

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 426

Dated 25th Feb. 1895.

INDEXED.

[Despatch Abstract.]

DELAYS IN A CRIMINAL CASE

Passing orders on the explanations submitted by Messrs. J.A. and A.R. Cumming relative to certain irregularities and delays in connection with the disposal of a criminal miscellaneous petition in South Arcot.

BACK PAPERS.							
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	2968		8-12-94				

FURTHER PAPERS.							
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	716 4928		1895. 1895				

1895

Indial 504

No 2938 312.94
Lodged N. 6572/94

The by the Magistrate
South Arcot

The Chief Secretary
to Government
Judicial Department
Madras

For order

With ref to G.O.
No 2938 of 3.12.94

Dated 29th January 1895

Recd 4
Recd 5

Ref on Regd No 127+192
may

CHIEF SECRETARY
GOVERNMENT OF MADRAS
4 FEB. 1895

Submitting with remarks
Explanations of Messrs. J. C.
Cumming & A. R. Cumming
original referred
to G.O. No. 2938 dated
3rd December 1894

Submitted to
Dir

South Arcot

Head Asst Collector's office
Cuddalore
17th January 1895

From

A. R. Cumming Esquire
By Head Asst Collector of
South Arcot

To

The Collector of South Arcot

Sir,

With reference to your endorsement No. 3025 dated 9. 12. 94 on G. O. No. 2938 Judicial dated 3. 12. 94 calling upon me to explain certain facts in connection with the disposal of Criminal Miscellaneous petition No. 4 of 1894 on the file of this Court, I have the honour to submit the following remarks.

2. I took over charge of this division on the evening of April 14th. My predecessor had been for nearly a month prostrated by fever, and the work of the division was naturally somewhat in arrears in consequence. I would point out here that I had then little over a year's experience of official work in this country and that Vriddhachalam was my first independent charge.

3. Vriddhachalam is under ordinary circumstances

I was gazetted to

Din

This is true
Hls.

Govt. will doubtless
be pleased to
attach weight
to this fact.
Hls.

and when I state that at the time of my taking over charge the work of the division was through no fault of my predecessor in arrears, and that 200 villages of the Chidambaram Taluk remained to be settled I will be apparent that to one of my short experience the task was no light one.

4. I completed Jamabandi about the middle of May. Meanwhile three reports, two on 23.4.94 and one on 9.5.94 had been received. The first of these was brought to my notice on 27.4.94, and I endorsed thereon an order to the effect that the Village Munsiff should harvest and store the Crops pending orders from the Tahsildar. If my memory serves me right, I ordered my clerk to draft an order to the Munsiff for the disposal of the Crops, which order would in the natural course pass through the Tahsildar. Hence the introduction of his name. No such order was ever drafted by my clerk who seems to have put the papers aside. Even the endorsement made on the 27th was not despatched; this, I think, I may safely say, was no fault of mine. Had the case originated in my time I should have been conversant with all the facts thereof: I should have remembered that such an order was to be drafted, and been able to remind my Magisterial clerk in the matter. The case was not however so fixed in my memory.

During Jamabandi the arrears of the Revenue & Magisterial Sides and after its close

Suntharasa
Asjar now
on leave is
the clerk
referred to.
He was reduced
by Mr. Hambrick
and has a
bad reputation
Hls.

Mr. Cummins
has been
commended by
the Dist. Judge
for his way in
which this case
was dealt with
by him. It
was an exceedingly
heavy case &
he has not lost
work was very
thorough
Hls.

Suntharasa
Asjar

I was fully occupied in trying to get abreast of my work. The report dated 29.5.94 reached me at Vriddhachalam on June 5th. I was there at Vriddhachalam for the first time. I was there for only two full days and had a considerable amount of work posted for hearing; there was also a large amount of outdoor inspection to be done, and many visits to be received from subordinates whom I had not previously met. My time was more fully occupied than I had expected, and in point of fact I had to travel all night in order to be in Chidambaram on the 6th for some Compensation Cases fixed for that date.

6. Under these circumstances the report was sent into office: it was not brought to my notice but was left to wait its turn with other papers.

7. On the head of all this came the hearing of the important defamation case preferred at the instance of the Board of Revenue by the Tahsildar of Vriddhachalam against one Sambasina Reddi of Thiruvannamur, — a case which had been pending for several months, and which you had orally asked me to dispose of as early as possible.

8. When the Sub Magistrate's orders were received by me on the 5th and 22nd July, I did not clearly remember the case: I marked the papers emergent and called for the previous papers in the case. There were not by me, and the cl

Dir

went on a year's furlough on August 1st. The details of the case were not known to his successor, and further information was called for on 4.8.94. He is still in the same position.

