

8/7/13

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1037

Dated 16 May 1895

INDEXED

[Despatch Abstract.]

REFERENCE TO THE HIGH COURT.

Explaining the High Court's refusal to reply to a reference made to it by the District Magistrate of Vizagapatam regarding Calendar Cases Nos. 45 and 46 of 1895 of the Principal Assistant Magistrate's file

BACK PAPERS.

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

FURTHER PAPERS.

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

[V. C. P.-1-11-94.-300.]

Re. C. No. 690/95
Dis.

VIZAGAPATAM COLLECTOR'S OFFICE,

Dated 30 March 1895.

From

F. D. A. O. WOLFE-MURRAY Esq.

Ag. Collector, Magistrate,
Vizagapatam District.

To

THE HONORABLE J. J. Price,

CHIEF SECRETARY TO GOVERNMENT,

Judicial DEPARTMENT,

MADRAS.

SIR,

With regard to para 1 of G. O. No. 344 Judicial Department dated 15 February 1895, I have the honor to say that I did report the matter to the High Court and the High Court advises me to consult the legal advisers of Government, so that apparently the question under discussion must continue to remain in that obscurity from which I temporarily withdrew it. No doubt it will some future day come up before a Court of authority and be duly decided on.

I have the honor to be,

Sir

Your most obedient Servant,

[Signature]

for Dy Collector.

[Signature]

DEPARTMENT.

FROM

Dist. Magistrate
THE COLLECTOR OF VIZAGAPATAM.

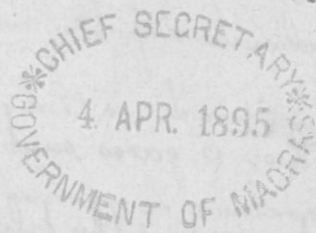
TO

THE CHIEF SECRETARY TO GOVERNMENT,
JUDICIAL DEPARTMENT,
MADRAS.

Dated 30

Received 4

March 1895.



Re. C. No. 620/95
Dis.

ENCLOSURES.

Subject.

Stating that the matter was reported to the
the Court and that the High Court advised
consult the legal advisors of Government
regarding an authoritative declaration of the
law under Section 195 C.P.C.

344 = 15-2-95
Sp 344 = 15-2-95

Dr.
ay *to 816*
12-4-95

With refer to his letter of 30. March
95, no 690, the D. Magistrate of Vizag-
apatam is requested to forward
for the perusal of Govt. copies
of the reports made by him
under Sec 438, C.C.P. of the
orders of the High Court passed
thereon.

10-4-95

At 7/4/95
To the D. Magistrate, Vizag. dated
12/4/95
11/4

[V. C. P. - 2-11-94. - 700.]

Re. C. No. 4185-4186
Dis.

From

F. D. A. O. WOLFE-MURRAY Esq.

Aj. Collector, Magistrate,
Vizagapatam District.

To

SIR,

The Registrar of the High Court of
Judicature, Appellate Side,
Madras.

C.C. nos 45 & 46/94

In forwarding herewith, under Section 438 C.P.C.,
the records of the marginally noted cases on the file of the
Principal Assistant Magistrate, Vizianagaram I have the honor
to solicit for an authoritative declaration of the law.

2. The complainant in these 2 cases sues the 2 accused
and two others in O. S. no. 35 of 1887 on the file of the District
Court, Vizagapatam to recover 7 withis and 10 visams of land
situated in the Grahapati Agraharam from the possession of the
defendants on the ground that the land in question was her
mother's *Spidhanam* property and that as such she was entitled
inherit it. Then the 2 accused deposed on oath that *Appa*
Narasayya the complainant's mother had no right to the land
under dispute but that she had a share in the lands known
Dorhita lands situated in some 8 villages. This suit was
dismissed on the ground that it was barred by limitation.

Subsequent

DEPARTMENT.

FROM

THE COLLECTOR OF VIZAGAPATAM.

