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Judicial (1896) Department.

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G.O., No. 1070

Confidential No. 85.

DATED 26-6-96

[Despatch Abstract.]

Sub-Judge Swaminatha Aiyar

Forwarding to the Hon'ble the Judges of the High Court for opinion the Hon. Mr Crole's report on certain charges against —

BACK PAPERS.

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

FURTHER PAPERS.

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

CURRENT No. 2655

Confidential

G.O. 1077 Judl 26/6/96

15 JUN 1896

Revenue Board Office
Madras
13 June 1896

From

The Hon'ble Mr C. S. Crole I.C.S.
First Member, Board of Revenue, and
Commissioner under Act XXXVII of 1850.

To

The Hon'ble Mr J. F. Price C.S.I. I.C.S.
Chief Secretary to Government
Judicial Department
Ootacamund

Sir,

I have the honor to report the execution of the Commission issued to me under Section 3, Act XXXVII of 1850, by Government Order, No 786, Judicial dated 29th April 1896.

2 As the Government expressed a wish that the enquiry should be commenced without delay, I fixed the 20th May for the opening of the Commission. This was the earliest possible date, consistent with the observance of the provisions of the Act regarding the service on the accused of notice of the Commission, copy of the articles of charge and lists of documents and witnesses by which the prosecution proposed to sustain the latter. The first hearing had subsequently to be adjourned till the 25th May, owing to the illness and ~~subsequent~~ his death of the daughter of the Government Pleader. I, however, reached Cocanada on the 20th, in

order to prevent the witnesses from dispersing, and to be able to issue summonses for the defence, and thus save time. The enquiry actually commenced on the 25th May, and concluded on the 6th June. There were 11 sittings in all.

The prosecution was represented by Mr. V. Subramaniyam, the acting Government Pleader, assisted by a Vakil of the High Court. For the defence, there were the Hon'ble P. Ananda Charlu, and with him, another High Court Vakil, and three Members of the District Court bars of Godavari and Kistna.

3. The accused is N. Swaminatha Aiyar, who was Subordinate Judge at Ellore, Godavari District, from 8th January 1894 up to the removal of the Court to Masulipatam in the beginning of January 1895.

4. The formal charges, framed by the Government Pleader, were three in number. They appear as ~~Exhibit~~ No. 40 on the list of documents submitted herewith. Shortly stated, they are:-

(I) Receiving a bribe of Rs1000 in the "Motati maintenance case".

(II) Causing one Bepin Behari Bhose to be solicited for a bribe. withdrawn

(III) Receiving a bribe of Rs:400 in the case of one S. Seshayya, an appellant.

5. These charges appear to have originated, owing to a petition alleging corruption, which was sent to the High Court by 7 Pleaders practising before the Sub-Judge. The signatures were subsequently verified by the District Judge, Mr G. F. Mackenzie I.C.S. A preliminary enquiry seems to have been made in February 1896 by Mr W. S. Meyer I.C.S., the Sub Collector of Godavari, under the orders of Government. In the result, the present Commission was appointed for the formal investigation of the three selected cases, cited above.

6. The accused Sub Judge pleaded "Not Guilty" to all of them, and at the close of the evidence for prosecution, put in a written statement. It refers specifically to Charges I and III only, because no evidence was adduced by the prosecution in respect of the second charge, which was, in fact, eventually withdrawn. The Sub Judge attributes the accusations made against him to the machinations of the Vakils, who were irritated by the severity with which he repressed irregular practices, and by the removal of the Court from Ellore to Masulipatam, in consequence of representations made by him as to the unsuitability of the Court building at Ellore. He likewise categorically denies that he ever received money as set forth in Charges I and III.

7. Charge I. When the accused Sub Judge assumed charge of the Court in 1894, he found O.S. No 26 of 1890 among the pending cases. It was a Suit which attracted some public interest, owing to the wealth and influence of the family concerned.

This is known in the District as the "Notai Family." It is a rich Komati family. The widow of one of its junior members was the plaintiff. She claimed maintenance at Rs: 100 a month, with arrears from 1888, and the use of a house. M. Venkatasami, the 4th witness for Prosn, as head of the family, conducted the case for all seven defendants. This kind of suit belongs to a class, in which a decision may be passed in favor of either party without exciting remark as to the good faith of the judge. As a fact, the Sub Judge decreed for plaintiff for Rs: 75 per mensem, but disallowed the rest of her claim. I may say here, once for all, that, taken by itself, the record does not show that the manner in which this suit was handled by the Sub Judge was marked by any impropriety. I dismiss the exception that was taken by the prosecution to an order during execution proceedings, as not entitled to much consideration. In appeal, the High Court set aside the decree, and mulcted plaintiff in over Rs 2000 costs. The "B Diary" shows that the Sub Judge revised the issues on the 17th January 1894, commenced the trial on 31st July, heard the arguments of the pleaders between 29th August and 14th September, and delivered judgment on 26th idem in the terms above described.

