

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2225.

Dated 4th Nov 1895.

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST ACQUITTAL.

Requesting the Government Pleader to present an appeal to the High Court against the judgment of acquittal in Calendar Case No. 17 of 1895 on the file of the Taluk Magistrate of Sidhout, Cuddapah district.

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BACK PAPERS.

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FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	5376		95				

Judicial Dept.
CURRENT NO. 4789

FROM,

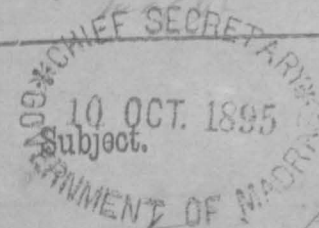
THE DISTRICT MAGISTRATE OF
Cuddayah.

TO

The Chief Secretary
to Government
Ft St George

Dated 25th } September 1895.
Despatched }
Received 10th }
By 11th }
Encl. 2.

Reference No. 921-17
Disposal



Requesting to instruct
the Government Pleader
to appeal against the
decision of the accused
in C.C. No 17 on the file
of the District Magistrate of
Siddhant.

1/10/95.

Endorsement No 2479
18-10-95

Referred to the Encl.
Pleader for favour of opinion
as to the probable results
of an appeal in this case

14/10/95. (By order)

David Davidson
12-10

As Under Secretary.

12/10/95
To the Encl. Pleader.
with papers in case
to be filed



Reference No. 921/95
Disposal mag

CUDDAPAH DISTRICT MAGISTRATE'S OFFICE,

Dated 25th September, 1895.

ENCLOSURES. 2

Camp. Kadiri.

From

J. H. Munro Esquire
Joint Magistrate in Charge
DISTRICT MAGISTRATE,
CUDDAPAH.

To

THE Chief Secretary to Government
Fort St. George.

Sir,

In Calendar Case No. 17/95 on the file of the Subk. Magistrate of Sishont, the accused, a police officer, charged under Sec. 404 I.P.C., was acquitted under Sec. 238 of the Code of Criminal Procedure. I have the honor to request that the Government Pleader may be directed to appeal, under Sec. 417 C.P.C. against this finding of the lower court.

2. The facts of the case are as follows.
The accused, Venkatadasu, the station
writer

writer of Sidhant Police station, who was in charge of the station in the absence of the Station House Officer, received in his capacity as a public servant, certain jewels which had been removed from the body of the mother of the 1st prosecution witness, which was subjected to a post-mortem examination on suspicion of murder. The first prosecution witness claimed the property after 4 or 5 months but it was not delivered to him. He put in a complaint petition before the Saluk Magistrate, and the accused was asked about the property. The accused produced certain jewels before the court but it was alleged by the 1st prosecution witness that the original jewels had been

tampered with so as to cause loss to him.

3. Before commencing proceedings the Saluk Magistrate submitted the case for the orders of the Divisional Magistrate, reporting that the accused being a public servant the case was likely to fall under Sec. 409 I.P.C., when it would be beyond his jurisdiction. The Divisional Magistrate ordered the case to be taken up by the Saluk Magistrate under Sec. 404 I.P.C.

property
deposited
in

4. The evidence for the prosecution shows (1) that the property though received by the accused in his capacity as Station House Officer was not noted in the registers of the station as it ought to have been; (2) that it was not handed over to, or even brought to the notice of, the two Station House Officers who succeeded him.

in office, though he himself continued to be in the same station as writer; (3) that no steps were taken by him to put the heir of the deceased in possession of the property; (4) that the property was not delivered to the party whom he claimed it, but that the accused said that as it had been lost he would make it good; (5) that it was produced in court only after a complaint was lodged, and in an informal manner; (6) and that it was tampered with by the substitution of pearls of less value. Regarding the last point the evidence of two witnesses, Goldsmiths, regarding the identity of the property, broke down in cross examination, but the evidence of other disinterested witnesses warrants a presumption

in favor of the prosecution, and the Sahib Magistrate also appears to take the substitution as proved.

5. The accused states that the property was not tampered with, and that the motive of the complaint was to wreak vengeance upon him for having refused to give private information to the complainant regarding public documents. This is a very inadequate motive.

6. The grounds of appeal are (i) The accused having received the property in his capacity as a public servant created a trust in himself, and the case therefore fell under Sec. 409 I.C. Its trial by a 2^d class Magistrate was ultra vires. (ii) The facts proved for the prosecution and detailed in para 4 supra clearly show the criminal intention

intention of the accused, and the
sub-Magistrate's finding to the
contrary is not supported by
evidence.

7. The records of the case, together
with the Calendar sheet and the
Divisional Magistrate's letter No. 203
9.9.95 are herewith submitted.

I am the humble
Sir
Your most obedient servant

W. S. S. S.
Joint Magistrate
in charge.

25.7.95

(No 4789 & 5081)

5081

H. M.

For orders

Perhaps the following order
may issue?

Order 4-11-95
Mis No 2225 1/11/95

In the circumstances
stated. The Court Pleader
will be requested to
present an appeal to the
High Court under Sec 417
C.C.P. against the judgment
of acquittal in C.C. No 17 of
1895 in the file of the Taluk
Magistrate of Sidhouth.

29.9.95
3/10/95

From

THE GOVERNMENT PLEADER,

Madras.

Dated 28th

Recd. 28th

Regd 29th

Oct. 1895

No. 1112.

17.10.4789
ENCLOSURE 2

CHIEF SECRETARY
28 OCT. 1895
GOVERNMENT OF MADRAS

Stating that an appeal against the
judgment of acquittal in C.C. No 14 of 95
in the file of Taluk Magistrate of Sidhouth
may be preferred to the High Court with
success.

To the Court Pleader
D. Magistrate of Sidhouth
(C.C.P.)

C.I. 11
Ref 11

CURRENT NO: 5087

Government Pleader's Office,

HIGH COURT,

Madras, 28th October - 1895.

No. 1112.

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras,

To

THE Chief Secretary to Govt.,

Fort St. George.

SIR,

x All enclosures
returned

With reference to your endorsement N^o 24498
of the 18th instant, I have the honor to submit the following
— Opinion —

1. The offence charged against the accused clearly falls
under section 409. The Sub Magistrate had no jurisdiction
therefore to try the case.

2. Whether the Divisional Magistrate transferred the case
to the Sub Magistrate, or the Sub Magistrate took cognizance
of the case under the orders of the Divisional Magistrate,
the trial would appear under section 530 (p) to be void.

3. Apart, however, from that the Sub Magistrate has
found that the jewels were entrusted to the accused. That
they were tampered with by him in some manner and that
for some time he kept them.

4. The only inference possible is that he intended to misappropriate them, but finding that the complainant was making a fuss, endeavoured to restore them. I don't think the Magistrate's conclusion that the accused was merely guilty of negligence can be supported. He ^(the accused) intended to misappropriate them for a time if the complainant's story be true.

5. I think the acquittal will be set aside and a retrial ordered.

I have the honor to be,
Sir,
Yours most obedt. Servt,
W. Power

Government Pleader.

When given for copying _____
When copied _____
When examined _____
When signed _____

189 .

READ AGAIN G.O., No.
189 .

DATED

CURRENT No.

ENCLOSURES TO O. No.

ORDER OF GOVERNMENT

LETTER 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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