CONFIDENTIAL.

21. v.

CHIEF SECRETARY'S
23 MAY 1895
GOVERNMENT OF MADRAS

My dear Price
Next month I have to
send a report on the Varada
Rao's work. I cannot report
favourably on him. He prefers
to do work. Nearly all he does
is for show — there is but
little solid work.
In my opinion he will never
be fit to be a Divisional
Officer. He is too fat &
unwieldy. He seems to be
stomach [illegible] the medical [illegible]

Vizagapatam

Judicial (1895) Department.

ORDINARY Mis

G.O., No. 1677

Confidential No 131

DATED 10-8-95

[Despatch Abstract.]

Mr. T. Varada Rao

Passing orders on the half-yearly report of the Collector of Malabar on the work of —, Asst. Collector, and the suggestion that — should be sent before a medical board.

BACK PAPERS.

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

FURTHER PAPERS.

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

~~Current~~ No.

Jud^l DEPARTMENT.

From

H. Moberly Esq. ICS

No.

Dated 21 } May 1895
Received 23 }
Enclosures

SUBJECT.

Suggesting that Mr T. Varada Rao Asst Collr, Malabar, should be ordered to appear before a Medical Board.

Cr.

D.O.

My dear Moberly,

Your D.O. of the 21st regarding Mr Varada Rao ~~I am to say that~~ If you consider him physically unfit for service, you should report officially in the matter.

Yours sincerely
(Fr. Orders)

11/6/95
D
10-6-95

H. Moberly Esq. Desp^d 13/6

Hm. & Circ.

For Orders

It is submitted that Mr Moberly should be told to make a formal recommendation on the subject if he considers Mr Varada Rao physically unfit for service.

D
27-5-95.

28/5/95.

Mr V. Row has not completed ten years service though he has very nearly done so. Ten years service will entitle him to pension of Rs 1500 per annum. If invalided before then he will get only a gratuity of one months pay for every completed year of service = Rs 3225

CSP
R 1626

28/5

I should say Mr Moberly shd report officially. As to V. R.'s service he ~~has~~ loses a good deal, apparently, under the rules, thus:—

	M.	D
Excess of Probationary period over 2 years		23
Jan 15 to May 14, '86, Med. cert:	4.	0
3/8/91 to 1/2/92, Spl. leave	5.	29
17/10/92 to 7/11/92, Sub. leave		22
	11 ·	14

None of this seems to count for service. It will ∴ be a year more before he attains 10 yrs. service.

29/5/95

Write Mr. to report officially if he considers Varada Rao physically unfit

30/5

W
1 June

In the Court of the Assistant Second class Magistrate Malabar.

Present— T. Varada Rao Esquire
Assistant Magistrate.

Calendar No 4 of 1895.

Complainant— Regina (on complaint of Nambiatti Chunthi Kandan ——)

Accused.
1. Nagathankavil Sami Kurup
2. Marallah Perachen
3. Cherukulangara Ramunni Nair
4. Puthiavittil Ukkaran Nair.

Offence and Law— House breaking by night with intent to commit theft and theft in a building sections 457 and 380 I.P.C and against 1st 2nd and 3rd accused in addition under section 75. I.P.C.

Finding of the Magistrate— Case not proved.

Sentence and order— Accused discharged under section 253 C.P.C

Judgment

The four accused before the Court, viz Sami Kurup Perachen, Ramunni Nair and Ukkaran Nair are charge sheeted by the Police on a charge under sections 457 and 380 I.P.C.

2. On the night of the 30th January 1895 these men are alleged to have broken into the shop of Tiyan named Chunthi-Kandan at Karaparamba and stolen new clothes to the value of Rupees 200 or thereabouts

Some of the items lost are alleged to have been discovered by the Police and produced in Court in consequence of information disclosed to them by the 1st, 2nd and 4th accused.

3. Prosecution 1st witness Kunhi Kandan the owner of the shop deposes that he found his shop broken open on the morning of the 31st January 1895. He had left the shop the previous night at 8 P.M. having properly secured the doors. The shop consists of two rooms one of which contained the clothes for sale which are said to have been stolen. On reaching the shop at 6.30 A.M. he found the south western wall broken open at about a stone's height from the floor. The hole was half a Kole square sufficient to admit a single person to crawl in at a time easily. Entering the premises he found a large portion of his stock in trade had disappeared. He also found a half burnt torch with a number of burnt lucifer matches on the floor and a piece of sharp iron. There was also a dirty piece of cloth, one corner ~~of which~~ was tied into a knot. It was found to contain a letter marked Exhibit A, to which reference will be made later on.

4. The complaint to the Police was made at 4 P.M. the same day and is marked exhibit B. It contains a list of the properties which the complainant professed he had lost and which he valued at Rs 150. Before the Court he raises the figure to Rs 200 which, he says, is only an approximate estimate,

As the man admits, he does not keep an account of stock and must therefore depend upon his memory for the amount or value of the goods in his shop on the night of the occurrence, the actual extent of his loss cannot be accurately determined.

