Sectt. II.27—45,00 —15-11-35.

Judicial (1884 ~~193~~) Department.

Ordy SERIES.

G.O. No. 850

DATED 1—4—1884

Confidential

[Despatch Abstract.]

Application from the Dy Magistrate in General Duties, Madura, for the defence at the public expense of a Suit instituted against him — Sanctioned.

BACK PAPERS.

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

FURTHER PAPERS.

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

Confidential

No 135

18^3/Crl

From

The

To

The

Sir,

1 In con
dated 19th Feb
to forward a
No 67 of 1884
Munsiff of
follows

2.
x copy enclosed
sented by M
Madhava
Ultimo pray
of the case
ferred to
the Assistan
not only a
and private
my opinion,
to the Court

3.
Madhava
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of watching
rdinate in
I leave it
ther I deserve
Mad havaram
ler, who
rrister-at-law,
that man

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nt and what
mon witnesses
was the frequent
ned and not
representations
by her aged
a poor stranger
ters' witnesses
with by the
said was
, the town
leaded that

I read the
at first, the

---

imputation therein contained did n
strike me as the word (w–g) Pl
=iff escaped my notice. It was
her father that applied in person
for the summons o [illegible] half o
his daughter. I told [illegible] le
that if the old man, meaning
the woman's father, troubled
me, it was only in the Court
and not in my house and
pointed out to him that his
petition contained a false
statement. I was then speaking
in perfect ignorance of the ig=
nominious imputation it con=
tained. In the second reading,
however, the word w–g caught my
attention and the plea of her
being a common prostitute and
of the lewd motive imputed in the
cross examination to the Railway
Inspector and others all instan=
taneously flashed before my
mind and I at once felt what
the party was really aiming at.
I stopped reading the petition
further and in the heat of the
moment remarked that his

petition was impertinent and said that the writer of the petition whoever he might be must be a rascal as I knew that the imputation was false and that I thought that it was made with the object of intimidating me by imputing a false motive - I ted Mr. Fischer to apply for an adjournment in view to his getting the case transferred to some other court as I was not inclined to proceed further with it after such an imputation on my character. Meanwhile my clerk who perused the remainder of the petition brought to my notice that it ended in a prayer for an adjournment in view to get the case transferred I then perused the latter portion and found to my utter astonishment that Mr. Fischer had also signed it. I was too glad to give the adjournment applied for.

[illegible]

10 If the petitioner h any complaint against me was open to him to lay it befo you. This he has evidently not done. It was entirely un necessary for him to make th false imputation in the petition presented to me. It will therefore be seen that the imputation was a deliberate insult offered to the Court. Bu the real petitioner, Madhavaram on whose behalf Mr. Fischer said, he presented the petition, was absent on the occasion & nothing could be done to him immediately. Mr. Fischer could easily plead ignorance of the contents of the petition. I could therefore take no proceedings against either Mr. Fischer or his client under Section 480 of the Code of Criminal Procedure The case having now been transferred from my file an I being [illegible] cent

I appeal to you for support with te main object of vindicating the dignity of the Court.

11 I enclose a draft power for your approval. Should the Government not sanction the defence of the suit at the public expense, I am quite pre=pared to defend it at my cost. beg at the same time that permission may be granted to me for prosecuting and suing for damages the person or persons that have attempted to defame my character.

12 I beg to add that the case has been dismissed by the Joint Magistrate for default of the complainant.

13 As I had to search for authorities on the subject I have not been able to submit this report earlier. The leading case bearing on the point is West - Von Stansfield) reported at page 20 Volume III Law Reports Courts of

[illegible]

Exchequer. The suit is posted for hearing on the 26th March 1884.

I have the honor to be

Sir

Your most obedient Servant

M. Tillainyaham

D. Magistrate

11 - 3 - 84

Confidential

1884 Department

From

The Dy Magistrate
on General Duties
Madura

To

The District Magistrate
Madura

Dated 11 } March 1884
Received

No 135

Encs: 4

Submitting a copy of plaint in O. S. No 67 of 1884 on the file of the District Munsiff of Madura together with the draft written statement proposed to be filed on behalf of the Dy Magistrate.

ENCLOSURE No. 1

In a letter

FROM
THE DISTRICT MAGISTRATE,
MADURA.

No. 4.

Dated 24th March 1884.

No.

Application of the Dy Magte on General Duties, Submitting Copy of plaint and written Statement in a Suit instituted against him

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To

The District Munsif of
Madu

Plaintiff.
Mádavaram Munsif Ayyar
Madura.

Deft.
Ti[illegible]nayaka Pillay
Dy Magte.

Plaint presented under Section 50 of the Code of Civil Procedure

The Pltff Submits.

