

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 473.

DATED 5th Mar: 1895.

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST ACQUITTAL.

Declining, with remarks, to prefer any appeal against the
Judgment of acquittal in Calendar Case No. 909 of 1894 on the
file of the Cannanore Town Magistrate.

W. A.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	602		1896				

Go. 168 - 25-1-95
413 - 19-2-93
63/94 Ac 4018

572

To
The District Magistrate
Malabar

To
The Chief Secretary to Government
Judicial Department
Madras

Dated 3 - 2 - 95

Despd S. 2 - 95

Recd 8 - 2 - 95



Requesting Government to
kindly reconsider its order dated
25th January 1895 or 25-1-95
declining to present an appeal
against the judgment of
acquittal in case 909 of 94 on
the file of the Cannanore Town
Magistrate.

Malabar District Magistrate's Office,
Calicut 3rd February 1895

From,

H. Moberly Esquire
Ag District Magistrate of Malabar.

To,

The Chief Secretary to Government
Judicial Department,
Madras.

Sir,

I have the honor to acknowledge receipt of L. O. dated 25th January 1895, No. 168 declining to present an appeal against the judgment of acquittal in Calenda Case No. 909 of 1894 on the file of the 2nd Class Magistrate Cannanore Town, and expressing surprise that I had thought it necessary to make a reference on so trifling a matter.

2. In his letter dated 12th December 1894 Defoucer 3452 H, Mr Bradley submitted that it was important to obtain a ruling upon the question which arises, whether, if a Magistrate acquits, as a Summons Case under C.P.C. Sec 245, a case which is really a warrant case, the only remedy lies in an appeal. Government

in its order of 15th January 1894, No 63 directed that should any such case occur in the future it should be reported promptly.

3. The case I reported was such a case. The Sub-Magistrate had tried a warrant case for a summons case, and had acquitted the accused. Unfortunately by oversight, I failed to make any reference to G.O. of 15th January 1894, No 63, and apparently the order has been forgotten in your Office. I regret the omission on my part. I have the honor to request that in the circumstances, Government will kindly reconsider its order.

I have the honor to be,

Sir,

Your most Obedient Servant

Chunook

Ag District Magistrate

D. M.

As

No. 572

From

D. M., Malabar.

Dated 8. 2.

1895,

FOR ORDERS.

With reference to G.O. of 25 Jan. 1895 No. 16 & 17, the Dist. Magistrate justifies his report to Govt. by quoting from G.O. of 15 January 1894 No 63 just. This has not been mentioned in his report, from the general tone of which it appeared that he recommended an appeal against the acquittal rather because the Sub-Magistrate had refused to convict the defendant in spite of his disbelieving the defence witnesses than because he thought this a profitable test case for obtaining a ruling on the question "whether, ~~the remedy against~~ a Magistrate ~~acquits~~ as a summons case" or "a case which is really a warrant case" & "should have been discharged" or, to all remedies lies in an appeal against the acquittal.

2. Had he mentioned this in his report Govt. would of course not have expressed surprise at the reference.

3. This hardly appears to be an analogous case however. In that dealt with in G.O. 63, the Sub-Magistrate treated a

case as falling under S 225 B of the M.C. who really fell under S 355 also. That is to say, he altogether ignored the fact that the person to whom resistance was offered was a public servant.

acting in the exercise of his duty.
In this case Mr. Moberly would argue that
similarly his pet might ignore the fact
that blow caused "bodily pain", & thus convert
"assault" into "causing hurt".

It is however to be noted that the borderline
between assault & hurt is not always
clearly defined, & that the complainant in
this case appears only to have laid a
charge of assault. In his revision petition
to the joint Magistrate, he speaks of having
laid a complaint under S 352 & 353.

It is doubtful therefore if he ever complained
of being caused pain.

Even however if his complaint had specifically
mentioned both sections - 323 & 352 -

on the Magistrate's procedure would have
been perfectly regular; disbelieving the
prosecution's story that a blow was
actually struck, he would have done perfectly
right to examine the defence witnesses, as
required in a samual case, in order to
dispose of the charge of assault, to convict
of which it would have sufficed to prove a
mere gesture.

5. The case of offence under S 225 B & 353
is different, for, given that the person to
whom resistance was said to have been made
was a public servant, it would have been
impossible to convict under S 225 B
without also convicting under S 353.

6. For these reasons it seems useless to
treat this as a test case, besides which
the Magistrate would say "he won't enter
into the general question, the evidence in
this case is too shaky, & we refuse to
order a retrial for that reason".

18.2.95

Mr. Moberly evidently intended an appeal on the facts. The case is overruled & I submit one which
is as all the desirable things before the High Ct. The Ct. would not enter into the general question but
would certainly reject the appeal on the evidence. 2072/95

Appeal against an acquittal

* Enclosure to P.O. 168
24.1.95

H.M. (for orders)

except for failing to record a
formal order of discharge on the one count

in the execution of his duty

I am with the Ct.
from if Mr. Moberly
appeals as a test case,
he should have said so

21/2/95

Revised P.O. 7/15.1.94 to 65 jail?
25.1.95 - 168 -

C. No 572 of 3.2.95

Order 5 March 1851/473

If Mr. Moberly desired that
an appeal should be preferred as
a test case, he should have expressly
stated his wish. But from the tenor
of his previous letter it appeared
to me that he intended
an appeal on the facts of the case.
As the judgment shows the evidence
to have been somewhat contradictory,
it is not probable that an appeal
would be successful, & the High
Court would very possibly refuse
to entertain it.

in that ground without entering into the general question on
which was raised in P.O. 7/15.1.94
to 65 jail. The Court is therefore
not prepared to prefer any appeal

(from orders)
25.2.95 4/3/95

The D.H., Mr. Labar & Co. despatch
5/3/95

Noted Cs

Perhaps the draft is
rather too much of a
Sketch?

Appeals
Acquitted

Sp
(From order)

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

189 .

READ AGAIN G.O., No.
189 ;

DATED

CURRENT No.

ENCLOSURES TO G. 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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