9. On 9.8.94 the petition of Sellamathu Idayam was received. I had from August 1st been touring in the Vriddhachalam taluq with regard to what then appeared to be the precarious state of the season. I visited many villages, and from that date to September 12th during the whole of which I was on tour in Vriddhachalam and Chidambaram, nearly every moment I could spare was devoted to the preparation of my judgment in the defamation case above referred to. That judgment was delivered on September 12th & has already passed through your hands. On the very following day the petition with the previous references was dealt with by me and disposed of.

10. During the whole of the period in question I was with very few exceptions working from early morning till late in the evening. If orders were not promptly passed on any particular paper it was simply because I was fully engaged in the disposal of other work.

11. I venture to hope that to my charge

This is true. Mr. Lumley has always worked hard. Hls.

To the Secy
3

St. Macistrate's Office

that I have been guilty of neglect in the discharge of my duty.

I have the honour to be
Your most obedient servant

A. R. Lumley

Ag. Dist. Collector & Magistrate
10.1.95

Incl.

And on 10th



192

From

The District Magistrate
South Arcot

To

The District Magistrate
South Arcot

Dated 20 }
Received } January 35.

By H. S. 3
Mag.
Encls 3.

Submitting explanation
for delay in the disposal of
a Civil Suit in Serevor
village Vaidachalam Taluk.

Submitted to Govt. with
reference to G.O. No 2938
Judicial, dated 3.12.94
with the recommendation
that the explanation be
accepted.

2. I have made a
few marginal notes.
A heavy division with
considerable responsibilities
fell to the lot of Mr. A.R.
Cumming at a very early
stage of his official
career and I am glad
to be able to assure
Govt. that he has always
striven to do his duty.

A. R. Cumming
Ag. Dist. Magr.
28.1.95.

Collector's Office

No. Arcot
3

Disposal No. 20
of 1895

Madurai
Dindigul 6th January 1895

From

J. A. Cumming Esquire

Ag. Dist. Magr.

Dindigul

To

The District Magistrate
Madurai.

Sir,

In returning your endorsement on
Current No. 2404 of 1894 on G.O. dated
3rd December 1894 No. 2938, calling for
my explanation as regards certain
delays and irregularities in the dis-
posal of a criminal Miscellaneous
Petition in South Arcot, I have the
honour to offer the following remarks.

2. As regards the delays Vaidachalam
is far from a light division and
normally took me more than the "eight
hours a day" which the British work-
man considers a reasonable limit
for his labour. Mr. Hamrick used
to say that Chidambaram gave him
more work than any other in
the district. And on

Govt. is aware
that he had a
very division
in his district
is heavy.
Hls.

days after the receipt of the petition),
I proceeded to Chidambaram to start
Jamaabandi. That taluk comprises
240 villages, nearly all wet. I had orders
to finish it as soon as possible. Allow-
ing 6 weeks for it, that meant 10 villages
a day and it is utterly impossible to
do that and keep all the current work
up to date. Besides petitioner's petitions
was received while I was engaged in
Jamaabandi.

3. Probably the above would be suf-
ficient to explain the delay. But a
more patent cause was my illness
which Mr. Stuart incidentally refers
to. I had been feverish for some
days and on 16th February was con-
fined to bed with remittent fever.
I could do practically no work though
I got up on 20th to try an important
case. Dr. Robertson came out to see
me on 21st for he made me to do any
work at all, and ordered me back
to bed. There I was till 6th March.
Dr. Robertson came out several times
to see me. My family were also suf-
fering from fever. During that period,
the probationary deputy Collector was
in charge of the division but as he
was magisterial he was not

This is true.
Mr. Cumming
became seriously
ill, partly on
account of
overwork &
partly on account
of fever contracted
in the execution
of his duties.
I became he
had no broken
home in his
division to live
in. The facts
were duly
reported semi-
officially to
the Board. He
was by Mr. C.
was deputed to
Pohora to
conduct

was confined
to bed -
Mrs.

This is true.
Mr. Cumming never
sprinted himself
and did excellent
work while in
his district.
Mrs.

This was so.
Mr. C. agreed
with me but
under the
circumstances
his such action
was necessary.
Mrs.

magisterial work fell in arrears.
For some time after I resumed work
on 6th March, I had to do most of
my work in a long arm chair. I did
not the physical strength to clear
the magisterial arrears, try a heavy
defamation case and carry on Ja-
maabandi at the same time, though
I worked through the Easter holidays.
I had not completely recovered when
I handed over charge on 14th April
and my work was still in arrears.

