

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 782.

Dated 18th Apr 1895.

INDEXED.

[Despatch Abstract.]

SANCTION FOR THE PROSECUTION OF A VILLAGE MAGISTRATE.

Directing the District Magistrate of Tinnevely to refer to the High Court for an authoritative ruling if the prosecution of the Village Magistrate of Terku Pittampatti in Ottapidaram taluk concerned in Calendar Case No. 87 of 1894 on the file of the Joint Magistrate, should fail for want of sanction.

and.

BACK PAPERS.

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

FURTHER PAPERS.

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

IND-100 in Criminal
CURRENT 189 5/577

Judicial Department.

TINNEVELLY *D. Magistrate* OFFICE.

From

The

District Magistrate

Tinnevely.

To

The Chief Secretary to

Government
Fort St. George.

Dated

27

Received

29

CHIEF SECRETARY
GOVERNMENT OF MADRAS
No. 387

1895

ENCLOSURE.

SUBJECT:

Soliciting the order of Government as to the

necessity or otherwise

of the District Magistrate

Sanction to the prosecution

of the Village Magistrate

of Jerkin Jittampatti in

For orders.
Submitted that the District Magistrate's view of the law is correct & that he should be told that Govt. agrees with him. He will be prepared to if the Court to which the complaint is preferred to dismiss it for want of sanction. The Dist. Magistrate can refer the matter to the High Court for an authoritative ruling.
2-4-95
10/4/95

CS.
Order 18 April 1895, No. 782.
The District Magistrate will be informed that the Govt. considers the interpretation of the law to be correct, & that he should proceed upon that assumption (from orders).
10-4-95
17/4/95

Submitted to H.E. for perusal of C.S. addition.
seen by me
17/4
which was concocted by

JUDGMENT in Criminal Appeal No. *119* *has been completed*
on the file of the Sessions Court of Tinnevely.

at the Court the appeal is preferred.	No. of the Case in that Court.	No. of the Appeal	Name and Description of the Appellant	Sentence & Law under which it is imposed in the Lower Court	Whether Confirmed Modified or Reversed	If modified the Modification.
<i>Joint</i> Magistrate of Tinnevely.	87 of 1894.	72 of 1894.	1. Perumal Naidu 2. Arumugam	<i>1" accused to six months' rigorous imprisonment for each of the offences or eighteen months' rigorous imprisonment in the aggregate Under Section 143, 204 and 293 of the Indian Penal Code</i> <i>2" accused to three months' rigorous imprisonment under Section 182 of the Indian Penal Code</i>	<i>Confirmed.</i>	

This Appeal coming on for hearing : upon perusing the petition of appeal and the record of evidence and proceedings in the case, ~~and upon hearing the arguments of~~ *Mr. Balu S. Shrinivasan not appearing* *and upon hearing the arguments* Plead for the Appellant and of the Public Prosecutor in support of the conviction, the Court delivered the following

JUDGMENT:—

Date of					
Presentation.	Filing.	Notice issued by Court to appear.	On which appellant ordered to appear.	Hearing.	Order.
19. 11. 94	22. 11. 94	23. 11. 94	5. 12. 94	13. 12. 94	19. 12. 94

The two appellants in this case have been convicted the first of fabricating false evidence and secreting or destroying a document which he might be lawfully compelled to produce as evidence in a court of justice and the second of giving false information.

2. The facts of the case as set forth by the evidence for the prosecution are briefly these:—

A complaint of house breaking and theft was made by the 2nd accused who charged two men named respectively Madan and Karupam with having committed the offence. The Police Inspector of Etapidarani who is the first witness for the prosecution went to the Police Station of Tadpatri and there found the first accused, who is the station house officer of that station, the 2nd accused, the village munsiff of Teku Tattanpatti, and the two men who were charged with the offence. The 1st accused informed the Inspector that the 2nd accused's house had been broken into and some brass vessel stolen therefrom, that Madan and Karupam had been arrested on suspicion, had confessed the crime

a spot in a channel where they said they had buried the stolen property and that the brass vessels produced had been found buried at the spot pointed out by them. The first accused showed the Inspector an attachi in which the above facts were set forth.

3. The Inspector's suspicions were aroused by observing that one of the articles which was a brass lamp thickly covered with oil on the outside had no dirt adhering to it as it would necessarily have had if it had been really buried in the ground. He asked the 1st accused to show him a place where the stolen property had been discovered.

The 1st accused could not do this and asked to be excused for his mistake. The Inspector learnt from two of the men who signed the attachi that the first accused had made them sign a list but had refused to inform them of its contents and that no mention had been made by discovery of the stolen property.