(1) That he belongs to the honourable family in Madura known as Sattu Teeraram Munsif Ayyar Avargal, and is a respectable Gouda Brahmin

(2) That at the instigation of some of his enemies, a Suit for maintenance was filed against him, in the Asst. Magistrates' office by one Ammani; as the Assistant Magte did not deal with the Suit properly, Pltff had it transferred to Defendant's file.

(3) That as the Deft. too did not conduct the Suit properly, the Pltff applied through his Counsel for an adjournment requesting that all further Proceedings be stopped with a view to get the case transf

the file of Some other Magistrate.

) That on the 12th Feby 1884, the date on which the above application was made, the Deft. in public Court, before the Plff's Counsel and Several others, called Plff. a Black-Guard, rascal, liar, impertinent fellow and several other names — all this without any cause whatever, out of spite and bad motive.

(5) That the above expressions means in Tamil which is the language of the Court, [illegible] [illegible], [illegible] [illegible] [illegible], and that the meaning is known to the Deft. and the aforesaid persons.

(6) That as the Deft. had used the above expressions, with bad intentions, it will lower the Plff. in the estimation of the People in Madras Town, and other places, and that it has proved detrimental to Plff's credit

(7) Cause of action arose on the 12th Feby 1884 the day on which the Deft. abused the Plff.

It is therefore prayed, that a decree may be passed directing the Deft. to pay to Plff Rs 600 as damages with subsequent interest and costs as estimated below and granting such other or further relief as the nature of the case would admit.

Amount of damages estimated by the Plff on account of the Deft. having unjustly and with bad intentions abused Plff. — Rs 600

(Signed by Plff)

(True Translation)

S. Magistrate
24/3

ENCLOSURE No. 2

In a letter

FROM
THE DISTRICT MAGISTRATE,
MADURA.

No. 4.

Dated 24th March 1884

No.

Translation of plaint

Draft. Written Statement of the D
in O.S. No 69 of 1884, on the fi
of the Court of the District Mu
Madura.

The Plaint shows, that
action in question arises out of
language alleged to be u d
by the Defendant, in a judi
Proceeding held before him as D
Magistrate, in the matter of a
claim for Maintenance under Chap
XXXVI of the Code of Criminal Proc
made by one Ammani against
Plff. The Suit therefore is unsusta

2. The Deft. asserting that the
imputation made against the
in the petition referred to in the
Plaint was totally false

3. The Deft. admits that he
used the expression 'rase l'au
denies that the other expressi
alleged were used by him, or tha
he acted with malice.

4. The Defendant submits, the

used the above expression, in remarking on the conduct of the author of the petition, and that, in so doing, he did not exceed the privilege possessed by a Judge, to comment on the conduct of parties before him.

5. Plff. is not entitled to any damages whatever.

6. The damages claimed are excessive

7. The notice required by Sec. 424 of the Code of Civil Procedure was not given

(Signed)
M. Tellanayakam Pillai
Dt Magte

C. S. Crole
Dt Magistrate
24/3

ENCLOSURE No. 3

In a letter

FROM
THE DISTRICT MAGISTRATE,
MADURA.

No. 4.

Dated 24th March 1884

No.

Draft written Statement

To

The Dt. Magistrate of
Madura.

Petition presented by Robert
Fische — Counsel onbehalf of
Defendant in C. No I of 1884 on the
file of the above Court.

1. The above case was origin
on the file of Mr. Robinson (Ass
who examined the witnesses cited by
the Plff and closed the evidence for
the prosecution,

2. Mr. Robinson, had told Mr
Pole -, Counsel, that he would prono
his judgment in the case.

3. Mr. Robinson did not do so, &
as he was adopting other measures
it was apprehended that the Def
would not get justice if the
continued to be on his file: a
motion was accordingly made before th
Dt. Magte for the transfer of
case and the case was then tran

-your file.

4. You ought to have pronounced your Judgment on the evidence of witnesses examined for the prosecution and instead of doing so, you have allowed the Pltff. to call for fresh witnesses and you have examined them. This procedure is contrary to Justice

5. After the examination of the fresh witnesses on the Pltff's side, a list of witnesses for the defence was given and their examination has been fixed for today.

6. While the Summonses for the Defence witnesses had been served on them, and the case was ripe for their examination to day, it appears that you have again taken a list of witnesses from the Pltff. and issued Summonses to 12 of them.

7. Besides, it appears from hearsay, that Pltff. frequents your house and it is on this account, that you are disposed to grant such indulgence

Note
It is to be borne in mind that Mr Fischer's case was that the woman is a "Common prostitute"

8. The procedure on your part of allowing the Pltff. to bring new witne often and often without closing case, is against Custom and Jus and gives room to my Client's enemie to fabricate false evidence.

