
Desp'd 21 } December 1880
Rec'd 22

No 407

Enc 7

Bringing to notice the
conduct of Mr Sharkey
Deputy Collector Nama-
kal Dn in connection
with certain magisterial proceedings.

D. O.

Salem General Dy Collector's office
27th December 1880.

R. D.
8 JAN 81

To

Honorable C. G. Master
Secretary to the Government.
Madras.

Sir.

Adverting to my letter to you of the 17th Inst. I beg to state that I only this day received a copy of the District Magistrate's letter to Government No: 407 dated 16th December 1880.

2. I beg to submit the following explanation for the consideration of the Government, as I find, that the District Magistrate, altogether mistaking my letter and labouring under a serious error as regards to certain points, has taken a completely erroneous view of the subject in question, and has unjustly and without any tenable grounds, accused me of being guilty of falseh [illegible] in

my explanation to him. (vide my letter to the District Magistrate dated 10th December 1880 No 111). It is for this reason alone, the District Magistrate states, that he calls the attention of Government. I shall, therefore now proceed to point out, how groundless his reasons are for arriving at this conclusion. The District Magistrate proceeds to state in para 2 of his letter, " But he has, as proved it seems out under his own hand, been guilty of falsehood in his explanation". By this I presume he alludes to my private letter of the 9th September which I had written to Mr Pritchard. This is apparent from para 7 of the District Magistrate's proceedings dated 9th December 1880; for, he there states, Mr Sharkey says that on the 10th hen Mr Prichard appeared and ked for adjournment, he was uch astonished, but on the previous day he had written a letter consenting to grant it. He further proceeds to state in the same para" contrasting his account with Mr Pritchard's it will be seen at once, that they are irreconcilable and in the face of Mr Sharkey's astonishment at the application which is belied by his own letter of the 9th. From this then, it will be apparent to Government that he arrives at the present conclusion from the supposed facts of my having consented to grant an adjournment and having given a different account of what had transpired in my court on the 10th September last to that given by Mr Prichard.

3. As regards 1st point, i.e granting of an adjournment, I beg respectfully to draw your attention to the concluding part of para 4 of the District Magistrate's letter under reply. He ~~The~~ states " Mr Pritchard who was at the

wrote requesting a further adjournment &c" "Mr Sharkey replied " That if the parties did not turn up, a convenient day for the trial could be arranged when he returned to Fankul the following morning." From this it will be apparent, that I did not grant an adjournment and neither did I mean to do so if I could have helped it, for the reasons fully set forth in my letter No 111 dated 10th instant, and the explanation there given will be seen to be perfectly consistent with what I had stated in my letter of the 9th to Mr Pritchard. This is what the District Magistrate considers to be false. Mr Prichard also admits, that when he personally appeared and asked for an adjournment on the 10th, I stated, that it was inconvenient to do so, as the parties had sappeared. In the face of this admission, and my letter of the 9th to Mr Pritchard

to the effect " that if the parties did not turn up, a convenient day for trial could be arranged," the District Magistrate will have it that I had granted an adjournment and therefore in my explanation I had uttered a falsehood.

4 I certainly was astonished at Mr Prichard's conduct, and any one possessed with any gentlemanly instincts, would be so. I was not astonished simply because he asked for an adjournment on the 10th, for this I fully expected he was aiming at, but I was astonished that he should have so deliberately planned and arranged matters with his clients so as to compel the granting of an adjournment. How he had done so, I have fully explained in para 7 of my letter to you dated 17th inst, and also in my letter to the District Magistrate No 111 da

10th instant, and to which I most respectfully beg to invite the attention of Government.

5. As regards 2nd point, viz. that I had uttered a falsehood, because my account of what had transpired on the 10th September is utterly irreconcilable with Mr Pritchard's, and his reasons for considering my account to be false, I beg to state, will be found in the latter part of para 5 of the District Magistrate's letter under reply. To quote his own words, he states "he gives one account of what took place on the 10th and Mr Pritchard gives another, which I believe is entitled to credit." In other words, he doubts the veracity of my statement simply because he gives preference to Mr Pritchard's statement. I beg most respectfully to ask, whether my statements could be fairly set aside under the circumstances stated in my letter to the District Magistrate dated 10th December last. There I have fully and convincingly ~~and~~ proved, and which will, doubtless, convince any impartial mind, that what I had stated must be accepted as the truthful account of what had actually transpired on the 10th. My statements are based on facts, which I challenge Mr Pritchard or any one else to deny, and which I am fully prepared to prove. Facts are stubborn things and cannot lie..

6. Moreover, it is apparent that the Dt Magistrate is now partly convinced that my statement must be the correct one; for, in the last part of para 5 of his letter under reply, he states, "Mr Sharkey, in his second letter, adheres to his statement as to what occurred on the 10th." and that he further proceeds in para 6 to state, "If this is so, I have only to remark that it explains the harshness of Mr Sharkey's

Proceedings in the issue," and so forth. Before the receipt of this explanation, he was of opinion, that I was actuated in ordering the prosecution of the appellant Tanjappa Pillai by revengeful feelings. (vide para 3 of the District Magistrate's Proceedings dated 9th Decr 1880), but in his letter to Government now under reply, he changed his opinion with reference to this charge, for, he makes no allusion whatever to it; but states, that I was harsh, not in ordering the prosecution of the appellant, (which he apparently withdraws) but, "in the issue and continuance of the warrant of arrest for default of appearance on the 6th September, notwithstanding that adjournment was granted." With regard to this, I beg respectfully to urge, that even in this case, I was perfectly justified in the action that I had taken. The law authorizes me

to

to issue a warrant for arrest, of even witnesses for disobedience to summons. If so, how much more justified would a Magistrate be, to compel the attendance of defendants, who, to evade punishment, make themselves scarce. In such cases, of course, an adjournment must be granted, (for the Magistrate has no other alternative left), as I have granted in the present case; for as all the defendants in the case intentionally failed to appear, and I could not therefore proceed with the trial of the case. Under the circumstances, I would therefore have been compelled to adjourn the case whether Mr Pritchard had personally applied to me or not, in the same manner, as cases are constantly adjourned in the different Courts when parties to fail to attend on the day appointed for hearing.