This happened on the 20th January 1894. On the 21st January the 1st accused sent in his report of

the house breaking, submitting with the attachi in which an entirely different account was given of the finding of the property. In this attachi (Exhibit B) the articles are said to have been discovered in a cholum field and not in a channel.

5. The Inspector says that this attachi is not the same as was originally shown him by the 1st accused. The original attachi which had been left with the first accused must therefore have been destroyed or secreted by him and Exhibit B fabricated in its place.

6. The evidence has been accurately set forth and fully dealt with by the Joint Magistrate. It is unnecessary for me to go into it in detail again.

7. The second, fifth, sixth and seventh witnesses all say that they signed a paper by the requisition of the 1st accused and the village headman. The second witness said at first that one of the signatures on Exhibit B looked

afterwards said that it was his. He is able to sign his name. The fifth witness says that he signed an attachi but did not know what it contained and that the signature on Exhibit is not his. The sixth witness put his mark to some paper which he cannot identify again. The seventh witness says that he signed a paper - but his signature does not appear in Exhibit B the second attachi at all. None of these witnesses know anything about the finding of the stolen property though three of them are supposed to have signed the attachi Exhibit B which the discovery of the articles in the plum field is described.

The Inspector is corroborated in his account that transpired on the night of the 19th January as to the contents of the missing attachi by the third, tenth and eleventh witnesses. There is no sufficient reason suggested as to why the Inspector should concoct such an elaborate case against the accused.

9. The defence evidence has been examined in a very full manner by the Joint Magistrate who has given satisfactory reasons for rejecting it.

10. It is significant that the third defence witness admits having signed an attachi relating to the discovery of the property and that Exhibit B - the only attachi in the case - has not been signed by him. This circumstance the blinders in giving his evidence made by the sixth defence witness and the fact that a copy of Exhibit B was inadvertently handed over by the first accused along with some other papers all go to support the prosecution theory that there were two attachis and that Exhibit B was substituted for the one originally shown to the Inspector by the first accused.

11. I see no reason to differ from the finding of the Lower Court and dismiss the appeal.

12. It appears from the Joint Magistrate's judgment that sanction was applied for

the village munsiff of Terku Tittam-

patti, but was refused by the District Magistrate.
There seems from the record to be ample ground
for prosecuting this man. The District
Magistrate will be asked to state on what
grounds he refused sanction and to forward
to this Court the record of any separate inquiry
he may have held in the matter.

(Signed) H. D. Bell
Ag. Sessions Judge.
19-12-94

(True copy)

for District Magistrate.
28.3.95.

16395
27/3

16395
J. Dept.
3
15/4

Translation of Exhibit B.

To
Her Majesty's Government.

Attest written by the village munsiff of
village of Terku Tittampatti village, Ottapidaram
Taluk, Shavetti -

That when constable no. 402 of the
Tadpatri station was enquiring into the
case of theft in the house of Arumugam (com-
plainant) to-day, one Muthu, son of Palman
of the said village came and said that the stolen
property was in the dry land, cultivated with
cholum seedlings, to the east of the village.
We at once went thither and inspected and found
a bronze chumboo, a bronze lamp, and a
kettle lying on the said dry land. We showed
the property to the complainant, who said that
they were his. The said property and a bright
lock were taken charge of by the Tadpatri
station house officer. To this effect the attestation
is executed.

(Signed) Pabbe Chettiar
" Gurusani Maniga
" Anubalam Subba Reddai
" Sundara Reddai
" Chetti nathan

Arunugam Pillai Kurnam.
Subramanian.
— mark of S. Arunugam
— " Pal sanivela
Signed) Arunugam
Subba vaidu V. m.
Perumal vaidu, Constable no. 402.

(True translation)

Charles W. Smith
for District Magistrate.
27-3-85.

[illegible]

19-1-94.

(6756) 4000 0000 0000

" ⑥ ⑥ sold Lernwörter in

" Geig Breunni

" *Micro Glandineum*.

" *Asy Gais di luv di omni.*
 " *Quily lompum.*
 — *Apri & Asy Gais.*
 — *Apri uir & ad lomp.*
 (Quire) *Asy Gais.*
 June 19.1.94 *Quin lomp & ad lomp.*
 (Quire) *Quin lomp & ad lomp.*
 402 di lomp.
 (True copy)
 for District Magistrate
 27-3-95.
 26395.
 27.3.

CURRENT

Review of the District Magistrate

Dated the 29th June 1894.

No. 737.

