

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1335

Dated 22nd June 1895

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST ACQUITTAL.

Directing the Government Pleader to present an appeal to the High Court against the acquittal of the appellants in Criminal appeal No. 69 of 1894 on the file of the Tinnevely Sessions Case Court.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
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Urgent
Judicial Deptt
Tinnevely District Magistrate's office

1037/95-46

CURRENT NO. 2607
From
The District Magistrate,
Tinnevely,

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

Dated 22nd May 1895.
Recd 27th do "
Camp No. 77

Enclosures 4 files sent
separately + 2.

Subject

GOVERNMENT OF MADRAS
27 MAY 1895

Requesting to direct the Public
Prosecutor, Madras, to present
an appeal to the High Court
against the order of the
Sessions Judge Tinnevely in
C.A. No. 69 of 94 on his file.

Order No. 1150.
Referred in original to the Govt.
Ruler for favour of his opinion
as to the probable result of an
appeal. A reply to this reference
should be submitted ^{early} sufficiently
to admit of the issue of orders
before the expiry of the appeal time

28/5/95 (By order)
Donald Davidson
of Madras Secretary

28.5.95

Cotacaramund
29th May 1895

To the Govt Pleader, with records,
Madras

TO BE RETURNED
WITH REPLY.

G.O.

Urgent

Tinnevely District Magistrate's
office, Camp Tiruchendur.

Dated 22nd May 1895.

Camp No. 77
Enc. 4 files.

CURRENT NO.

From
A. W. B. Higgins Esquire,
District Magistrate of
Tinnevely.

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

Sir,
I have the honor to request that
the Government may be pleased under
sec. 417 of the Criminal Procedure
Code to direct the Public Prosecutor
to present an appeal to the High Court
against the order of acquittal of
the sessions judge of Tinnevely in
Criminal Appeal no. 69 of 1894.

2. The facts are these. On the 27th January
1894.

was noticed by the complainant and some others; that they then came and beat him severely and took him to the station with the box, and that the case of theft was concocted against him with the aid of constables nos. 519 and 317.

5. On the 1st February 1894, the complainant put in a petition to the Sub Magistrate stating that the police had unjustly referred the case as false and requesting that the case should be taken on the file and enquired into. This was accordingly done.

6. In the Sub Magistrate's enquiry the fact of the arrest of the accused by the constable was not corroborated. There was no eye witness to speak to the theft. The evidence of witnesses in other respects was so discrepant and improbable that the case appeared to be a concoction. The Sub Magistrate accordingly discharged the accused under section 253 Cr. P. C. I would invite the attention of

of Government to the judgment of the Sub Magistrate of Palamcottah in C.C. No. 59 of 1895 1894 which forms an enclosure to this letter and in which the nature of the evidence has been discussed

7. The police applied to the Sub Magistrate for sanction to prosecute the two constables Velayutham Servai (defendant) applied for similar sanction to prosecute the complainant and his witnesses - for offences under sections 182, 193 and 211, which was granted. - vide Proceedings of the Sub Magistrate No. 164 dated 1st June 1894.

8. This case was charged before the Head Quarter Deputy Magistrate and filed as C.C. No. 66 of 1894. Subramanian Servai, complainant in the theft case and Dalavoisami Pillai constable no. 317, referred to above were convicted under sections 182, 193 and 211 I. P. C. and

and sentenced - the former to 3 months
was rigorous imprisonment and to pay a fine
some of Rs 30 and the latter to six months
beat rigorous imprisonment and a fine of Rs 60. -
slatis and Sadagoparamanujam, constable
of the no. 519, was convicted under ^{sec.} 182 and 193
with I.P. 6 and sentenced to six months ri-
317. gorous imprisonment and a fine of Rs 60.

5. The Deputy Magistrate believed the
put prosecution story which showed how
stated the charge of theft had been concocted.
He gave his grounds for this belief and his
reasons for rejecting the evidence for
the defence are given by the Deputy
Magistrate in his judgment in the case.
6. to which I respectfully invite the
attention of Government. As the evidence
of each witness has been discussed in
this judgment, I have not thought it
necessary to restate it in this letter.
His conclusions appear to me on the whole
sound.