7. In para 7 of my letter to you dated 17th Inst, and in my letter of the 10th Decr to the Dt. Magistrate No 111, it would be clearly seen, how deliberately this adjournment also had been planned, and how helpless I was rendered in the matter by the conduct of the appellant and others concerned in the case, and therefore the reasons which the District Magistrate assigns in para 6 of his letter to Government under reply, are more cogent in the other way. Because, the facts of Anujappa Pillai the appellant having intentionally gone away to Madras, though he had applied to me for an adjournment and was refused, and having been in Madras on the very day (6th September) he was summoned and personally ordered by me to attend my [illegible]rt, clearly convinced me, that my process had been intentionally treated with utmost indifference and contempt by the appellant, inasmuch as he cared more to transact his own business in Madras than to appear in my court, and therefore the more justified was I in issuing the warrant for his arrest, and even here, I dealt very leniently with the man, because I had provided for the taking of bail from him, so that he need not be put to unnecessary inconvenience by being brought under arrest to my court, which concession I was not bound to grant in the present case. From this it would be apparent, that I was lenient in my proceedings, instead of being harsh as stated by the Dt. Magistrate

8. In para 4 of his letter to Government, the District Magistrate states, that the case for hearing was fixed on the 6th September at Sátangárpettai, but that on that date, the case was called on at Yerumapatti, 11 miles from the appointed place. By this the Government would no doubt be led to infer, that the parties were expected by me to travel a greater distance, and thereby put to unnecessary inconvenience, while they were not prepared to do for want of timely notice. I beg here to point out, that Yerumapatti is 11 miles closer to the appellant's village than Sátangárpettai, and the village is so situate that he must pass Yerumapatti, in order Sátangárpettai: So that the

change of place, proved infinitely more a convenience, rather than a hardship to the appellant.

9. Then again, in the same para, the District Magistrate proceeds to state, that a letter written by Mr Pritchard dated 4th September, reached me at 2 P.M. on 6th September, and I answered at once granting an adjournment till the 10th, but did not recall the warrants I had issued.

10. I beg respectfully to point out, that, as I have already stated, this application by Mr Pritchard for an adjournment of the case, was simply a dodge, and it will be apparent from the following fa

11. The appellant applied personally for an adjournment of the

case on the 2nd September. I refused to grant it and ordered him in open court to attend at Jerumapatti on the 6th. He promised to do so. He then obtains from me a copy of the judgment against his brother, leaves direct for Salem on the 4th September, gets his counsel Mr Pritchard to send in a formal application for an adjournment of the case, which his client must doubtless have told him that I had refused to grant on his request. Mr Pritchard does not wait for my reply, but leaves Salem by that very evening's train, and he and his client the appellant, transact their business in Madras and return to Salem on the 7th; so that, neither Mr Pritchard nor his client the appellant, was aware of the result of the application for an adjournment till the 7th September. Moreover, the letter was purposely delayed till the 6th, and I did not receive it till 2 P.M. of the 6th September, though the man who brought it pretended to be an express messenger. The reason for this delay is simply this. Mr Pritchard and Nanjappa Pillai wanted to get over the business at Madras by the 6th and return to Salem by the 7th, by which time alone my reply could possibly reach him, and he knew that I could not possibly try the case without his client the appellant, and his other clients. So, he made quite sure that I would be forced to adjourn the case. If the letter reached me on the 4th or 5th, and he waited for my reply at Salem then he would be compelled to attend my Court on the 6th September, if I refused an adjournment, and which evidently he expected I would do, especially as I had refused to do so when the appellant personally applied for it. I was aware of the appellant's and Mr Pritchard's movements, as the witnesses for the prosecution, who attended Court on the 6th at Jerumapattie, had informed me of the same. Finding myself helpless in the matter, I had granted Mr Pritchard's request; for it would be bad taste to refuse, when I could not help myself, while Mr Pritchard and his clients would be probably laughing in their sleeves, at the dodge they had played me.

12. Because I had done so, the District Magistrate observes, that I should have withdrawn

the warrants I had issued against the appellant and others in the case. If I had done so, I would have been deprived myself of the only effectual remedy I had for compelling their attendance, and the fact of my notwithdrawing the warrants, will, in itself prove that I had unwillingly complied with Mr Pritchard's request for an adjournment, as I had no other alternative left.

13. Then again, the District Magistrate states in para 4 of his letter, that my verbal orders to appellant, changing the place where my Court was to be held on the 6th September, was not proved and denied.

14. Is it a matter of surprise that the appellant would deny

this, when the District Magistrate admits, (in his Proceedings in appeal No 50 of 1880 para 3,) that this appellant is a liar?. What was there then to prevent him from denying this fact too!. I had asked the District Magistrate, in my letter No 99 dated 20th November 1880, to order evidence to be taken on this point, because the verbal order I had given to appellant was legal, and imposed a liability on the appellant as directed. (Vide. H.C. Proceedings dated 18th January 1870 No 123). But for reasons of his own, he declined to do so, being of opinion that the verbal order was illegal and not binding on the appellant. How then could this fact have been possibly proved. The denial of the same, by the appellant, who the District Magistrate is convinced to be a liar is assumed apparently to be true, and my statement, false.

