

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 344

Dated 15th Feb. 1895.

INDEXED.

[Despatch Abstract.]

REFERENCE TO THE HIGH COURT

Informing the District Magistrate of Vizagapatam that he has power to report the case referred to the High Court if he doubts the legality of the Principal Assistant Magistrate's finding, and stating that as he does not recommend an appeal against the judgment of acquittal the reference to Government was unnecessary.

BACK PAPERS.

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

FURTHER PAPERS.

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DEPARTMENT.

FROM *Dist. Magistrate*
THE COLLECTOR OF VIZAGAPATAM.

To
The Chief Secretary to Government
Madras.



Dated 1st }
Received 3 } February 1895.
dy 6 }

Re. C. Nos 4185 & 4186
Dis.

ENCLOSURES. one bundle
records sent
Subject. separately.

Requesting that the High Court may
be moved for an authoritative decla-
-ration of the law under sec 195 B.P.B.
and forwarding the connected records.

Handwritten notes:
The Hon. Secy to Govt. 10/11/95
R. X. B. 10/11/95
H. B. 10/11/95
a misquotation

Reference to the
High Court

C.S. 15 Feb 1895 No 344

has power to
The Dist. Magistrate should report
the case to the High Court under
s. 438 of the Cr.P.C. if he has
any doubts as to the legality
of the Principal Secy's finding.
2. As he does not recommend an
appeal against the judgment of
the Magistrate, the reference to the
High Court is altogether unnecessary.

12-2-95

The D.M., Vizagapatam, with enclosure
dated 10/11/95

Note Mr. Wolfe Murray might read his
codes.

Dated 1st February 1895

From

J. D. A. O. Wolfe Murray Esqrs
W. A. Wilcock Esq

Sg Magistrate,

Vizagapalam District.

To

The Honorable J. F. Price,

CHIEF SECRETARY TO GOVERNMENT,

Judicial DEPARTMENT,
MADRAS.

SIR,

1.C.C no 45 of 1894.

2.C.C no 46 of 1894.

In forwarding herewith the records of the marginally noted cases on the file of the Principal Assistant Magistrate, Vizianagaram I have the honor to request that Government may be pleased to direct the Government Pleader to move the High Court for an authoritative declaration of the law.

2. The Complainant in these two cases sued the two accused and two others in O.S. no 35 of 1887 on the file of the District Court, Vizagapalam to recover 7 Vuttis 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 deceased mother's Sridhanam property.

accused deposed on oath that Appalamarasayya - the Complainant's mother had no right to the lands under dispute but that she had a share in the lands known as Dowhitra lands situated in some of Villages. This suit was dismissed on the ground that it was barred by limitation. Subsequently the Complainant sued the accused and two others in the Court of the Subordinate Judge of Vizagapatnam in O.S. no 32 of 1892 to recover possession of the said Dowhitra 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 Dowhitra 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 inquiry

under Section 193 I. P. C. The Principal 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 the Subordinate Judge, two distinct sanctions are required under Section 195 C. P. C. and that as no sanction for prosecution was granted by the District Judge also, the accused could not be proceeded against.

So 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

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and one of them was avowedly false and I think that anyone of the two tribunals either the District Judge or the Subordinate Judge can sanction their prosecution under Section 195 Cl (b) and that two separate sanctions are not required as was

Magistrate and the Bombay High Court.

The question is an important one and I think it highly desirable that the opinion of the Madras High Court also should be obtained in the matter.

5. I do not for the following reasons ask for the retrieval 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 sought to take action against the accused on 16.6.94.

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

I have the honor to be,

Sir,

Yours most obedient servant,

Harmanindran

for Magistrate

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

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READ AGAIN G.O., No.
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DATED

CURRENT No.

ENCLOSURE TO G. No.

ORDER OF GOVERNMENT

LETTERS OF GOVERNMENT

STATEMENT WITH DITTO

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

N.B.—

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