Read letter no. $\frac{430}{7.4.94}$ of the District Superintendent of Police forwarding copy of a report of the As Superintendent of Police on referred charge the crime no. 6 of the Troppampatti station and -ing orders as regards the village magistrate; this office endorsement thereon dated the 27th 1894 forwarding the letter to the Joint Magistrate for necessary action.

Read also the report of the Stationary Sub of Ottapidaram no. $\frac{440}{25.6.94}$ and the endorse of the Joint Magistrate thereon recommending prosecution of the village magistrate as a prima facie case against him.

order.

Of the two attachis said to have been by the village magistrate, only one is at forthcoming. The case does not further very clear one. In the circumstances Magistrate considers the prosecution not magistral to be undesirable.

(Signed) B. Judge

Ag District of

(True copy)

26395.

for

CURRENT No. 157
No 387

Tinnevely District Magistrate's Office

Dated 27th March 1895.

From

A. W. B. Higgins Esquire,

District Magistrate of

Tinnevely.

To

The Chief Secretary to

Government,

Judicial Department,

Fort St. George.

Sir,

In case No. 87 of 1894 on the file of the
Joint Magistrate, Perumal Naidu (a Police constable)
and Arumugam were convicted, the former for
offences under sections 193, 204 and the latter
under section 182 I.P.C., and sentenced, the
former to 18 months rigorous imprisonment
and the latter to 3 months rigorous imprisonment.

2. The conviction and sentence by the joint-
Magistrate were upheld by the Sessions Judge
in criminal appeal no. 72 of 1894. A copy of
judgment of the Sessions Judge is enclosed.

3. The charge which was concocted by the

1. False evidence
2. Production of a document
3. False information with intent
4. Causing a public servant
5. Use of false power
6. Injury to another person.

accused and which was subsequently proved to be false was one of house-breaking and theft.

4. The offence charged against the constable consisted in his fabricating false evidence by (the aid of the village magistrate of Terku Titampatti (B) in Ottapidaram taluq. who gave an attachi (report) as to the finding of the stolen property, and again, after destroying or secreting that attachi, fabricating false evidence by substituting for it a fresh attachi under the signature of the same village magistrate (Exhibit B in the case). A copy of Exhibit B is enclosed with an English translation for the perusal of Government. The two attachis materially differed in that the former indicated a channel as the place where the stolen property was found buried, while in the latter the place was stated to be a cholum field.

5. From the records of the case the Sessions Judge (Mr. Bell) learnt that sanction to prosecute the village magistrate for his participation in the

offences for which the constable had been punished was refused by the District Magistrate and wished to be informed of the grounds for such refusal, he (Sessions Judge) being of opinion that there were ample grounds for such prosecution. (On perusal of the record I agreed with Mr. Bell). By the time this communication of the Sessions Judge was received, Mr. Macleod, the District Magistrate, had taken charge of the Sessions Court. I therefore suggested to him that he should refer the question of the revision of his order (Copy enclosed) passed as District Magistrate to the High Court. In reply Mr. Macleod has stated that he is still of the same opinion, and that if I should wish to do so, I might refer it to the High Court.

6. In considering the question, it has occurred to me that it is very doubtful whether in this case the sanction of the District Magistrate is required in order to institute

a prosecution against the village magistrate;
and the object of the present reference is to
obtain the orders of Government on this point.

7. G.O. dated 22nd October 1873, No. 1682, judicial,
states that prosecution of village magistrates
should not be permitted by Collectors without
their own sanction. But G.O. dated 9th October ¹⁸⁷⁴ ~~1873~~,
No. 1886 judicial, which interprets the ~~said~~ order
of 1873, seems to make it clear that it is
only in cases where a village magistrate
acts as a judge (criminal or civil) that the
sanction of the District Magistrate is required
for his prosecution.

8. In the case under reference the village
magistrate acted in giving the attachi as a
Police officer or an executive magistrate under
section 8 of Regulation XI of 1816.

9. I also respectfully beg to invite the
attention of Government to the rulings of
the High Court on the point - printed in the notes
on pages 865 and 866, Weir's Code, 3rd edition, 1888.

10. As I believe the general practice is to
apply to the District Magistrate for sanction
to prosecute a village magistrate - whether
he acted as a criminal or civil judge or
in his executive capacity as a magistrate,
and as the question is one of general
importance, I have thought fit to refer
the case for the orders of Government.

11. As, in the event of Government deciding
that in the present case the sanction of the
District Magistrate is necessary, the High
Court must be addressed for the revision
of the order of the District Magistrate referred
to above, I request the favor of early order.

I have the honor to be,

Sir,

Your most obedient servant,

District Magistrate

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26395