14 The ingenuous and satisfactory explanation of undeniable circumstances in my two letters to the District Magistrate, now before Government, and which, I have little doubt the Government will see, operate in my favour, and are extremely important, as much for the protection of my character as for the discovery of truth, are summarily rejected, by the District Magistrate, and are characterized as "false statements of facts and disingenuous account" of my proceedings in the matter. With all due deference and submission, I beg most respectfully to submit, that to any impartial mind, my explanation will be proved to be quite consis

with truth, and my innocence, and quite irrelevant to the particular inference sought to be derived from them by the District Magistrate. The circumstances therein alluded to, completely neutralize and repel the imputed presumption, while on the other hand, they induce a stronger counter-presumption in my favour, to every allegation of the existence of which, I respectfully submit, justice demands, that dispassionate and candid consideration be given, instead of being summarily rejected. I therefore feel assured, that the Government will not consider the inference drawn by the District Magistrate, as stated in para 7 of his letter to Government, as a reasonable and

15. I am not the 1st Magistrate who had reason to complain of the irregularities practised by Mr Pritchard in the conducting of cases before magistrates - Mr Le Fanu, the then as joint Magistrate, had occasion to comment very unfavourably on Mr Pritchard's conduct in connection with the assistant superintendent of Police, Mr Stevenson's case. The Government will be satisfied with the accuracy of my statement, if they will be pleased to call for the papers which were placed before the Government by Mr Le Fanu in the year! 1877. as far as I remember.

16 I have served Government long and faithfully for the past 19 years and as a Magistrate for

reputation from several officers now holding the highest offices under Government. I have been thanked by them for services rendered, but was never once told that I cannot be trusted and must therefore be turned out of the District.

17. My character was not built up in one day, and I feel assured, that a just and impartial Government will not see their officers thus treated, and their well-earned characters destroyed in a day by one stroke of the pen.

I beg to remain
Sir
Your most obedient servant.

W C A Sharkey

From Mr Hankey
to Govt

d/27-12-80

Honourable C. G. Ma
Secretary to Gov
[illegible]

Sir,

Having heard from
Stokes yesterday, being
that he has submitted
papers to Government
concerning a [illegible]
action against one [illegible]
Ellis under Section
ordered by me in
as Divisional Mag
of this district, I beg
fully [illegible] fo
facts for your [illegible]
course [illegible]

dated 9th instant, that he had made up his mind to report the matter to Government, whether or not, I had any explanation to submit to him to vindicate my cause. From this, it will be apparent, that he avoided my explanation dated 10th instant in reply to his proceedings as far as he was concerned & therefore could not have taken into consideration the conclusive and undeniable circumstances alluded to therein, and which I beg most respectfully now to invite your kind attention, as I feel it incumbent to do so, in justice to myself and for the vindication of reputation, which I now

the 18 years of my Government service, remained unsullied in the opinion of the Government I had served.

3. Mr Stokes apparently has two reasons for bringing this matter to the notice of Government:

vide para 3 Collector's Procgs dated 9th Oct 1880.

1st, That I was influenced by "personal vindictiveness", and that I had in my letter of the 21st November "an after-plea to throw a false colour over the whole transaction".

2nd That "contrasting my account with Mr Pritchard's, it will be seen at once that they are utterly irreconcilable", and "which account, "is belied" by my own private letter of the 9th to Mr Pritchard, and

vide para 7 of ditto

he gives credence to Mr Pritchard's statement, evidently believing that there could be no doubt in the matter.

4. How far Mr Stokes is correct in coming to this conclusion will be apparent, if you will kindly peruse my reply to the above proceedings dated 10 the current No 111. This will at once convince you, that Mr Stokes had formed his opinion, simply in placing implicit confidence in the correctness of Mr Pritchard's statement, which you will now see are altogether incorrect. Of course, with such statements, and in the absence of my explanatory letter alluded to, the Collector

since my arrival in this District, has treated me with uniform kindness and consideration, but for this erroneous view that he has taken in the present case, and which I am prepared to convince him of the case, I should have still enjoyed the good opinion he had hitherto formed of me as [illegible] often, and which is apparent from the official and semi official correspondence which passed between us.

5. It is unnecessary for me to repeat all which I had stated in my explanatory letter, which, I feel assured, after the patient consideration of the

1 (1880) Sep 6.

come to the conclusion that the action I had taken in the matter, was not only justifiable, but absolutely necessary to maintain the credit of Justice, and to preserve the dignity of our Courts and those of the Sub-Magistrates under my charge.

I shall now state a few circumstances which, I trust, will convince you, whether the prosecution under section 174 I.P.C. I had ordered against Sawyappa Pillai was justifiable or not.

This Sawyappa Pillai and his brother are very troublesome characters. They depend mainly for their living on Palani

prosecution to prove the character of the witness as a private individual, I beg respectfully to state, that a perusal of my judgment in calendar case No 23 dated 23rd September 1880 will fully satisfy you as to his antecedents. This witness was recently convicted by me in a most scandalous case of defamation. This Sawyappa Pillai is apparently his partisan. This man and his brother were jointly tried and convicted by me very recently under section 186 of the I.P.C., and his brother was also, a few weeks prior to that, convicted of the same offence. Backed up by the vakils, they

recently under the

that they could resist the lawful orders of the authorities here with impunity. Such is the character of this Nanjappa Pillai.