5. Prosecution 2nd witness Ramunni Menon, Head Constable, Nagaram Police Station, says that the 1st and 2nd accused were arrested on the 3rd February 1895, near Eranjipalam and at Kallipuram respectively. They were separately examined by the Police Head Constable and admitted to him having secreted the share which fell to them in a temple called the Nagathan Kavu. To this spot the Police, accompanied by the complainant the two accused and the adhigari of Cutcherry Amsam, repaired and forthwith the 1st accused entered the Kavu and produced a bundle which contained a great part of the property now recovered and produced in Court. It is now necessary to refer in detail to exhibit A. It runs thus. "Written by Nagathan Kavil Sami Kurup (1st accused) I intend to break open into the clothes shop of Kunhi Kandan at Karaparamba you - my friend Perachen - and Chambadan Sami must come together immediately you get this note. Thus to Marakkat Kandi Perachen (2nd accused) written by Nagathan Kavil Sami Kurup." The underlined words are written as a note in the margin of the letter. On the top appears the letter "Shri" and the figure 18 in English. The note is

is written on thin paper in pencil and bears too large oil stains. The contents of this note are referred to in exhibit B, the Complaint, so that when on the 2nd February 95, the station house officer, prosecution 2nd witness, met the 1st and 2nd accused, he was able to question them in regard to the matter of house breaking which they denied having taken part in. Chandu Menothi met the station house officer at 3 or 4 P.m the same day ie after the 1st and the 2nd accused and gave him some information which induced the station house officer to arrest the men the following day.

6. Prosecution 3rd witness Chandu Menothi swears that at 11 or 12. P.m on the night of the 30th January 1895 he saw near the Karaparamba bridge the four accused persons and they said that they were waiting for a friend. The shop appears to be in the vicinity of this bridge. Prosecution 3rd witness says he told Complainant this on the 3rd day, which would be on the 1st February 1895 — a Friday — and the Police on the 4th day or 2nd February 95, a Saturday. On the following day he was confronted with the 2 accused who as already observed are said to have made a clean breast of the whole affair.

7. On a careful perusal of the Police Note Book I find that on

on the 3rd February 95 beyond the statement of Chandu Menothi regarding the accused there was nothing before the Police implicating them. The 1st accused is an old offender and being a hardened thief, I do not believe that ordinary moral influence induced him to make a clean confession to the Police soon after his arrest. The same reason prevents me from assuming that the statement of Chandu Menothi regarding his presence on the night of the occurrence at or near the Karaparamba bridge is such as to alarm an experienced hand like the 1st accused into making an admission. From all that I can make out of his appearance and demeanour in the dock, I am convinced that the 1st accused is distinctly able to distinguish between strong and weak evidence.

8. Returning to the discovery of property at the Kavu, I find that the following witnesses depose to facts concerning it viz, prosecution 1st and 2nd witnesses and the prosecution 4th witness Karunakaran Nair the adhigari. Prosecution 1st witness says "the temple was locked when we went to the spot. 1st accused said he had lost the key of the temple. Ramunni menon Head Constable asked him for the key." On this point Prosecution 4th witness the adhigari says. "The Head Constable asked

the 1st accused for the key of the temple. The Head Constable said "In whose possession is the key"— 1st accused said "The key is in my Fathers' hands. The father was not sent for". This is discrepancy No. 1.

9. Prosecution 1st witness joined the party on their way to the temple. He says: "The temple was searched at 12 noon. I did not hear 1st accused say anything relative to the property. He simply took out the clothes from inside the temple," also "I did not hear 2nd accused say anything". On this point he is Contradicted by the Head Constable prosecution 2nd witness and the adhigari prosecution 4th witness. Prosecution 2nd witness says: "Both 1st and 2nd accused said they had placed the bundle there (in the temple) 1st accused took it out. The Inspectors heard the 1st accused say "we kept the bundle within the temple". The Complainant also heard it. Prosecution 4th witness says "Complainant was present when accused Confessed". Both the adhigari and the Complainant joined the Police on their way to the temple. It may be asked what occasion was there for the 1st and 2nd accused who were in the Custody of the Police to reiterate their Confession en route. This is explained by the adhigari. The Inspector asked the accused if they

were not being taken to the temple, on a wild goose chase. Thereupon the accused declared positively that they were going to give up the property secured therein. It is impossible to explain why if the Complainant was present at the time, he does not remember this conversation.