8. But in the meanwhile, the defendant Venkatasami (4th witness) had at an early stage of the hearing seen cause, as he says, to doubt the

the fairness of the Sub Judge. He appears also to have begun to suspect him of trafficking with one Rangasayi, a distant connection, who was managing the suit for the plaintiff widow. He, therefore, appointed one of his servants, Tuta Seshayya (12th witness for ~~plaintiff~~ Prosecution) to watch the house of the Sub Judge at night. The record shows that a bazaar man (13th witness for ~~plaintiff~~ Prosecution) who seems to be an independent witness, had brought the fact that Rangasayi was seen visiting the Sub Judge at night to the notice of the 4th witness. This appears to have been early in August, from which date the 12th witness watched the house in his master's interests, for, as he says, about six weeks. The time was probably not so long. After observing that Rangasayi visited the Sub Judge every few nights, he saw him come one evening along with another man, who carried a bundle on his shoulder. Rangasayi went through the compound, and entered the Sub Judge's house as usual. In half an hour he returned, and, along with his companion, went to the back door, which was opened by some one from the inside. Rangasayi received his burden from the man who was carrying it, and went inside. The man referred to is called in the evidence the "Turpu", or eastern man, and is the 8th witness for ~~plaintiff~~ Prosecution. He confirms the above, and states that the bundle was a heavy bag of what he believes to be rupees, which was taken out of a large box in Rangasayi's timber yard, and given to him to carry. This man belongs to Ganjam district, but states that, at that time, he was in the employ of Rangasayi. The latter denies that he was so at the time stated, but defence, (Exhibit No XIX), goes to support this witness on that point. I may observe that these two witnesses (8 and 12) were not seriously cross examined by the defence, a course which is never adopted by an experienced practitioner in respect of damaging evidence, except when a witness is telling the truth and cross examination would only help to bring this out with increased clearness. The two seem to me to be speaking the truth.

9. The above transaction must have occurred in the first few days of September. On the 1st of that month, as is shown by Exhibit I, Rangasayi negotiated and obtained for the plaintiff widow a loan of Rs. 1000 from 5th witness, on the pledge of 3 jewels valued by a goldsmith (6th witness) who was called in at Rs 1200 or 1300. Another goldsmith speaks to having made one of them, while Venkatasami (4th witness) as the head of the family identifies two of them as the plaintiff widow's property, and one as belonging to her son-in-law. She was not called by either side, but there can be no real doubt of the fact. The jewels were made up into a bundle, along with a dated Chit, giving details of the transaction. This parcel was sealed with the plaintiff widow's seal. It was opened before me in Court.

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10. While all this was going on, Rangasayi was having some suits conducted by one Gowrinatha Sastri B.A. a young Vakil (10th witness). The latter asserts that at repeated interviews, Rangasayi detailed his negotiations with the Sub Judge, and eventually announced that he had actually paid him Rs 1000 for the "Notai" case. In consequence of this knowledge, Gowrinatha Sastri tried to stop a supplemental address to the Sub Court on the part of the junior Vakil for defendants, by saying "Why do you waste your breath. There will be a decree as prayed for." The Vakil for the plaintiff widow (9th witness for ~~plaintiff~~ Prosecution) and the 4th witness for ~~plaintiff~~ Prosecution corroborate this. The former says that the Sub Judge must have heard the remark, if he had been attending to the Proceedings. The incident is strong corroboration of the alleged confession. Gowrinatha Sastri subsequently disclosed the particulars to brother Vakils, when the Sub Judge's honesty was becoming a matter of general doubt.

11. The 11th witness is the Hon'ble N. Subba Row, the leader of the Rajahmundry bar. He states that, a year or so after the above events, Rangasayi, who had a suit being heard in the District Court, which he was conducting, confessed to him that he had bribed the Sub Judge, and, in answer to further questions, gave him details. This witness alleges that the "Notai" case was

"almost notorious", so he was curious to get at the truth from Rangasayi himself.