This Nanjappa Pillai was summoned, together with others, to appear before my Court on the 6th of September last, and take his trial. Mr Pritchard who was his counsel, and engaged by the Belukurichi Mittadar, nominally applied to me for an adjournment of the case on the 4th September from Salem. This will be apparent from the fact, that he does not wait for a reply, which he could not expect, the very earliest, till the 6th of that month. It is apparent, that he did not want a reply, because he

leaves the very day, i.e. the 4th, for Madras. The Belukurichi Mittadar, and his client Nanjappa Pillai accompany him. Nanjappa Pillai, on the 3rd September, personally applied to me for an adjournment, which I declined to give, and was ordered in open Court by me to attend positively on the 6th at [illegible] which is only a few miles from his village. He, in disobedience of the order, walks away to Salem, meets Mr Pritchard his counsel, gets him to make a formal application for an adjournment, and deliberately goes away to Madras on his own private business, on the very day that he was to appear before me for trial.

This man, on being produced before me on the 10th, stated in open court, that he was ordered not to attend my court by Mr Pritchard, and denied being in Madras on the day on which he was ordered to take his trial before me.

8. Being perfectly convinced that the whole thing was deliberately planned, and that he intentionally and in defiance of my authority, refused to attend my court on the 6th, I ordered his prosecution under section 174 I.P.C. before the Lower court. Mr Stokes admits that Ponnappa Pillai had made statements before the Sub-Magistrate which was absolutely false, and that he also admitted to the Sub-Magistrate that he disobeyed my summons. These facts, will in themselves show whether the man knew that he was guilty of wilful disobedience to my orders, and therefore resorted to all these lies and dodges to effect his release. Mr Pritchard have also come to his rescue and defended him; but the Sub-Magistrate, being fully convinced of his guilt, convicted him and 6 others who were jointly prosecuted under section 174 I.P.C. Ponnappa Pillai is the only one that appealed against this decision to the District Magistrate, (the others being satisfied with the justice of the conviction) who quashed the sentence of the Sub-Magistrate, and placing implicit confidence in Mr

Pritchard's statement (who, of course, as counsel, is interested in his client's release) attributes dishonorable motives, by which, he states, I was actuated in ordering a prosecution against this Ponnappa Pillai, whose antecedents, as above detailed, must satisfy you as being a most objectionable character.

9. The division of Nannilam is reputedly a bad one, and this will be apparent from the remarks recently made by the Session Judge Mr Pennington, who had a considerable experience in the district. This gentleman remarks, that the "neighbourhood of Nannilam is such a hotbed of petty

character and

property is safe," and strongly deprecated the conduct of one of my subordinate magistrates for dealing leniently with an offender, who, in his opinion, richly deserved punishment and therefore was punished by the Session Judge himself. Such being the character of the division in which I am appointed by Government to administer justice, it behoves me in the faithful and independent discharge of my duty, to take every opportunity to bring offenders to justice. The present case, in my humble opinion, was a proper one to bring to the front, and in the conscientious discharge of my duty I have taken the

action in the matter. If then
under such circumstances,
my conduct is called in question,
it will simply be impossible
for any magistrate who has any
respect for himself, and is anxious
to restore order and discipline
in his division, faithfully to
discharge his duty in this most
troublesome division, of all that
I have had the privilege of
presiding over as a Divisional
magistrate, during the past 8
years of my service as such.

I feel assured that
after patient consideration
of the facts laid before you,
I will be honourably acquitted
of all blame in the matter,

at the hands of Government,
[illegible] fully accorded to me.

I beg to remain
Sir,
Your most humble servant,
H. C. H.

Revenue (1880) Dept.

D.O. No. 7578.

From W. C. H. Shakey Esq.
Divisional Magistrate
Salem Dist.

8/17
1/18 } December

Submitting ex-planation with reference to the criminal prosecution of one Nunjappa Pillay under s. 174 I.P.C. ordered by him & reported against by the District Magistrate, Mr. Stokes. Transferred

R.D.
21 DEC 80

Transferred to the Judicial Department.

Ft St George
6th Decr. 80

G. Masters
Secretary to Govt.

... are set down as ... month. As instances of the reports which are about, I may state that since writing my

---

of the Division. The Appe... ordered the prosecution of Nunja Pillai for disobedience o... dispensed with his compliance with that order, and, to have accepted the suggestion that the

District Magistrate, on

Judl (1880) Department

Coll W.C. & [illegible] 21

From

Rev. Dept.

No.

Dated 20 } Decr. /80.
Received 21 }

No. 4234

Transferring explanation from Mr. Sharkey, Divisional Magte., Salem Dt., with reference to a criminal prosecution ordered by him & reported against by the Dt. Magte., Mr. Stokes.

Confidential. R. D.

21 DEC 80

[illegible]

Salem, 16 December 1880.

My dear Davidson

I have written officially to you begging the attention of Govt. to the conduct of Mr. Sharkey Deputy Magistrate in this district, in connection with a certain case.

I have been for some time past disquieted by the thought that it was my duty to bring to notice the general prevalence of rumours as to the corrupt conduct of this officer, but having nothing but rumour to go upon, I have hitherto abstained. I have received many anonymous petitions on the subject, but none on which I could take action. From all sources open to me, including confidential information coming through the police, native newspapers sent for my perusal, and conversation with individuals, the same story reaches me. His gains are set down as Rs. 5000 a month. As instances of the reports which are about, I may state that since I wrote my

---

of the Division. The Appell
ordered the prosecution of Nunja Pillai for disobedience
dispensed with his compliance with that order, and, to have accepted the suggestion that

+ Hawks – a Native of U. I. – [illegible]

16/12/80

papers relating to his removal, and thinking that the Salt Commissioner had been rather hard on him I resolved to give him a fair chance. I have done so; and the result of my nine months Experience is that I consider him unfit to have the powers of a Deputy Collr. on General duties, and that he can only be safely employed in treasury work. At any rate he ought not to be retained in a place like Namkal which should have a European of unquestioned integrity in charge of it. I submit my opinion to Govt. for what they may think it worth, conceiving that my position as head of a district entitles, if it does not require me, to do so.