TO

Subsequently the complainant sued the accused and 2 others in the Court of the Subordinate Judge of Vizagapatam in O.S. No. 32 of 1892 to recover possession of the Doshitral lands basing her claim on the admissions made by the accused in O.S. No. 35 of 1887 and on some documentary evidence. In this suit the accused deposed on oath that the complainant's mother had no share in the Doshitral lands, quite contrary to what they had previously deposed in the former suit before the District Court.

3. The complainant consequently moved the Subordinate Judge for sanction to prosecute the accused for perjury. The Subordinate Judge after making a preliminary enquiry sanctioned the prosecution of the accused under Section 193 I.P.C. The Principal Assistant Magistrate to whom the cases in question were transferred by me for disposal dismissed them on the ground that as the accused made two contradictory statements on oath, one before the District Court and the other before the Court of Subordinate Judge.

Judge, two distinct sanctions are required under Section 195 Cr.P.C. and that as no sanction for prosecution was granted by the District Judge also, the accused could not be proceeded against.

Empress V. Balaji Sitaram 11 Bombay High Court 342.
" V. Dala Jiva I.L.R. 11 Bombay 190.

4. Mr. Scott in passing this order followed the marginally noted rulings of the Bombay High Court.

Here the accused made two contradictory statements before two tribunals and one of them was assuredly false and I think that any one of the two tribunals either the District Judge or the Subordinate Judge can sanction their prosecution under Section 195 Cr.P.C. and that 2 separate sanctions are not required as was surmised by the Principal Assistant Magistrate and the Bombay High Court. The question is an important one and I think it highly desirable that the opinion of the High Court of Madras also should be obtained in the matter.

I do not for the following reasons ask for the retrial of the cases.

1. Mr. Scott has followed the rulings of the Bombay High Court and I cannot call his order illegal.

2. The Subordinate Judge sanctioned the prosecution of the accused on 16th December 1893, whereas the complainant

Dated

Received

189

Re. C. No.
Dis.

ENCLOSURES.

Subject.

brought to take action against the accused on 16th June 1894.

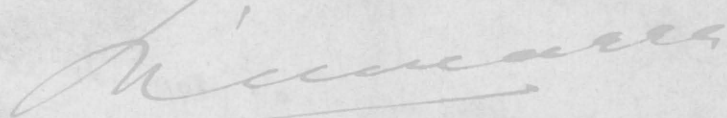
The inordinate delay made by the complainant leads me to doubt that the complainant has availed himself of the sanction granted to compel the accused to come to some amicable settlement in respect to the lands sued for.

I have &c &c,

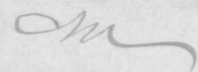
(Signed) W. Lys,

For District Magistrate.

(True copy)



for Dg District Magistrate.

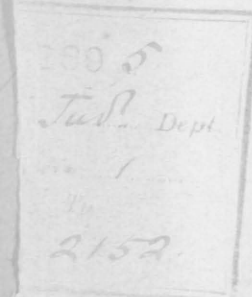


DEPARTMENT.

Enclosure in a letter
From
The Collector of Vizagapatam.

To
The Chief Secretary

Dated 25th April 1895.
Received



Re.C. No. 1572
Dis.

ENCLOSURES.

Subject.

Letter to the Registrar
Court

No 591 Judicial.

Proceedings of the High Court of Judicature at Madras.

Dated 15th March 1895.

Read letter from the Dy District Magistrate of Vizagapatam
dated 28th February 1895, C. C. case No. 4185 & 4186 of 1894.

The High Court declines to express an opinion on
a question of law not brought before it judicially. The District
Magistrate if so advised should apply to the legal advisers
of Government.

/ True Extract /

/ Signed /

Dy Registrar
Appellate side.

To
The Dy District Magistrate of Vizagapatam with records.

/ True Copy /

[Signature]

for Dy District Magistrate.

Re. C. No.
Dis.

CURRENT No. 2152

VIZAGAPATAM COLLECTOR'S OFFICE,

Dated 25 April 1895.

From

F. D'A. O. WOLFE-MURRAY Esq^r,

Ag. Collector, Magistrate,
Vizagapatam District.

To

THE HONORABLE J. J. Price,
CHIEF SECRETARY TO GOVERNMENT,
Judicial DEPARTMENT,
MADRAS.