10. Last of all it has not been made out by the prosecution that the temple is in the exclusive possession of the 1st accused or that no body had or Could have access to it without the knowledge of the 1st accused. Sifting the evidence I find that the only point against the 1st accused is that the kavu is in the same paramba on which his house is. The witness for the prosecution start with the statement that the temple is in the possession of the 1st accused, but when invited to give reasons for their belief they are unable to find any. Prosecution 1st witness says it is a deserted temple. There is no worship. Head Constable prosecution 2nd witness declares that the kavu Consists of one room and is thatched. The house of the 1st accused is 50 yards from the kavu and is the nearest house to it. The Eranjipalam is thickly inhabited. Prosecution 2nd witness is sure that the kavu is in the possession of the 1st accused, but his sole reason for saying so is that he lives in the same paramba. There is no daily worship however, but an annual

festival. The 1st accused had been out of jail for 7 or 8 months. He has no information in whose possession the Kavu was during the incarceration of the accused - he believes it may be with his house-people. The accused was in jail for two years. The witness is not aware who put him in possession when he got back. Although a Nair he cannot say whether a temple would be considered polluted by the entrance within its precincts of an ex-convict. All this is surely not straightforward. Much stronger evidence is required to prove exclusive possession. Prosecution 4th witness distinctly says 1st accused is not in possession of the temple, but that the proprietor is one Nani Varassiar. He ought to know as he is the owner of the Jenm of the paramba which he has leased to the father of the 1st accused.

11. Prosecution 7th witness Matthu is the owner of a house near this paramba. He swears that the Kavu is in the possession of the 1st accused. Matthu gave evidence in C.C. No 103 of 1887 regarding the discovery of property - a case which is in all fours with the present case. The last occasion on which he had been to the Kavu was two years ago.

12. The padlock which the prosecution 2nd witness opened is one of the commonest description. It is very ancient and rusty. Any ordinary nail ought to be sufficient to open it. The Head Constable says

he had some trouble in opening it but he admits he had to only pull it violently to open.

13. Between this Case and Case No 103 of 1887 on the file of the Tahsildar Magistrate of Calicut, there are points of very striking agreement. Nagathan Kavil Sami Urup is the accused in both the cases. The offence is theft of new clothes valued at Rupees 135 from the same shop as in this case, and the Complainant is of course the same. The properties were recovered on Confession by the Police in both the cases, the only variation being that in 1887 they were recovered outside the temple under a shrub jungle and now within the temple itself. Prosecution 2nd witness Raman unni Menon, Head Constable, conducted the investigation in both the cases.

14. Exhibit A is a remarkable document. It is addressed to the 2nd accused who is addressed as "Perachan my friend" by the 1st accused. It makes an assignation at the very shop which it was intended to loot. The shop is named in definite and clear terms and the owners name and the class of articles stored therein are also described. How it was delivered to the addressee does not appear from the evidence. It was found in the shop itself by the prosecution 1st witness on the morning of the 31st January 1894

It is scarcely credible that any such document if it was really framed would have been left behind in the manner alleged. As the 1st and 2nd accused deny before me their having made any Confession I have been led to examine the evidence adduced by the prosecution closely. Unfortunately the Confession was not recorded in the presence of the Police Inspectors Lafemais and Veeran Kutti. They appeared only after the prosecution 2nd witness had finished the examination of the accused.

15. The evidence against the 4th accused has next to be examined. He was arrested on the 12th February 95 and from him prosecution 5th witness Konu Kurup, Head Constable No 1311 is alleged to have received a statement revealing the disposition of the property which fell to his share. They were five mundus which were found buried in a paramba known as the Mundacheri paramba in Kottuli Amsam. This witness says: "4th accused pointed out to me the Cocoanut tree (under which they were buried) and he took out the mundus. Prosecution 5th witness admits the paramba, where the properties were found is accessible to all. In the case of the 4th accused als there does not appear to be sufficient ground for assuming an adequate motive for making a Confession to the Police. He was arrested as his name was mentioned by Chandu Menoki, prosecution 3rd witness. Prosecution 5th witness

Says "I questioned him and said he must tell the truth. I said "we know everything, you must confess the truth". This was sufficient to draw out the Confession.

16. Prosecution 6th witness Sreedharan Nambudri, the Adhigari of the Amsam, was present when the Police discovered the mundus. He says the bundle (containing the mundus) was buried 1½ feet deep in a sandy soil. The paramba is an open plain and there is a house near, which belongs to a Tiyan.

17. Prosecution 8th witness Kanaran Nair — a pensioned Police Constable says that Exhibit A is in the handwriting of the 4th accused. He was a servant in his wife's house and was educated with the Children of the family.