The case which I have actually handed up may perhaps strike Govt. as a trivial one, & as not requiring that so much fuss should be made over it. I think it is clear that he has told lies in the matter; but had it been any one else, and had I not almost resolved to write to Govt. regarding his reputed corruption I should have waited to see what the High Court say to my proceedings, of which of course copies have been sent to them.

Yours sincerely
H. E. Stokes

Hon. R. Davidson C.S.I.

No. 908

Proceedings of the High Court of Judicature at Madras, 3rd. May 1881.

Read again Proceedings, dated 9th November 1880, passed by the District Magistrate of Salem on Criminal Appeal Petition No. 50 of 1880, presented against the sentence of the 2nd Class Magistrate of Namkal Taluq in Calendar Case No. 103 of 1880.

Read also Order, dated 9th December 1880, passed by the District Magistrate of Salem on Criminal Appeal Petition No. 50 of 1880 reversing the sentence passed by the 2nd Class Magistrate of Namkal Taluq in Calendar Case No. 103 of 1880.

Read also Proceedings of the District Magistrate of Salem, dated 9th December 1880, animadverting upon the conduct of the Deputy Magistrate of Salem, Mr. Sharkey, in directing the prosecution of the accused in Calendar Case No. 103 of 1880 above referred to.

(Here enter High Court No. 99 of 1881.)

Read also the records submitted in accordance with the Proceedings of this Court, dated 12th January 1881. No. 43.

(Here enter H. C. No. 1,026 of 1881.)

In connection with the order of the District Magistrate reversing the sentence of the 2nd Class Magistrate, the question of law arises whether, when an accused person has been summoned to attend at a certain place, and afterwards and before the day fixed for the hearing arrives, is informed by the Magistrate verbally in Court that he must attend at another place in substitution for the place mentioned in the summons, he is not liable to conviction for disobedience of the lawful order of a public servant, if he fails to attend at the place at which he has been verbally ordered to attend.

2. The High Court is of opinion that a verbal order, if so given as is suggested, would be legal. The accused, however, not having admitted the issue of such an order, the 2nd Class Magistrate ought to have called for legal proof of it and the District Magistrate in appeal might have supplied the defects by proceeding under Section 282 of the Code of Criminal Procedure, to take further evidence himself or to direct the 2nd Class Magistrate to make further inquiry on the point. The evidence as it now stands is insufficient to warrant the conclusion that a verbal order was issued—and therefore insufficient to warrant a conviction. There are circumstances in the case which in the Court's Judgment relieve it of the duty of directing further inquiry. The Magistrate's order will therefore be affirmed.

3. But it also appears from the Proceedings of the District Magistrate, dated 9th December 1880, that he, at the hearing of the appeal, formed and recorded an opinion on the Proceedings of the Magistrate of the Division of which this Court, in the exercise of its functions of superintendence, cannot refrain from taking notice. The case under reference came before the Appellate Court (*i. e.* the Court of the District Magistrate) in a manner most unfavorable to the Magistrate of the Division. The Appellate Court appears to have understood that the Divisional Magistrate ordered the prosecution of Nunja Pillai for disobedience of his order after he had substantially dispensed with his compliance with that order, and, to have accepted the suggestion that the

Divisional Magistrate had been actuated in instituting proceedings by a vindictive feeling that the failure of the accused to attend was due to his having gone to Madras to move this Court to disturb a conviction by the Divisional Magistrate. In this view the conduct of the Divisional Magistrate not unnaturally appeared to the Appellate Court deserving of the severest reprehension, and when, from an expression in the Divisional Magistrate's explanation, the Appellate Court was led to infer the Magistrate had been guilty of a false statement, the opinion formed by the Appellate Court of the impropriety of the Magistrate's conduct received apparent confirmation. The fuller explanation subsequently submitted by the Divisional Magistrate and the production of the whole of the correspondence that had passed between Mr. Pritchard and the Divisional Magistrate afford some materials for a conclusion of which the Appellate Court had not the advantage.

4. It appears that Nunja Pillai was summoned with other persons to appear before the Divisional Magistrate at Tattayyangar Pettai on the 6th September to answer a charge of having obstructed a public servant in the execution of his duty. About three days prior to that date, he went to the Magistrate's Court to obtain copies of Proceedings in which his brother had been convicted. He then applied to the Divisional Magistrate to postpone the hearing of the charge against him as he wished to engage Counsel. The Divisional Magistrate, considering that he had had sufficient time to retain Counsel, refused an adjournment and directed him to attend on the 6th September at Yerumaipettai for the trial of the charge. The Divisional Magistrate states he promised to attend as directed. On the 6th September, the complainant and the witnesses for the prosecution and two of the persons charged with the offence presented themselves. On this day the Divisional Magistrate received a letter dated Salem, September 4th, from Mr. Pritchard who had been engaged to defend all the persons charged in the following terms:—

"I am just off to Madras and will be there a few days. Would you mind adjourning the inquiry into the case against Nanjappan and 13 others till after the 16th."

Nanja Pillai and the others of the accused with two exceptions did not attend.