9. Against this decision the accused
appealed

appealed to the Sessions Judge (Mr. Bell)
who in his judgment in Criminal -
appeal no. 69 of 94 quashed the con-
viction and sentence of the Deputy
Magistrate.

10. The grounds of appeal were as -
follow: -

- (a) Difference in the number of de-
fendants and witnesses as stated in
the 1st complaint and in the com-
plaint to the Deputy Magistrate.
- (b) Non-mention of Paravati (1st de-
fendant's wife) in the complaint
to the police.
- (c) Variation in the motive for con-
cocting the case.
- (d) Non-mention of the complainants
(Velayutham) sister and sister's
daughter in the complaint to the police.
- (e) Want of independent evidence.
- (f) Low social status of some of the
prosecution

and several prosecution witnesses.
was rigorous (9) Unsatisfactory nature of the evidence
some of Rs 30 of the 6th prosecution witness (Vellachi)
beal rigorous (10) Variations in the evidence regarding
slat and Sad the beating of the complainant and
of No. 519, with reference to the carrying of the
with I.P. 6 a box to the station.
317. gorons in (11) Want of examination of Vellala
5. The Dep witnesses.
prosecu (12) Commission of the offence in broad
sl the cha (13) These grounds are to a large extent
re His gror day light
th reasons
f the def adopted in the appeal judgment as
Magis reasons for reversing the decision of the
to who Lower Court. To show the apparent
attent fallacy of these arguments, I beg to
of eac enclose in original for the perusal of
this of Government a memorandum from
neces the Superintendent of Police in which
his c the conclusions of the Sessions judge
run have been fully met. I have no
A hesitation in endorsing the views of

the Superintendent.
11. One important point to which I
would invite the attention of Govern-
ment is that the appeal judgment
disregarded the Sub Magistrate's
judgment in the theft case and dis-
regarded also the failure of the defence
to prove the theft case before the
Deputy Magistrate. Though it rested
with the prosecution before the Deputy
Magistrate to prove that the charge
brought against the complainant -
(Velayutham Kon) was false, yet surely
the fact that the evidence on the
other side was thoroughly unsatisfactory
was relevant and worthy of con-
sideration by the appellate court.

12. I submit that there has apparently
been a failure of justice in this
case.

13. The material records are enclosed
with

CURRENT NO. 2949

Government Pleader's Office,

High Court,

MADRAS, 19th June 1895.

No. 582

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras.

To

THE Chief Secretary to Govt.

Fort St. George.

SIR,

With reference to the Judicial Department
Endorsement N^o 1150 of the 29th ultimo, I have the
honour to submit the following:—

Opinion.

The argument of the Sessions Judge in paragraph
4 of his Judgment is strongly in favor of the truth of the
Prosecution story. He has apparently forgotten that the
present charge arose out of the charge of theft brought
against the 1st Prosecution witness. The question therefore he
had to try was the truth or falsity of that charge. The
doubt which the Judge considers is thrown upon the case
by the fact of the alleged commission ^{of the offence} in broad daylight
applies with far greater force to the original ^{charge of theft} than
given by the Superintendent of Police for not citing any
people

Enclosures
returned

ENCL

ORDER

LETTER

STATE

PAPER

people of the immediate neighbourhood seem sound and are supported by the record of the Sub-Magistrate.

I think the Memorandum of the Superintendent also meets the arguments of the Sessions Judge in paragraph 7 of his Judgement.

The Judge is wrong in treating the 'Prosecution witness' statement, when he was an accused person, as a complaint. It was not in any sense a complaint. It was merely offered as an explanation of the false charge brought against him, and does not profess to be exhaustive.

The District Magistrate and Superintendent seem to think that it was incumbent on the Judge to refer to the judgement of the Sub-Magistrate in the theft case. In my opinion not only was the Judge right in not doing so, but he would have been wrong if he had used or acted on the said Judgement. He could however refer to the record and he seems to me to have entirely lost sight of the fact that the question at issue before him was the truth or otherwise of the complaint of theft.

On the whole there seems to be good grounds for appealing against the decision.

The appeal time expires on the 5th July.

I have the honor to be,
Sir,
Your most obedt. servt.,

W. V. V.

Government Pleader.

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ed _____

189.

G.O., No.

DATED

No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTERS OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.-

A = Copy in full.
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