18. The most important evidence against the 4th accused is his Confession Exhibit C recorded by the Town Sub-Magistrate of Calicut on the 12th February 95. It is a Confession recorded under Section 164 C.P.C. The first question put by the Magistrate was "Where is the Police officer who accompanied you" to which the accused replied that he had been sent outside by order of the Court. The next question was "Do you know anything about the three lots of new clothes produced before the Court." Answer "Sami, Ramunni Nayar and Parachan and I stole this on the 18th Makaram at night from the shop of Kunhi Kandan which we broke through. Ramunni Nayar went in and brought out the clothes. We divided them into three shares in a place near

Karaparamba. One share fell to Sami Kurup and Perachen, One to Ramunni Nair and One fell to me which is now before the Court. I gave up the property from a paramba where I had buried it. All the above is voluntarily stated." Question "Did you write the letter shewn to you Exhibit A"? Answer "Yes I did - Sami Kurup and Ramunni Nair made me write it to Perachen. I wrote and gave it to Sami Kurup. I do not know who gave the letter to Perachen. All the above is stated voluntarily."

19. The magistrate who was examined by me as 9th prosecution witness states that he warned the man more than once, that anything said by him would be used against him and that he did so before recording the statement. It will be remembered that the magistrate directed the Police officer who accompanied the accused to stand out during the examination. Section 164 C. P. C requires that no magistrate shall record a Confession unless upon questioning the person making it. he has reason to believe that it was made voluntarily. The belief, I consider, should be the result of questions put to the accused by the magistrate. In this case I find that no questions were put to the accused to arrive at the belief because the magistrate admits that there were no questions put to the accused to elicit that he made the statement voluntarily.

Such a belief cannot properly accrue from the mere statement of the accused that the Confession is voluntary. When an accused fresh from the Custody of the Police is produced, and is ready to make a Confessional statement he is not likely to draw back when asked if the statement is voluntarily made. It is independently of any declaration from the accused i.e by questions put to the accused, that the magistrate must arrive at the belief that the Confession to be recorded is a voluntary Confession. It appears to me that the magistrate may have safely remanded the prisoner to Custody under the instructions contained in standing Order No. 1 of 1888, before recording the statement.

20. This Confession is retracted before this Court, and the accused alleges that he was tortured by the Police to make it. He is unable to substantiate the allegation regarding the torture

21. The evidence before me consists of the Confessional statement Exhibit E, supplemented by the discovery of property under circumstances which cannot be considered free from suspicion. The Confession is retracted before the Court during the trial.

22. The accused Nos. 1 and 2 allege that there is special Cause of enmity between them and the Complainant. Against the 3rd accused there is no legal evidence

and the confessional statement of the 4th accused, I have determined not to rely on. I discharge the accused under section 253 C.P.C. The property will be returned to the prosecution 1st witness.

Calicut
28th March
5. P.m.

Sdj. T. Varada Rao
Assistant Magte.
2nd class

(True Copy)

Sdj. T. Varada Rao
30/3
Asstt Magte
2nd class.

5
Judl. Dept.
3
3083

(True Copy)

District Magistrate

Calicut
24-6-95

Ma
25.6

Proceedings of the District Magistrate of Malabar dated 30th May 1895.

Read again Copy of judgment in Calendar Case No. 4 of 1895 on the file of the Assistant 2nd class Magistrate, Malabar.

Read also record of the Case.

2nd accused Perachan and 4th accused Ukkaran Nayar are present in obedience to the notice issued to them to shew cause why further inquiry should not be ordered in the case

Order.

Accused 1, 2 and 4 in Calendar Case No. 4 of 1895 on the file of the assistant 2nd class Magistrate were called upon to appear today and shew cause why the order of the Assistant Magistrate discharging them should not be set aside and a further inquiry ordered. The 2nd and 4th accused have appeared in person. The 1st accused has not put in an appearance although notice to appear was served on him on 22nd instant.

2. I have perused the records and do not think that there is sufficient evidence against the 2nd accused to warrant me in ordering further inquiry into his case. The evidence of the 2 Police Inspectors, who have not been examined as witnesses, would not strengthen the case against him; so no further inquiry will be ordered in his case.

3. As regards the 1st and 4th

accused, there are good reasons for ordering a further inquiry. It is in evidence that the house of N. Kunhi Kandan was broken into on the night of the 30th January last and certain properties stolen, that on the 3rd February 1st accused was arrested when he confessed to having concealed some of the stolen property in the Nagathankaon temple, that he was at once taken to the temple, that he entered the temple and in the presence of the adhigari and two Police Inspectors brought out a bundle containing some of the stolen property. The Assistant Magistrate has endeavoured to discredit this evidence (1) by pointing out two discrepancies which would have probably been explained away had he taken the trouble to question the witnesses and (2) by stating that the prosecution has not proved that the temple is in the exclusive possession of the 1st accused or that no body had, or could have had, access to it without the knowledge of the accused. As to this last argument I can only say that if the property had been hidden in the temple by some person other than 1st accused and without the knowledge of the 1st accused, the 1st accused would not have admitted that property was hidden there, nor would he have taken the Police to the spot and produced the bundle.