5. Although Mr. Pritchard may have intended that this letter should have been delivered earlier, the request he addressed to the Magistrate was somewhat unreasonable. It shows no consideration either for the convenience of the Magistrate or the convenience of the complainant and his witnesses.

6. A District officer has to arrange his business to meet the convenience of parties throughout the area of his jurisdiction and it can hardly be expected that, within 2 days of the day fixed for the hearing of a case at an out-station, he can postpone the arrangements he has made nor can ordinarily notice be given to the complainant and his witnesses in time to prevent them from undertaking a bootless journey. The Divisional Magistrate was entitled to disregard an application for an adjournment not made to him in open Court. The application, moreover, was coupled with an intimation that the learned Counsel was starting for Madras and that he could not be present if the adjournment had been refused.

7. This letter was not delivered to the Magistrate on the day of its date nor until 2 P. M. on the day on which the case was to be heard. The Divisional Magistrate was at the same time informed that Nunja Pillai had left Salem for Madras with Mr. Pritchard. The Divisional Magistrate had certainly reason to think that his orders were being treated with contempt. Not only had Mr. Pritchard gone off without waiting for an answer to his application for an adjournment but his client had prevented the Magistrate from exercising any option in the matter by departing with Mr. Pritchard. The Magistrate was compelled to order an adjournment to his own inconvenience and to the inconvenience of the complainant and his witnesses. He not unnaturally regarded the absence of Nanja Pillai as a wilful disobedience of his order, and, to secure

the attendance of the accused at an adjourned hearing, he issued warrants for their arrest. He fixed the 10th September as the date of hearing and the place Velayapatty. Of these arrangements the Divisional Magistrate courteously informed Mr Pritchard in a note which reached Mr. Pritchard on the evening of September 7th.

8. On the 9th September Mr. Pritchard again, as it seems to the Court, disregarding the convenience of the Magistrate and the prosecution, addressed a note to the Magistrate acknowledging the receipt of the Magistrate's note on the 7th and asking that the case might be adjourned to some date after the 16th. In this note he informed the Magistrate he had been unable to communicate with his client who was at Madras.

9. To this note the Magistrate replied on the same date and it is important to observe its terms for it appears they bear out the statements afterwards made by the Magistrate as to his motives in directing a prosecution.

"I * * * hope to be at Namkul tomorrow morning where I shall see you and if the parties who *must* appear tomorrow will not turn up, we must arrange for a convenient day for the trial of the case. Warrants have been issued for the arrest of the defendants who failed to appear on the 6th instant * * * * * I hope to see you there tomorrow positively." The word "must" is underlined, the learned Counsel is informed that warrants have been issued and that the Magistrate must positively see him on the morrow.

10. The Magistrate conveyed in pretty clear terms that he considered the accused had wilfully disobeyed his order of the 6th September and was determined to enforce obedience to his orders and so far from assenting to grant an adjournment, intimated he would only do so, if the accused did not appear—a contingency he considered improbable. On the following day—the 10th, the Magistrate held his Court at Namkal. The account he gives of what took place on that day is substantially though not entirely in accord with Mr. Pritchard's statement, but, on one or two points the Court believe Mr. Pritchard was mistaken; and weighing the statements of each in the light of the previous conduct and correspondence of the Magistrate, it seems more likely that his account which is the more circumstantial is the more accurate. Mr. Pritchard states that he saw the Magistrate in his Court at Namkal at 7 A. M. and asked that the case might be adjourned to the 16th or 17th when he had other cases in the Court as he had to appear before the District Munsif and must leave Namkul at 2 P. M.; that the Divisional Magistrate said the defendants had all come and it would be inconvenient; that he told the Magistrate he believed some were there but that Nanja Pillai was at Madras; that the Divisional Magistrate said, "very well, I will adjourn the case and will call up the defendants and tell them so"; that he did not then call up the defendants but following him out of the office said Nanja Pillai was at Yerumapatty last night and asked a Telugu peon if this was not the case; that the peon answered he had met him in the street; whereupon he, Mr. Pritchard, said the peon was mistaken and had probably taken Nanja Pillai's brother who resembled him for Nanja Pillai; that he left Namkul at 2 P. M. and at a distance of 6 miles met Nanja Pillai and others returning from Madras; that Nanja Pillai gave him a letter from Mr. Michell of Madras, dated September 8th, and that he told Nanja Pillai the case had been adjourned to the 16th or 17th. Mr. Pritchard further states he appeard for all the accused, that he saw some of them after the interview with the Divisional Magistrate and told them the case was adjourned. He denies that he ever instructed them not to appear on the 10th.

11. The following points are apparent from Mr. Pritchard's statement—that the Magistrate believed all the accused would be present on the 10th, that the Magistrate would not have granted an adjournment if they had been present; and that the Magistrate considered Mr. Pritchard was in error in supposing Nanja Pillai was still at Madras. The Magistrate states that Mr. Pritchard is mistaken

in saying he saw him at 7 A. M. at Namkul inasmuch as he passed the night at Yerrumapatti and did not reach Namkul until 9 A. M., and that owing to a difficulty in procuring carts, his clerks did not arrive until later in the day; that he desired to proceed with the case on that day as the warrants were returnable on that day; that he attended Court at 10-30 A. M. and, very shortly after Mr. Pritchard entered the Court and "much to his astonishment" applied for an adjournment; that he—the Magistrate, ordered the parties to be called, whereupon Mr. Pritchard observed—"not one is present, for I have not seen a soul up to this time here"; that he asked Mr. Pritchard to wait as they might turn up; that Mr. Pritchard replied that he had made every arrangement to start for Salem at once; that the peon returned and stated that all the witnesses were present but no parties; that he (the Magistrate) was much annoyed, finding himself again constrained to adjourn the case; that Mr. Pritchard had scarcely left Namkul for Salem when Nanja Pillai and two more of the accused were brought before him in custody, having been arrested under the warrants he had issued; and that, on his enquiring why they had not attended on the 6th or the 10th, they replied Mr. Pritchard had instructed them not to attend the Court as he would have the case adjourned.

