

Judicial (1895.) Department.

ORDINARY MS.

G.O., No. 478.

DATED 5th Mar: 1895

INDEXED.

[Despatch Abstract.]

PETITION.

Declining to interfere with the sentence passed upon Muthu-
chidambara Chetty, accused in Calendar Case No. 607 of 1893,
on the file of the Second-class Magistrate, Negapatam.

Arch

BACK PAPERS.

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FURTHER PAPERS.

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jud

Pabu B. S.

752

jud

From

K. K. Chidambaram Clerk

*accused in Cat. C No 607
of 1945. on the file of the
L. M. Chidambaram. Reg. apptn.*

Date. 16. 2. 95

Recd. 16. 2. 95

Encls. 15

Subject

*Regd. that the sentence
passed on him. May be
cancelled*

To

His Excellency The Right Honourable

BEILBY BARON WENLOCK, C.C.I.E.,

GOVERNOR-IN-COUNCIL,

FORT SAINT GEORGE,

MADRAS.

The humble petition of MUTHU CHIDAMBARA CHETTY, accused, in Cal. Case No. 607 of 1893, on the file of the 2nd Class Magistrate of Negapatam, at present residing under the care of P. SITARAMA IYER, at No. 61, Coral Merchant Street, Black Town, Madras.

MAY IT PLEASE YOUR EXCELLENCY,

1. The complainant in the above Calendar Case preferred a complaint in the 2nd Class Magistrate's Court of Negapatam charging Petitioner and others under Sections 451 and 352 of the Indian Penal Code.
2. The Sub-Magistrate found the Petitioner (among others) guilty, and sentenced your Petitioner to suffer simple imprisonment for two days and a fine of Rs. 25.
3. The Petitioner and others appealed to the 1st Class Sub-Divisional Magistrate of Negapatam, who without giving due consideration to the arguments advanced on behalf of the Petitioner, summarily disposed of the case and upheld the conviction of the Sub-Magistrate.
4. It is alleged in para. 1 of the Sub-Magistrate's Judgment that the complainant's aunt went to the 1st accused's (Petitioner's) oil bazaar at 2 o'clock, that the Petitioner asked for one anna due to him, that she said she would pay it, and that therefore the Petitioner (accused) abused her. It is further alleged that while she was informing on her return home to the 6th witness about it, the Petitioner and his party came there and beat the complainant and others. The Lower Courts and as well as the High Court to which a Criminal Revision Case was filed, failed to observe that the prosecution story is very unlikely on the face of it, in the absence of any sufficient motive, and considering the improbability of the story and the untrustworthiness of the evidence.

5. Your humble Petitioner begs to convey to Your Excellency that he is a respectable man paying an Income Tax of Rs. 28 a year and that a man of his position would not have left his bazaar twice in the course of two hours to go to complainant's house for the purpose of committing two distinct assaults; and the complainant's aunt who was the chief instrument of the quarrel did not come forward as a complainant nor was she examined as a witness.

6. There are innumerable discrepancies in the prosecution, but withal that, the Sub-Magistrate believes the story to be true which is merely one-sided and the 1st Divisional Magistrate says in para. 7 of his Judgment that because the Sub-Magistrate credited the evidence for the prosecution he is necessitated to arrive at the conclusion that the evidence of the prosecution witnesses is entitled to full credit.

7. It is evident from para. 2 of the Sub-Magistrate's Judgment that no one took any steps towards separating the parties at the time of the quarrel, though there were a number of witnesses at the scene of offence; but the Sub-Magistrate gives a different version, quite unsupported by records, that these witnesses and the 1st and 6th witnesses together cannot be said to be strong enough to meet the five accused together.

8. The story for the defence is supported by independent witnesses, especially the Court peons, the evidence of one and all of whom corroborates with the story of the accused in saying that he (Petitioner) was not present in the house at the hour of the alleged offence. The fifth defence witness speaks to the strong enmity between the Petitioner and Rangasamy Chetty and the case is a concoction.

9. It is admitted on all hands that the parties are bitter enemies, and it is urged by the 1st Class Sub-Divisional Magistrate (*vide* para. 5 of his Judgment) that in such a state of feeling there is no knowing how small a matter will be sufficient to cause them to break into violence. This fact renders the prosecution very weak for it would not be unfair to presume that the complainant would have, out of the strong enmity, concocted a case like the present one which is exactly the story of the defence, and considering the deadly enmity of the parties, and the improbability of the story, there are abundant reasons to believe that the prosecution story is more or less a colorable transaction.

10. Your Petitioner craves leave to bring to Your Excellency's consideration one peculiar circumstance in connection with this case. The complainant in his complaint before the 2nd Class Magistrate has added the name of one Vencatachellam Chetty brother of Petitioner, and who is said to have assisted the Petitioner (1st accused) in the assault. There were several judicial proceedings between the Petitioner and the said Vencatachellam and the last of such, which was pending in the High Court, ended in favor of your Petitioner, and the said Vencatachellam Chetty was ordered to pay the costs incurred in the suits by the Petitioner. Thereupon your Petitioner applied for execution against the said Vencatachellam and recovered part of the costs. At this juncture it is highly improbable and unjust to expect that such a person like Vencatachellam would have stooped to join and help the Petitioner in the perpetration of the crime, and thus be criminated himself, (*vide* printed papers marked as A and the execution Petition.)