4. Mr Varada Rao's bias against the Police is apparent throughout the judgment. He has not examined the 2 Police Inspectors, who accompanied 1st accused to the temple and saw him enter and bring out the bundle of stolen property. He refuses to credit the story, in other words he accuses 2 Police Inspectors, a Head Constable and an Adhigari of an attempt to fabricate false evidence.

5. In para 7 of his judgment the Assistant Magistrate refers to "the Police

note book". It is not stated whose note book was referred to and I am at a loss to know under what section of the Indian Evidence Act this note book was admitted in evidence. I have asked Mr Varada Rao to explain, but he has failed to give me any explanation.

6. So far as 1st accused is concerned the evidence of Mr Lafernais and the Taluk Police Inspector should be taken under C. P. C section 437. I order further inquiry into the case against 1st accused.

7. The evidence against 4th accused shews that he was arrested on 12th February, that he admitted having buried some of the stolen property, that he took the Police and the adhigari of Kottuli Amsam to a paramba, that he dug up the earth near a cocoanut and produced 5 clothes which he admitted had been buried by him, that he was at once taken to Calicut and produced before the Town Sub Magistrate, and that before the Town Sub-Magistrate he made a confessional statement. The Assistant Magistrate determined not to rely on this confessional statement although he has not given good reasons for thinking that it was not made voluntarily. Independently of this confession, the finding of 5 clothes in a paramba and the accused's admission before the adhigari that he had buried them are facts which are not easily explained away. The Assistant Magistrate discredits this story as "the paramba is an open plain and there is a house near". All I can say is if the accused did not bury the clothes why did he take the adhigari to the spot and admit that he had buried the clothes.

8. It appears to me that this accused has been improperly discharged. Under C. P. C Section 437 I order further inquiry into his case. All the witnesses who signed the search

23

list in his case should be examined.

9. As 4th accused is present in Court, ordered that he be bound over in the sum of Rupees 25 with one surety in the sum of Rupees 25 to appear before the Assistant 2nd class magistrate on Saturday the 1st Proximo

Sdy H. Moberly
ag District Magte

To,
The Assistant 2nd class magistrate
Malabar with records, bond
and bail bond.

(True Copy)

5
Jud
4
3083

W. Moberly

District Magte

Calicut
24.6.95

---

24 CURRENT No. 3083

Confidential

Malabar Collector's Office,
Calicut, 24th June 1895.

No. 34 Confl

From,
A. Moberly Esquire,
ag. Collector of Malabar,
Calicut.

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

Sir,

I have the honour to furnish the report called for in G. O dated 12th January 18 No. 64.

2. In my letter dated 18th Decem 1894 No. 17, I reported on Mr. Varada Rao's work between 16th August and 18th December 1894: my present report deals with his work since the latter date.

3. In his magisterial work, Mr. Varada Rao has certainly shewn improvements. He has tried only 6 cases of importance. In one cas the accused was discharged; in two cases the accused were convicted and the convictions upheld on appeal; in one case there was a conviction and no appeal; a fifth case is no under appeal; and in the sixth case I was compe in the exercise of my revisional powers, to order further inquiry in respect of two of the accused. Copies of Mr. Varada Rao's judgement[a] in the ca and of my order[b] directing further inquiry, are

a. pp 6-19
b. pp 20-23

nclosed. In this case Mr Varada Rao evinced a very strong bias against the Police; I am afraid that this bias caused him to omit, in para 5 of his judgment, all mention of 2 Police Inspectors being present at the so called search of the Nagathan Kavu temple.

4. With the exception of this case I have on the whole been satisfied with Mr Varada Rao's magisterial work.

5. With his work as Chairman of the Calicut Municipality, I have not been satisfied. To questions which are likely to come prominently before Government, such as Moplah burial grounds, water supply, and the tramway scheme, he has devoted considerable attention; but to ordinary onservancy, repair of roads &c he has paid but little attention. Mr Varada Rao lives in Kallayi and the portions of the Municipality which according to his Diaries, he inspected, are not very far from his house. In October last, the military authorities raised the question as to whether the Municipal Council could not undertake the conservancy of the barracks. Owing to Mr Varada Rao's contradictory letters, the matters remained unsettled till ast month when I requested him to go to the barracks — had not done so before — and to look into the matters himself.

6. Mr Varada Rao's relations with certain members of the Municipal Council are somewhat strained, but for this Mr Varada Rao is not wholly to blame. Many of the educated people of this District think that Malabar should be for the Malayalis, and that people from other Districts should not be brought here.