12. The Magistrate can hardly be mistaken as to the hour at which he held his Court on the 10th. He gives reasons why it could not have been earlier than he has stated, and Mr. Pritchard has probably been mistaken in his recollection on the point. The account which the Magistrate gives of the proceedings in Court in the presence of Mr. Pritchard does not substantially differ from that given by Mr. Pritchard and it exhibits equally with the account given by Mr. Pritchard the Magistrate's reluctance to consent to an adjournment and his expectation that the accused would be brought before him.

13. Again, it seems probable that Mr. Pritchard was mistaken as to the distance from Namkul at which he met Nanja Pillai. If Mr. Pritchard left Namkul at 2 P. M. he would not have accomplished six miles of his journey until after 2-30 and as Nanja Pillai was on foot, he would hardly have reached Namkul and have been arrested before the Magistrate's Court was closed. Now he was certainly brought before the Magistrate on that day. The question at what hour and at what place Mr. Pritchard met him is not however very material. What is material is the excuse he gave for his absence and on this point the District Magistrate had nothing before him to contradict the statement of the Divisional Magistrate. It may be true that Mr. Pritchard did not tell his clients they might disregard the Magistrate's order, but it may also be true that Nanja Pillai and the other accused gave that excuse and this is clear that Mr. Pritchard knew very well when Nanja Pillai accompained him to Madras; that if the Magistrate did not grant the adjournment for which he had applied, Nanja Pillai had resolved to disobey the Magistrate's order and not to present himself before the Magistrate on the 6th September. The Magistrate states that his authority having in other instances been treated with similar contempt, he considered an example necessary; and that solely with an object of putting an end to such irregularities and believing it his clear duty, he ordered the prosecution of the appellant.

14. It appears to the Court to be unnecessary to travel out of the facts of the case and to seek for a motive in the supposed vindictiveness of the Divisional Magistrate because an order passed by him had been made the subject of an application to this Court.

15. The conduct of the accused had been apparently such that the Magistrate had been twice constrained to adjourn the trial. How greatly such adjournments render the Court's administration of justice distasteful to the people and indispose them to assist in it is so well known to the authorities to which the Magistrate is subordinate that they are constantly pointing out to the Subordinate Magistracy their duty to abstain from granting adjournments. When a Subordinate Magistrate finds that the accused do not even trouble themselves to ascertain whether he is willing to entertain an application for an adjournment but on two occasions constrain him by their absence to grant it, he cannot be considered to have acted from harsh or unworthy motives in endeavouring by all proper means to enforce his authority, avoid a waste of the time of public servants, and protect complainants and witnesses from grievous inconvenience.

16. It remains only to notice one expression from which the District Magistrate has drawn an inference unfavorable to the Divisional Magistrate. The Divisional Magistrate in his first explanation stated that Mr. Pritchard on the 10th September made an application for an adjournment "much to his astonishment."

17. The District Magistrate having before him the Divisional Magistrate's letter of the 9th September infers that the statement is untrue; that the Divisional Magistrate knew an adjournment had been asked for and therefore could not be astonished it should be made.

18. What the Divisional Magistrate meant to convey appears to be this,—not simply that he was astonished that an adjournment should be applied for, but that, having intimated he would not grant an adjournment unless the accused constrained him to do so by failure to attend, he was astonished at the application because it could only be made on the ground they were not present and he believed (and that he did so believe is clear from Mr. Pritchard's statement) that they were or would be present.

19. The Court sees no reason why the Divisional Magistrate should have altogether unnecessarily committed himself to an untrue statement on an immaterial point and on the other hand the explanation above suggested is consistent with the passage in the Magistrate's statement which immediately follows the words on which stress is laid.

20, Having considered the statements of Mr. Pritchard and of the Divisional Magistrate, the Court is of opinion that the Divisional Magistrate is not deserving of the censure passed on him by the District Magistrate.

(True Extract.)

/Signed/ W. Morgan,

Dy. Registrar,
Appellate Side.

/True Copy/

J. Morgan

Deputy Registrar,
App: Side.

Exmd—N. Lakshmanarao.

/ Signed / W. Morgan,

/ True Copy /

W. Morgan

Deputy Registrar,
Appl: Side.

In Judl: 1380/81.

No. 909

CURRENT No. 1380.

FROM

W. MORGAN, ESQUIRE,
Deputy Registrar of the
High Court of Judicature at Madras.

To

THE HONORABLE R. DAVIDSON, C. S. I.
Chief Secretary to Government.

HONORABLE SIR,

I am directed by the Honorable the Chief Justice and Judges to transmit, for the information of Government, the accompanying copy of the Proceedings of this Court dated 3rd May 1881, No. 908

HIGH COURT OF JUDICATURE,
MADRAS, 3rd May 1881.

I have the honor to be,
Honorable Sir,
Your most obedient servant,
W. Morgan
Deputy Registrar,
Appellate Side.

Exd.—N. Lakshmana Rao.

Judicial (Sdd) Department
(Mr Sharkey)

No.