9. For the above reasons, my clien believes, that he will not get justi if the case is in your hands.

10. My client is therefore prepared to present a petition to the Dt. Mag for transferring the case from your file.

11. It is therefore requested, that no further enquiry may be conducted in this case by you till such a petition is presented and orders passed thereon

(Signed) R. Fischer
Counsel for Deft.
" Madavaram Mosa-cyyar

(True Translation)

Dt. Magistrate

24/3

ENCLOSURE No. 4

In a letter

FROM

THE DISTRICT MAGISTRATE,
MADURA.

No.

Dated 24th March 1884

No.

Petition by Mr R. Fischer, Barrister at Law to the Dy Magte. for stopping further Progs in a case of maintenance

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misconduct, which

Madura Dt. Magtes office

No. 24th March 1884

From

C. S. Crole Esquire
Dt. Magistrate
Madura

To.

J. A. Daves Esquire
Registrar High
Appellate Side

Sir.

I have the honour to request you to lay before the Honorable The Judges. for such disciplinary action under para 10 of the Letters Patent, as may be deemed appropriate, the following Complaint made by the Dy Magistrate of Madura, against Mr Robert Fischer, Barrister at Law.

2. It appears that, during progress of a Case for maintenance Mr Fischer appeared before the Dy Magistrate with a Tamil peti- Signed by himself and the Dep

which Contained the following words;—
"Besides, it appears from hearsay, that
"Plff. frequents your house and it
"is on this account that you are
"disposed to grant such indulgence
It is to be borne in mind that Mr Fischer's
e was that the woman is a "common
rostitute"]
Certified Copy of the whole petition,
g with a translation is appended
this letter for reference.

The Dt. Magistrate laid the matter
before me, immediately after the occurrence
along with an indignant denial, that
the accusation Contained a single
word of truth. In fact, he asserts
that it was a false charge wilfully
made for the purpose of intimidation.
He further requested that the case
might be removed from his file.

I adjourned the Consideration
of the matter, by an order postponing
t until the Case, which I transferred
the file of another Magistrate,
d been disposed of, partly in the hope
t proper feeling would Come
the aid of the Advocate in
etion, and that he would purge
the Gross Contempt of Court;
ll of the

and professional misconduct, which
had Committed by submitting some rea
explanation of it, and by tendering a
abject apology.

5. Neither of these things has been done, a
as the original case is now disposed of,
nothing remains except, ~~except~~ to submit
the complaint, for the decision of
High Court.

6. I am given to understand, that
defence which will be adopted consis
two parts:— First, that no advoca
is responsible for statements howeve
odious or defamatory made by hi
in the interests of a client: Secon
that the charge, made against
Nagle in the present instance, wa
made in good faith by the client.

7. Now, the outrageous imputatio
made, is in itself a refutation of t
plea of bonafides, while the fa
that Mr Fischer is a European,
is able within my knowledge, to r
Tamil documents with the facility o
a native, negatives the suggestio
of ignorance of the Contents of
documents in question.

Moreover, it is perfectly futile for him,
attempt to shelter himself behind
a plea such as this. Mr Fischer had
long been employed on the case.

He had every reason for caution,
d, good grounds to be suspicious of
lient, for this was the second occasion
which that client had applied
r transfer of the original case, on
ground of the immoral bias of
Magistrate — Mr Fischer, just
before the Christmas Holidays, appeared
before me with insinuations of a
similar kind against the Asst.
Magistrate, on whose file the case
then was; and I removed the case
to the Dy Magistrate's file, as much
in the interests of the young
Magte in question as on any other
consideration. These facts were
known to the Dy Magte as well as
to Mr Fischer, and it is perfectly
preposterous for the latter to affect
believe, that the Dy Magistrate
ould have committed himself, even
ad he been tempted to do so

Another evidence of the charge
a malicious desire to insult
d intimidate, is the utter purpose
ness of the Statement, save that.

It could by no possibility be asser
that the Court of the Dy Magte
was the appropriate place in whi
to ventilate the grievance, if it exis

11. This fact the parties know very
well; and the proof of it is, tha
an application for transfer was lo
in my Court on the self same da
This document, however, contain
no allusion to the accusations ma
against the Dy Magte, by Mr Fi
It was a perfectly decorous and resp
document. It was presented, however
by another Vakil, Mr John
This circumstance leads to the almost
unavoidable inference, first, that the
slanderous imputation on the Dy Magte
was made on Mr Fischer's responsibility and second
that it was false

12. If there had been the slightest
colour for it, the charge would
most undoubtedly have been reiter
in my Court — the only place in
which it could be investigated: or
in which, the making of it would
have served any useful or hone
purpose; yet, although Mr Fisch
had aggravated the heinousness

is contempt by asserting before the Dy Magte, that the charge made in the petition could be proved, no allusion whatever was made in the petition filed before me to a circumstance, which would never have been concealed had it been in any way true.