Several of the Municipal Councillors regard Mr Varada Rao as a stranger, and would, I have no doubt, be glad to see him replaced by a Malayali. Still there is no doubt that Mr Varada Rao has not consulted the Council suffici that he has forgotten that the Councillors hav a right to ask for information, and that he is inclined to regard the Councillors as his subordina

7. In order that I might be able to form some idea of what inspection work he was doing, I asked Mr Varada Rao to keep a Diary and to send it to me every fortnight. He sent it regularly for a time. On the 19th March he sent me a Diary for the whole of February. On this I remarked: "You were instructed to send in a fortnightly diary. Today is the 19th March and on that day you send a diary for the whole of February, but no diary for 1st to 15th March." Mr Varada Rao promised that this should not happen again. Yet from 15th April he omitted to send me any diaries. On the 13th instant after he receive my letter asking for his diaries, he wrote up his diary and sent it to me. I enclose his diary from 20th January to 31st May.

8. Mr Varada Rao says that during the last two months he has not been well. This may account for his unsatisfacto work. Still I cannot help thinking that he is physically unfit to be a Divisional Offic He is so stout that he is unwieldy, and that he could ever do the inspection work that is expected of a Divisional officer I do not believe. He is not wanting in brains, but I honestly

think

that he cannot do, all that is expected, of a Divisional Officer. I venture, therefore, to recommend, that a Medical Board be asked to determine as to his fitness for further service.

I have the honour to be
Sir,
Your most Obdt. Servant.
Moberly
ag. Collector.

It was ordered in the case of Venkata Jaggo Rao but Mr. Arundel's report about him was much more complete.

JG
10/7

Mr. Moberley's report on Mr. Varada Rao is not sufficient to justify us in ordering him to appear before a Medical Board.

W
12 July

23

Jud. Dept. 29 Mr. T. Varada Rao.

CURRENT No. 3083

Confidential

CHIEF SECRETARY
28 JUN. 1895
GOVERNMENT OF MADRAS

From,
The Ag Collector of Malabar
Calicut.

To,
The Chief Secretary to
Government,
Judicial Dept.
Ootacamund.

Dated 24-6-95
Despd
Recd 28"

No 34
Confl.

Encl 4

Submitting report called for in G. O No. 64 dated 12th Jany 95 regarding Assistant Collector Mr T. Varada Rao.

Hm. & circ.

For Orders.

There is nothing particularly noticeable in the Diaries which appear to relate solely to municipal inspections, there being nothing to show that Mr Varada Rao was not doing magt work on days when his inspection work was light.

2. Mr Moberly recommends that Mr Varada Rao be sent before a medical board to determine whether he is physically fit for service

D
4.7.95

So far Mr. Moberly does not seem to have shown cause for attempting to get rid of Mr. V. Row by means of a Medl. Bd. Nothing showing his general unfitness for his present post has been advanced.

8/7/95

Mr. Moberly has not made out much of a case. If he thinks V.R. physically unfit for a dist. officer's work he should give ~~further~~ more details. Why doesn't he take him out with him on tour & see what he is capable of in the way of moving about?

9/7/95

It would need much fuller details to show that Varada Rao is physically unfit & should be sent before a Medical Board. We shd not order this with the information Mr. Moberly gives us in the case of a member of the ICS

H.T.O

30.

In the Court of the District Magistrate of Malabar.

PRESENT:— H. Moberly Esquire,

JUDGMENT.

IN CRIMINAL APPEAL No. 8 of 1895.

DATE OF						From what Court the appeal is preferred.	No. of the Case on that Court	No. of the Appeal.	Name and description of the Appellant.	Sentence and Law under which it was imposed in the Lower Court.	Whether confirmed, modified or reversed	If modified, the modification.
Presentation.	Filing.	Notice issued by Court to appear.	On which appellant ordered to appear.	Hearing.	Order.							
14.6.95	14.6.95	18.6.95	25.6.95	6.7.95	8.7.95	Court of the Assistant second Class Magistrate of Malabar	Calicut no 7 of 1895	Criminal appeal no 8 of 1895	Kunnigott Imichathan alias Imbichi nair of Olavanna amsam in Calicut taluk.	Sentenced to undergo rigorous imprisonment for 6 months. Sections 457 and 380 I.P.C.	Reversed.	

Heard ~~m~~ Mr. Krishnan nair, Vakil, for the appellant.

2. The Assistant 2nd class magistrate convicted the appellant, who is in jail, of house breaking and theft in a building. The prosecution story in the lower court was that Kunhunni nair's house was broken into on the night of 30th

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31

April 1895 and certain articles stolen. On the 1st May Kunhunni Nair reported the house-breaking at the Kasba Police station. On the 4th May appellant's house was searched and certain of the stolen articles were found tied up in cloth and concealed in a heap of cocoanut husk.

3. For the appellant it is contended
(a) that the evidence as to the search is untrustworthy;
(b) that the delay between date of complaint and date of search has not been satisfactorily explained.