R.D.
6 MAY 81

From

The Deputy Registrar
of the High Court of
Judicature at Madras

Dated 3rd May/81
Received 6 —

CURRENT No. 1380

No 909

Transmitting for the
information of Govt.
Copy of H.C. Pro: of 3rd May/81
No 908.

Capital! here is some
hope for a subordinate
officer — when the High
Ct. give such Colour[illegible]
[illegible] pains as this!
A.
[illegible] 23/7

Salem D
Camp Valappady
Dated 20th May 1881

No. 1280.

CURRENT No. 1587.

From

The Ag Dt. Magistrate
of Salem

To

The Chief Secretary to
Government

Madras

Sir,

I learn that a copy of High Court Proceedings 3rd May 1881 No 908 has been sent direct to Government and I therefore respectfully request that orders may be speedily passed by Government in the matter of Mr Sharkey's transfer.

2. It would not be seemly for me to comment on the Proceedings of the High Court. I will merely remark that they have accepted Mr Sharkey's version and colouring of the facts and have refused to give credit to Mr Pritchard's statements; but I, who know both men, consider that Mr Pritchard is the more worthy of belief.

[illegible]
L

3. I therefore respectfully renew my application that Mr Sharkey may be removed to some other employment.

I have the honour to be
Sir
your most obedient servant

J. Nicolls

Ag Dt Magistrate

Compared
Pas

Judl. (1881) Dept.

(Mr Sharkey)

From

The Ag Dt Magistrate
of Salem

R.D.
5 MAY 81

To

The Chief Secretary to Govt.

Ootacamund

Dated 20 }
Despd 23 } May 1881
Recd 25 }

No. 1280.

CURRENT No. 1587

Requesting that orders
may be passed by
Govt in the matter of
Mr Sharkey's transfe

Judicial DEPARTMENT.

No.

From The Ag District Magistrate, Salem,
d 16th Decr 1880 reporting on the moral
unfitness of Mr Sharkey, the Dy
Magte, to exercise magisterial powers.

Endorsement of the Revenue Deptt d 20
Decr 1880 transferring an explanation
submitted by Mr Sharkey.

Confidential letter from Mr Stokes
d 16 December 1880.

Letter from Mr Sharkey d 27 Decr 1880.

Letter from the Registrar of the High
Court d 3rd May 1881 No 909
transmitting Proceedings of the
High Court in Mr Sharkey's
case.

~~FOR ORDERS~~

Letter from the Ag District Magistrate,
Salem, d 20 May 1881 No 1280,
requesting orders in the
matter of Mr Sharkey's transfer.

For Orders.

I think there is a
that arose later

?Tinnevelly

in Madura. in wh. the Dt. Magte. of that Dt. referred Mr. Sharkey's conduct to the H.C. & we desired that the result might be reported.

Has this report come?

28/5/87.

Salem Pritchard Matter

FOR ORDERS.

I hope it won't be long
before we get the [illegible]
in terms done by the
Dept. (if anything)
in the case sent by
Mr. [illegible] from
Tinnevelly (for the papers)
to Salem — where it
was disposed of by
Mr Sharkey —

[illegible] 23/1

Recirculated with
Current No. 2376/81.

12/

High Court
11th Jany 81.

My dear Forbes

In Mr. Sharkey's case

we have only as yet Stokes' Proceedings
but I am calling for the record
and for explanation — but these
the High Court will pass
orders unless Government
prefer disposing of the matter
themselves. The Court cannot
will express an opinion until
the full case is before it.

Yours sincerely
Lewes McIver

F.D.F.
8/1

---

cial DEPARTMENT.

on the moral
Magte, to exercise
ated 20 Decr.
submitted by
Mr Stokes
81
Mr Sharkey
is put up
dat

Note Mr Sharkey's conduct in the Salt Dept. is understood to have been unsatisfactory

G.V.F.
8/1

Salem [illegible] Matter

From
Mr Stokes
d/11-1-81

acknowledging
D/O of 10th
idem
in re
Sharkey.

Recirculated with
current No. 2376/81.

[illegible]

Judicial DEPARTMENT.

No.

From Ag Dist. Magte, Salem

Dated 16 Decr /80 reporting on the moral unfitness of Mr Sharkey, the Deputy Magte, to exercise Magl powers

FOR ORDERS.

Endorst. of Rev. Dept. dated 20 Decr. transferring an explanation submitted by Mr Sharkey.

A confidential letter from Mr Stokes on the matter is put up

6/1

A further letter from Mr Sharkey dated 27 Decr/80 received 6/1/81 is put up

8/1

__Note__ Mr Sharkey's conduct in the Salt Dept. is understood to have been unsatisfactory

8/1

Salem Pritchard Matter

By

Mr Sharkey Dy Ct

Magte Salem

FOR ORDERS.

Write d/o to Mr Iver–

"Stokes (Salem) has sent up certain papers with a report, charging Sharkey with falsehood & disingenuousness & asking for his transfer "as he cannot trust him"–

"But in a d/o, Stokes states he has also addressed High Ct. The Govt. therefore wd. wish to wait till they get – as they suppose they wd – copy of H. Cts Procs in the matter.

D. F. Carmichael

"I presume the H. Ct. wd. call on Sharkey for any further explanation he desires to offer – otherwise it is right to say he has sent in ~~an~~ exculpatory statements of some length".

D. F. C.

8/1/1

Do despd accdly

10/1 R.T.S.

1881

Recd No: 4 Encl. 26th Jany 1881, No 180

The Dist. Magte will forward any proceedings that may be passed by the High Court immediately on receipt thereof

S. T. Forbes

The Dt. Magt: Salem. Desp. 26/1. for Chief Secy

C 8/1