3. In any case, I consider that Fischer is liable for the consequences d that it is undoubtedly necessary the interests both of the dignity d independence of the Bench, and of the reputation and honour of the Bar in Madura, that the fact should be brought home to both in the most unmistakeable manner by the application of the sternest measures of repression and punishment on the part of the High Court, in the present instance. If such protection be not extended, ~~[illegible]~~ it will be futile to look for the honest and fearless discharge of duty from the Native Judiciary.

14. I have informed the Dy Magte, that his duty was at once to suspend the offending Advocate 2 from practice in his Court, as well as in those subordinate to him, pending the final orders of the Honourable the Judges. I sho feel obliged by the High Court expressing an opinion as to the propriety of that direction.

15 As I have said, the Dy Magte Compl to me of the Conduct of the Advoca in question immediately after it occurrence. As a sort of Counterbla to this, the party (Deft before the Dy Magte) has been induced to bring a civil action for defamation against the Dy Magte for expressing condemnation of, and indignation at, the outrage committed on his Court. This, of course, does not affect the matter which I now submit for orders.

(Signed) C. S. Crole
Dt Magist

(True Copy)

C S Crole
Dt Magistrate
24/3

ENCLOSURE No. 5.

In a letter

FROM
THE DISTRICT MAGISTRATE,
MADURA.

No. A

Dated 24th March 1884

No.

Copy of letter to the High Court, bring to notice the professional misconduct of Mr R. Fischer, Barrister at law. Madura

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Confidential

No. A.

Madura Distri
Magistrate's offic
24th March 188

From

C. S. Crole Esquire
District Magis
Madura

To

The Honourable E. F. Web
Chief Secretary to
Government, M

Sir

1. Translation of plaint.
2. Draft written Statement
3. Translation of Petn presented by the Pltff to the Deputy Magistrate

I have the honour to Sub for the Sanction of Government application accompani by the marginally noted pa made by Mr Tillanayaka Pillai, B. A. General Du Dy Magistrate of Madu for the defence at the public expen of a Suit instituted against hi under the following Circumsta

2. During the progress of enquiry into a petition for main by a certain woman, her husba or paramour, whichever he ma is not known, thinking that case was going against him, i through Mr R. Fischer, Barri

Law an application, Seeking for adjournment; in view to obtaining the removal of the case to another Court, on the ground of the Dy Magistrate's immorality with the Complainant in the case.

3. The Dy. Magistrate with not unnatural indignation, denounced the concocter of the Slanderous imputation, as a rascal or used words to that effect. He at once adjourned the case, applied to me to remove it from his file, and reported Mr Fischer for professional misconduct.

4. The party was then induced to file this Suit for Rs 600 damages for defamation. The Case is extremely Simple. The plea of privilege is a Complete defence to it. I Submit, that it is a case in which the Dy Magte is entitled to be defended by Government. His Character is above all Suspicion, and he merely performed a plain duty in resenting a wanton insult offered to the Bench.

5. I beg to Subjoin for information a letter+ which I am about to ad to the High Court, on the Conduct of the Advocate alluded to

+ Copy enclosed

I have the honour to be
Sir
your most obedient S

Distt. Magistra
24/3

copy of telegram
to Dt. Magt. Ma
Despd. on 1 Ho

Your letter 24
No 4 defence of
sanctioned.

C. No. 1261. Jud^l

Magisterial

(1884) DEPARTMENT

DISPOSED OF
1st APL 84
Dt. Magte
BY G. O. No 850 (Mis)

FROM THE ~~COLLECTOR OF~~ MADURA.

No. 4

ENCLOSURES 5

Dated } 24th March 1884.
Received } 26

No.

SUBJECT.

Submitting for Sanction, an application from the Dy Magistrate on General Duties, Madura, for the defence at the public expence, of a Suit instituted against him, by one Madavasami Musar appar of Madura.

⊙ I don't think any reasonable exception can be taken to Mr Forbes' letter.

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the defence of

paper was only brought yesterday 26th March

Order: 1 Apl/84 G. O. No. 850 (Mis)
28/3

The defence of the suit is sanctioned

26–iii

Mag. Madura
Genl. } despd 2/4/84

Tel. despd 1/4

A case of maintenance was brought in the Court of the assistant Magistrate Division, Madura, Mr Fisher, barrister, applied transfer of the case on the ground of the "bias" of the Magte, the Dist Magte granted transfer to the Native Deputy Magistrate! imputation was made in a petition before the Deputy Magistrate by Mr whereupon the Magistrate called Fisher's client a "rascal". This man sued the Magte in the civil for damages, he wants his sanctioned at government expence is requested to paragraph 9 of letter to the High Ct. This submitted Magistrate, is not justified in to the High Ct without apparently assistant Magistrate know of the made against him, and with that he half believes them

26–iii