4. I may be told I should have taken
leave. As I know my work was in
arrears and my quarterly returns
would be bad, I wanted to cover up
the period I was totally incapacitated.
I did not have but Mr. Stuart
received informal ^{intimations} from
the Board of Revenue that it was
unnecessary. And I did not apply
for leave as Dr. Robertson said I
would be all right in a drier station
and I was expecting a transfer very
soon. Mr. Elphinstone got his Reg.
Sub. Collected in the Gazette of 13th
February and I was next for
promotion. I was gazetted to

Div.

Dividigul on 21st March, which
exactly suited me.

5. These facts with I believe amply
explain the delays in the case - why
I did not take immediate action
under Sec. 104 C.P.C., why summons
was not issued to the witnesses
(the Magisterial clerk was busy with
the other checking accounts), and
probably had no time to prepare
them) and why Comander petitioner's
petition was not immediately
attended to.

6. As regards the irregular attach-
ment. The best way to dispose
of the petition would have been
to proceed to Seemur. But as I was
on the point of beginning the journey
- bandi of a heavy taluk and the
place was over 40 miles away, I
did not consider myself called
on to do so. Nor was the matter of
sufficient importance to justify
me in doing so, especially as the
parties had a Station House officer,
a police Inspector and a Sub
Magistrate, all within some 10 miles
of the place. The facts quoted by

the petitioner in para 7 showed an-
-ever that a breach of the peace
was imminent, and I therefore
issued an order under Sec. 144,
restraining both parties, to which
petitioner consented.

7. Considering the time it would
take to serve summons, and the
other work I had on hand, I had
no expectation of disposing of the
matter before some of the crops
were ready for harvest - vide para
6 of the petition. I could not expect
the parties to refrain from inter-
-ference if the crops were not har-
-vested when they were ripe. I
therefore accepted petitioner's sug-
-gestion that the Village Munsiff
should harvest them as they ripened.

8. But for my illness, action would
have been taken under S. 104 and 145
C.P.C. Undoubtedly it was a proper
~~cause~~ case for the latter section,
though petitioner in his sworn
statement said there was "no
takarar between us about the lands".
But when the matter after con-

Siderable

Sidderable delay came before me again, circumstances had materially changed. There was no immediate risk of riot and there was ample time to have recourse to a civil Court.

So that I referred them. The only subject of contention then was the crops which had been reaped. No section of the C.P.C. authorized me to settle the rights of ownership to these. Even S. 146 does not authorize me to attach moveable property. But if I had not provided for the crops being reaped when ripe, either my order would have been set at naught, or the crops would have materially deteriorated.

9. In the record sent to me, there is no report received from the Village Munsiff by me, asking for permission to take measures to prevent damage to the attached crops. One was received on 21st February (the first day Dr. Robertson saw me) reporting that Rengaswami Adayan had disobeyed my order.

10. I would suggest that this letter be

I find that it was W. A. R. Cumming & not Mr. J. A. Cumming who received the applications from the Village Munsiff. W. J. A. Cumming only received the report - In 21 Feb/94 referred to in this paragraph. AKS.

To the Collector

Magistrate's office

4

be forwarded through the Collector of South Arcot, who is well acquainted with the facts of my illness.

I have the honor to be
Sir,
Your most obedient servant,

[Signature]
Collector.
Magistrate.

Siddhally d. d.

From

The ^{COLLECTOR} ^{MAGISTRATE} of
Ag faint Madura

To

The District Magistrate
Madura

Dated

6. }
Received 8. } January 1895.

Disposal No. 20 of 1895.

Enclosures. (1 file)

SUBJECT.

Submitting explanation
Called for in his order
an Current no 2407 on
no 2938
3.12.94.



See letter from the
Madura dated 14-1-95
a explanation of the

South Arcot

Dis No. 9

From

L. C. Miller Esquire,
Acting District Magistrate
Collector of
Madura.

To

Chief
The Secretary to Government,
Judicial Department,
Madras.
Through the District Magistrate,
South Arcot.

Sir,

With reference to para 3 of
G. O. No. 2938 dated 3rd December
1894, Judicial, I have the honor
to submit herewith the explanation
furnished by Mr. J. A. Cumming,
therein called for.

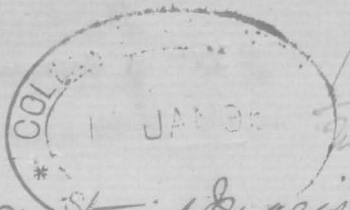
I have the honor to be

Sir,

Your most obedient servant,

L. C. Miller
District Magistrate
Collector.

Siddhale d. o



From District Magistrate
The Collector of
Madras.