11. The case was concocted at the instance of one Rangasamy Chetty and his son Ponnusamy Chetty who are the deadly enemies of the Petitioner. This fact is strongly supported by documentary evidence. Besides this the Sub-Magistrate (who convicted the Petitioner) was for a long time living in the house of the said Rangasamy Chetty. In a case brought against the said Rangasamy's son, Ponnusamy Chetty (*Judgment in* Calendar Case No. 2 of 1892, on the file of the Sheristadar and Second Class Magistrate of Negapatam of which the Petitioner came in possession only after the disposal of the Appeal), the Sub-Magistrate (who disposed of your Petitioner's case) has given evidence on behalf of the said Ponnusamy Chetty. He says that the complainant first came to him that morning, that he then sent for the accused and told both of them that one should not call the customers of the others, &c. There is a separate Sheristadar Magistrate to inquire into petty assault cases and this is entirely out of his cognizance. The accused Ponnusamy Chetty being his close friend he was afraid lest the complainant would implicate him, and simply to avoid such things, the Sub-Magistrate sent for this Ponnusamy Chetty and tried to effect a compromise. This clearly shows that the Sub-Magistrate is interested towards the said Ponnusamy and there is close intimacy existing between them (*vide* para. 4 of Judgment in Calendar Case No. 2 of 1892). Further the procedure of the Sub-Magistrate in not examining the witnesses mentioned in the complaint amounted to a bias and gross irregularity.

12. Your Excellency's Petitioner is a respectable and recognized Merchant of Negapatam paying an income tax of Rs. 28 and a Municipal Tax of Rs. 45. The case is a thorough concoction and the sentence given to your Petitioner is a serious stigma and a lasting infamy to himself and his posterity, inasmuch as he is lowered very much in the estimation of his relatives, friends, and co-merchants.

13. Under circumstances set forth above, Your Excellency's humble Petitioner craves leave to appeal to your generosity and requests that Your Excellency will be pleased to take a broad view of the circumstances, to take into consideration the connected facts, the deadly enmity between himself and Rangasamy Chetty's son, Ponnusamy Chetty, whom the Sub-Magistrate was inclined to oblige even by going afar from the sphere of justice, and to cancel the two days' simple imprisonment and a fine of Rs. 25 inflicted upon him.

For which act of charity, your Petitioner as in duty bound, SHALL EVER PRAY.

He begs to remain,
Your Excellency's most obedient servant,

MADRAS,
February, 1895. }

c/o P. SITARAMA IYER,
No. 61, Coral Merchant Street, Madras.



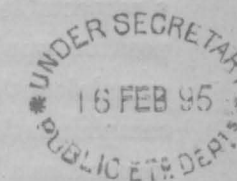
To

His Excellency The Right Honourable
BEILBY BARON WENLOCK, G.C.I.E.,

GOVERNOR-IN-COUNCIL,

FORT SAINT GEORGE,

MADRAS.



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For which act of charity, your Petitioner as in duty bound, SHALL EVER PRAY.

He begs to remain,
Your Excellency's most obedient servant,

MADRAS,
15 February, 1895. }

c/o P. SITARAMA IYER,
No. 61, Coral Merchant Street, Madras.

To

His Excellency The Right Honourable
 Baron Baily Venlock Esq
 Governor in Council
 Fort St George
 Madras



The humble petition of Kunth
 Chidambes Chetty Complainer
 in Cal Can no 607 of 93
 on the file of the 2nd class magi-
 strate of Myapalam at present
 residing under the care of P. Sili-
 rama Iyer at no 61. Coral mar-
 chant Street, Black Town
 Madras.

May it please your Excellency.

As my petition addressed to your
 Excellency to day was sent without my sig-
 nature on it. I request that your Excellency
 will be pleased to accept this petition
 enclosed herewith and containing my
 signature and dispose of my case along with
 the enclosures already sent your Excellency most obedt
 your humble servant

15 Feb 95

P. Siliaram Iyer
 no 61. Coral merchant

[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page.]

CURRENT No. 752 OF 1892.

Application for remission of sentence from convict in the
Jail,

FOR ORDERS.

Name of the Convict

Arthur Charles (Hester)

Offence committed.

See 501 & 352

Adjudicating Court.

2nd Class Magistrate

Sentence imposed.

2 day & simple lift

25 Rs fine

Result of appeal to High Court.

Appeal dismissed

Previous Convictions.

Nil

Note

The petitioner asks that the sentence shd. be "Cancelled". Govt cannot do this; the pet. is treated as a request for remission; the sentence has never been undergone.

See no reason

to interfere

BA

1/3/95

Order 5 March 1895 No 478

The petitioner will be

informed that Govt

sees no reason

to interfere

with the sentence passed

upon him.

D

5-3-95

To the Secy (G.O.) despd
with all encs 6/3/95

Rb.
2/8/95

replied 5/3/95

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

189

READ AGAIN G.O., No.
189 ,

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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IN ORIGINAL.

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