4. I will deal with this second ground of appeal first. The Assistant Magistrate thinks that the Station House Officer has satisfactorily explained the delay by stating that "the mere suspicion of the Complainant against certain persons was not sufficient to warrant the Police in proceeding against them". No doubt mere suspicion would not justify the Police in arresting; it would, however, justify them in making a search. Now this is what the Station House Officer said: "The search was made on 4th May 1895 at 3 P.M. The

Surely not, unless the complainant [illegible] give valid reasons for his suspicions; & SHO wd not be justified in subjecting a house owner to the indignity of a search without

D

[G.]

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32

"Complainant said he suspected the "accused. He gave the complaint to me "on 1st May. The Complainant only suspected "the man. It did not appear to me to be "sufficient to warrant my searching his "house. On 4th May I saw the accused. "I interrogated him. He said he knew "nothing of the theft. The accused also "said he had spoken about this to "Complainant's brother and that it is "advisable to go there. I went to Raman "Nair. In the talk between Raman Nair "and the accused it came out that "they wished to settle the matter by "returning the property to the Complainant. "Then my suspicions were aroused "and at once conducted the search."

Why?
D

Who wished to settle the matter is not stated. If it was appellant, why was not Raman Nair cited as a witness to prove this? The Assistant Magistrate has not referred to this in his judgment nor did he question

The Station House Officer on the point. I cannot therefore accept the Station House Officer's explanation for the delay in making the search as satisfactory.

See above, marginal pencil note D

5. The second Prosecution witness – so the Assistant Magistrate says in para 5 of his judgment – "swears to having seen the accused and one Kanaran Nair at 10 naligas after sunset near the gate of the Prosecution 1st witness' house on the night of the occurrence". As a matter of fact this witness who was examined on 17th May, after stating that 1st witness had lost some articles owing to house-breaking "some 10 or 18 days before today", said: "I saw at about 10 naligais after sunset one night the accused and one Kanaran Nair. I saw them near Complainant's gate. I stated this to the Head Constable when I heard of the offence. × × ×. Three days after the occurrence I

D) on the informality of a search without good reason.

heard that a theft took place in Complainant's house. I told I. Koyotti what I saw the next day early in the morning while I was going for my work". This witness is a Tiyan.

6. Now the Complainant stated that when he discovered the theft on the morning of 1st May he cried out and a crowd gathered, and that "a Moplah in the "crowd told me that he saw the "accused and another named Kanaran "Nair near the gate of my house at 10 or 12 naligais the previous night." In cross-examination the Complainant said: "I did not say in my complaint "that I. Koyotti saw the accused near "my house on the night of the alleged "offence. I said – I. Koyotti told me "that another person saw the accused "near the scene of offence". Thus in his complaint Complainant said that I. Koyotti told him that another person had seen Appellant near the scene

A

of offence; yet in his examination-in-chief he said that a Moplah told him that he had seen appellant near the scene of offence.

5 7. In para 6 of ~~his~~ judgment the Assistant Magistrate notes that, instead of a Moplah, a Tiyan is examined as 2nd Prosecution witness, and he then says: "The explanation is furnished in the cross-examination of the prosecution 1st witness. The prosecution 1st witness says that the Moplah had told him that another man (2nd Prosecution witness) had seen the accused and that was all he intended to say in his examination-in-chief". This statement is not only incorrect but misleading. In para 6 supra I have quoted from Mr Varada Row's notes of the evidence. Complainant did not in cross-examination explain away what he had stated in his examination-in-chief. He was cross-examined as to his complaint; and in his

This corresponds roughly with the passage marked A on the previous page. It is not literally correct but is not ~~[illegible]~~ very misleading. D

cross-examination he did not say that T. Koyotti had told him that 2nd Prosecution witness had seen the accused and that was all he intended to say in his examination in chief. It is surprising that a Magistrate of Mr Varada Row's standing should, in a judgment, make such a misleading and incorrect statement.

Vide passage marked A D

8. Now the Station House Officer must have known on 1st May that a Tiyan had seen the appellant near complainant's house on the night of the offence. Why did not he question the Tiyan at once? The Tiyan says he did not inform the Head Constable of what he had seen till 3 days after the occurrence. So the delay in searching appellant's house has not been satisfactorily explained.

Why? Has he admitted that he knew it on the 1st May? D

Apparently he had [illegible] seen the accused near the house; a circumstance which of itself hardly [illegible] warrants [illegible] D

9. Now as to the search itself. The 1st Prosecution witness when cross-examined as to the search said "The Head Constable

"went to accused's house and sent
"for me on the day of search. When
"I went there the Adhigari was
"not present. Namb[illegible] Nair was
"not present when I went but when
"search was made he came. I
"went and fetched the Adhigari.
"Then the accused and one Constable
"went in. We all stayed outside"

Now Section 103 of the Criminal Procedure Code requires that two or more respectable inhabitants of the locality shall attend and witness the search, and that the search shall be made in their presence. A search inside a house cannot be said to be made in the presence of persons when those persons are standing outside the house. The Assistant Magistrate should have known this and should have refused to act upon evidence as to a search not made in accordance with the requirements of the law. The search not having

Technically yes but It is what is nearly always done: before entering into the house, the constable selected takes his uniform off, shows his cloth, hands, armpits &c to the bystanders so that they may know that he is not taking any missing articles with him in order to concoct a case
D
13.7

been properly conducted, evidence as to the result of the search cannot be admitted.