To Chief
The Secy. to Govt.,
Judicial Department,
Madras.
Through the District Magistrate
South Arcot.

Dated 14 January 1895.
Received

Dis No. 9
Enclosures 1
SUBJECT.

Submitting the
explanation furnished
by Mr J. A. Cumming,
Called for in G.O. dated
3-12-94, to 2938 Judi-
cial

Submitted to Govt. with
reference to G.O. No. 2938
Judicial, of 3.12.94, with
the recommendation that
the explanation be
accepted.

2. I have made a
few marginal notes. Mr.
J. A. Cumming was seriously
ill for some days and
had overworked himself.
I am confident that
the delay and irregularities
induced by Govt. were due
to illness & heavy work
combined.

Approved & Sent
By District Magistrate
29-1-95

South Arcot

St. Magistrate's office
Cuddalore

504 29 January 1895.

From

A. E. Castle Stuart Stuart Esquire
Ag. St. Magistrate of
South Arcot.

To

The Chief Secretary
to Government
Judicial Department
Madras.

Sir,

Referring to Government order dated
3rd December 1894, No: 2938 Judicial, I have
the honour to submit the explanations
of Messrs J. A. Cumming and A. R. Cumming
called for by Government with my mar-
ginal remarks. The former was received
by me through the St. Magistrate of Cuddalore.
Mr. Cumming's object in submitting it
through me is explained by him in the
last para of the explanation.

2. As directed in the latter portion of
para 3 of the Government order, I beg to
report that the process fees amounting
to Rs 6-8-0 were paid by petitioner -
Seturama Pattammithu Ndayan in stamps
affixed to the petition dated 1st February
1894 put in by his Vakil and that they
are

Mundumbar
for ag. st. Magistrate.

500-20-6-94.

DEPARTMENT.

No. 304

The Dist. Judge, of South Arch.

Dated ²⁹~~14~~ - January 1895,

FOR ORDERS.

Mr. A. K. Cummings' clerk seems
to be more than twice as
much as he should be to deal
with him.

I don't blame W. J. A. Cummings
for falling ill - the fault lay
in the illegality of his original
order for which he should
be duly "wipped".

hvs

2/2/95

C.A.

Order 25 Feb 185 No 426

The A.R. Company's explanation
will be accepted. The Dist. Mgr.
should however take steps to punish
the clerk who was responsible for
delay in taking his order.

2. Mr. J. H. Cummings' explanation
exonerates him from blame
as regards the original ^{ill-considered} order
of attachment of the crops, for the use
of which he is decidedly to blame
(from orders)

(from order)

2572/95 - $\frac{\Delta}{22.285}$

The Dear Madam, I have

Wm. H. R. Cummins.

The Public Dep^t

The Dist. Mgr. of South West
submits with remarks the explanatory
called for from Messrs. J. A. & R. C.
Canning on P.O. No 2938 of 3. 12. 94.

2. It appears that Mr. J. H. Cumming was so ^{led up to by the} ~~unwillingly~~ ^{reluctantly} forced as to be physically incapable of attending to his work, & that he received no reports on this case from the village magistrate. - His initial error of ordering the attachment of the crops is explained with the remark that he "accepted the petitioner's suggestion that village mandiffs should harvest 'them' as they ripened" in order to prevent the parties from interfering. - This was of course illegal, & Mr. J. H. Cumming should not have passed the order before taking action under § 145 of the C.P.C. - It is however to be remembered that he was at the time overworked & falling ill.

3. Mr. T. R. Cumming; explanation is more satisfactory. His registerial clerk repeatedly neglected his orders to treat these papers as urgent; & Mr. Cumming had just entered on a heavy subdual charge for the first time, when favorable response was in full swing.

4. Lehrb. habe will und ist

P = Copy abstract
Q = Copy heading only

But the value of the sealed Court fee
stamp is refunded to the petitioner

X
16-2-95

It is submitted that the explanations
of the Secy. General's Office
are altogether satisfactory and may
be accepted.

The Secy. was ill and Mr. Dinesh
and the latter was in charge of
a division for the first time had
very much on his mind and
beside his usual work on
his hands.

HP
19/2/95

Delay in a Criminal
Case

H. H.
for orders

Given for copying _____
Copied _____
Examined _____
Signed _____

189

AG IN G.O., No.
189

DATED

RENT No.

ENCLOSURES TO O. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

N.B.—

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