SIR,

Referring to the Memorandum of Government No. 816
dated the 12th instant, I have the honor to forward herewith copies
of the marginally noted correspondence therein referred to.

I have the honor to be,

Sir,
Your most obedient servant,

for Dy Dist Magistrate.

of letter No. 6 of 1895

34186 dated

74

2. 95.

of High Courts

edings No. 591

15. 3. 95.

216

Enclosure in a letter from
the District Magistrate to
Chief Secretary Re 1572 dated
25 April 1895

1895
Tud. 1895
2
2152.

Cpy of the High Court
On 591 of 15 March 1895

CURRENT NO. 2152
Judicial DEPARTMENT.

FROM
THE COLLECTOR OF VIZAGAPATAM.

TO
THE CHIEF SECRETARY TO GOVERNMENT,
Judicial DEPARTMENT,
MADRAS.

CHIEF SECRETARY
GOVERNMENT OF MADRAS
30 APR. 1895

Dated 25 April 1895.
Received 30 April
Regd. 1st May

Re. C. No. 1572
Dis.

ENCLOSURES. 2.

Subject.

Forwarding certain correspondence
in memo. no 8168/12 in which
called for forwarding CC 4546
on the P. & Magistrate's file

C. No. 81695 + papers
H. M.
C. No. 1703 + 2152

For orders

Para 4 of the N. Magistrate's
letter of reference to the High Court
does not seem to be properly
worded. The orders of the High Court
in the case should
have been asked for and
its "opinion" merely. Enclosed
N. Magistrate himself had
that he would not ask the High Court makes a rule of not
retrial of the case ~~proposing~~ abstract opinions as to the
question. Nothing prevents
can be done in the matter. ^{from orders} 16 May 1895 N. 1037
now. The point may be that the District Magistrate will be
asked that the refusal to give
an opinion was clearly due
connection with the proposed terms in which his letter of
reference was couched. The reference
should have expressly referred
to the High Court "for orders"
ground that the District Magistrate
is the locality of the judgment.
The Criminal Procedure Code
High Court is not in the
of replying to questions in this
the Dist. Mag. deprecated any
merely asked for "an authoritative
on the law" &c.

[G.
25.
900-82000]

Judicial DEPARTMENT.

C. No. 1703 + 2152

FOR ORDERS.

Please see - P.O. of 15.2.95 to
344. - Mr. Wolfe Murray reports
that he did refer the case to the
High Court under Cr. P.C. 5438.
It appears however that his letter
of reference merely asked the
High Court "for an authoritative
"opinion on the law", with the remark
that he could not call the decision
of the magistrate illegal as it
was supported by Bombay rulings, &
but for other reasons he thought
a retrial undesirable. -
The High Court, might upon this letter,
have taken action under 5439 but
did not choose to do so, adopting
not unnaturally the alternative
course of saying "we are not
here to give opinions - except in cases
judicially before us." - If Mr. Wolfe
on the law" &c.

Ref ce to High Court

Murray letter had been worked
carefully. "I doubt the
legality of the decision & accordingly
refer the case to the High Court for
orders." I imagine, the High Court
would have been forced to express an
opinion on the case referred "for orders"
Should Mr. Wolfe Murray be
told this?

(b). The matter might be taken up
in connection with the amendment
of the Criminal Procedure Code?

D
18.5.55

Mr. W. Murray "reference" to
the H.C. consisted in sending
up a verbatim copy of his letter
to G.O. which will be found
in G.O. 18.344 dated 15.2.55
1895. The draft of this
appears to have been prepared
by the Office and was written
by 25 H in himself
18.9.57/95

H.M.

FOR ORDERS.

10/5/95

Given for copying
Copied
Examined
Signed

189.

G.O., No.

DATED

No.

TO G. No.

GOVERNMENT

A A A A A A A

GOVERNMENT

CH DITTO.

FILED, BEING MEANT FOR DESPATCH
ORIGINAL.

Copy in full.
Not to be copied.
Copy abstract only.
Copy heading only.