10. There is therefore no evidence against appellant. I reverse the conviction. On Saturday last an order was issued to the Superintendent of the Central Jail, Cannanore, to release appellant on his own recognizance. The bond executed by appellant will now be cancelled and he will be released unconditionally.

11. One point deserves to be noticed. The search list has been signed by 6 persons, viz. 1st Prosecution witness, the Station House Officer, the Constable who made the search, the Adhigari and 3 other persons. There is no evidence that the Adhigari is a respectable inhabitant of the locality in which the house, that was searched, is situate. I don't deny the Adhigari's respectability; but the fact that he is Adhigari does not necessarily qualify him to witness

I submit ~~that~~ there is not the slightest necessity to ~~prove~~ call evidence to prove ~~that~~ the village headman is a person of respectability fit to witness a search, unless & until his respectability is challenged by the accused
D

23

every search in his Amsam: He witnessed this search, yet notwithstanding C.P.C. s. 103 was required by the Police to attend as a witness of the search.

Narikeer Nair who signed the search list appeared according to 1st Prosecution witness, on the scene when search was made. C. P. C. Section 103 is perfectly clear. The search list is to be signed only by the persons in whose presence the search was made; yet here we have a search-list signed by persons who were outside the house the whole time and could not have witnessed the search.

Sd. H. Moberly
1st Class & Ag. Dt. Magte

Calicut
8th July 1895.

(True Copy)

H Moberly
Ag. District Magte

189 5
Jud. Dept.
Enclo. No. 1
To
C. No. 3340

JKK
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10. 7.

of the law. The search not having

40

CURRENT No. 3340

Confidential

No. 37/Confl.

Malabar Collector's Office
Calicut 8th July 95.

From

H. Moberly Esq:
Ag. Collector & Dt. Magte of Malabar.

To

The Chief Secretary to Govt:
Judicial Dept:
Ootacamund.

Sir

In continuation of my letter No. 34/Confl. dated 24th ultimo reporting on Mr. Varada Rao's work, I have the honor to forward copy of my Judgment in Criminal Appeal No. 8 of 1895 reversing Mr. Varada Rao's order in Calendar Case No. 9 of 1895.

I have the honor to be
Sir,
Your most obdt. servant,

H Moberly

Ag. Collector
& Dt. Magte:

826

Confidential No. 239 41

Judicial Dept:

CURRENT No. 3340

12 JUL. 1895

From the Collector &
Dt. Magte. of
Malabar

to the Chief Secy. to Govt.
Judicial Dept.
Ootacamund

Dated 8th July 1895
Recd. 12
Regd. 13

No. 37/Confl.

Encl 1

Forwards copy of judgment in Crimnl. appeal No. 8 of 1895 reversing Mr. Varada Rao's order in C.C. No. 9 of 1895

or the case. The search

42

[G. 24.]
500—21-5-95.

Jud¹. DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated from
" " 3083 " 189 , 24 June , " } Dist. Magte., Malabar
" " 3340 " 189 , 8 " July : " }

G.O. 10 August 1895, No. 1677

ORDER.

Note.

Please see C. 3340 since received; it is submitted that there is nothing in it likely to induce Govt. to take a harsher view against Mr. Varada Rao, & that there is no need to circulate. Mr. Moberly appears to be a hypercritical appellate Court; attention is invited to his judgment & the marginal pencil notes

D
13.7.95

Mr. Moberly's appeal judgment ~~seems to me~~ to tell much more against his fitness to be Dt. Magte. than against Varada Row's fitness to be a Divl. officer

JB 6/8/95

The Govt. does not consider that the Dist. Magte. has shown sufficient cause for calling on Mr. Varada Rao to appear before a medical board, as no ~~the~~ detailed reasons have been advanced in support of the opinion that he is physically unfit for further service.

2 A further report regarding ~~[illegible]~~ his ~~[illegible]~~ work should be submitted in six months time and the Dist. Magte. might with advantage, cause ~~[illegible]~~ ~~make~~ Mr. Varada Rao ~~take [illegible]~~ to accompany him on his tours ~~camp with him~~ in order to ascertain whether he is physically capable of ~~performing [illegible] duties~~ moving about as a divisional officer should

D
13 7 95

JB

The Dist. Magt. Malabar (4)
With 2 Encls

3/8/95

Despd. 10/8

Confidential No. 239 41

Mr. Varada Rao

H.M.

DESPATCH

Show CS the HM's notes

7-8

of the case. The search not having

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