12. Neither in Cross examination, nor in any other way, has the evidence of these two pleaders been seriously assailed. It may be, as well to note at this point, that whereas Rangasayi denies the first confession, "he will not swear" that he did not tell Subba Rao that he had bribed the Sub Judge.

13. The defence objected to the reception of this class of evidence at all. But I overruled the objection under Section 10 of the Indian Evidence Act, on the ground that when two persons are found to be conspiring together to commit an offence, to wit, the obtaining of a bribe for the Sub Judge, "anything said in reference to their common interest" is a relevant fact both to prove the existence of the conspiracy, as well as to prove that any particular person belonged to it. This is no doubt a very important departure from the English law, but it has none the less been the law in India since 1872.

14. The direct evidence regarding the giving of the bribe, is sought to be further corroborated by a marked change in the demeanour of Rangasáyi, the plaintiff widow, and her brother, from some date about 20 days before judgment. Intense anxiety and importunity gave place to an appearance of confidence and indifference as to the result. This is deposed to by the pleader (9th witness for ~~plaintiff~~ prosecution) who conducted the case for the plaintiff widow. He

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says, moreover, that Rangasáyi and the others almost ceased to come to him at all, although the case had reached the "argument" stage, at which suitors are usually most anxious and excited. The only result of the cross examination of this witness on the part of the defence was to amplify, and render more suggestive, the statements which he had made.

15. Such is the case for the prosecution. It naturally divides itself into 5 branches:-

(1) the conduct of the maintenance suit by the Sub Judge
(2) the raising of a loan for Rs.1000
(3) the giving of that sum to the Sub Judge
(4) the effect of that knowledge on the demeanour of the plaintiff widow's party.
(5) the confessions of Rangasáyi.

16. The defence consists of a blank denial, of an allegation of conspiracy of vakils against the Sub Judge, and lastly of an alibi for Rangasayi on 1st September, the day on which the loan appears from Exhibit I ~~is said~~ to have been raised.

17. At this point, I take the opportunity of remarking, once for all, on the extreme feebleness and barrenness of the cross examination of the prosecution witnesses. In more than one instance, their evidence was sensibly strengthened as the result of it. Again, I note with surprise that the alleged conspiracy of Vakils has, in no way, been attempted to be

one of the leading vakils of the H.C. !

proved directly, while the result of such cross examination, as there was on the point, goes to support the propriety of the course of action adopted by the Vakils, in representing, what they had reason to believe to be, the dishonesty of the Judge to the proper quarter. The evidence goes no further than that, and on that point I find that the defence has failed.

18. Now as to Rangasayi's alibi. This point has been much laboured by the defence, as if the whole case depended upon it. I cannot concur in this contention, although the incident deserves close examination. When the evidence regarding the loan of Rs 1000 to the plaintiff widow, through the instrumentality of Rangasayi, was being taken, neither side laid any stress upon the exact date, and none of the witnesses gave any. A chit, which was, as usual, unsigned with a view to avoid stamp duty, (Exhibit L), was sealed up with the jewels, & contained a date, namely, 1st September 1894. Rangasayi says that all the people about the Court were talking about the loan in connection with that particular date. This may or may not, have been. I entertain some doubt about it. However, Rangasayi states that, upon hearing this date, he sent off to Ellore for his accounts & documents, and that they were brought in by special messenger. He then entered into communication with the defence as I gather from the record. When the Government Pleader intimated that he did

not

not intend to call him, although he had entered him on the list of witnesses given to the defence, I was asked to compel him to do so, as a matter of fairness to the defence. I declined to make the order, as the Government Pleader alleged that he was not a witness of truth. But as this witness's name had occurred repeatedly in the evidence for the prosecution, and it seemed desirable to hear what he had got to say, I offered to assist the defence by ordering him into the witness box there and then. A plea of illness on the part of the leading Vakil being urged, the examination of this witness was allowed to stand over until the Monday morning following. The interval of two days was utilised in briefing the witness (~~on~~ see his evidence), his documents were taken possession of, and filed by the defence, and he became in all but name a full defence witness, with interests, as it turned out, identical with those of the accused Sub Judge.

19. He belongs to a family of 4 brothers, originally trading jointly. One appears to have since seceded. The family has, owing to the mania of Rangasayi for litigation been reduced, from comparative affluence to a condition but little removed from want. For instance, when Rangasayi started for Madras on the 24th August 1894, in order to ~~pursue~~ prosecute a ~~Revision~~ Petition of Review in ~~before~~ the High Court of an appeal decision, in which it had confirmed the decrees of both the Courts below,

the total ready money of the family in Ellore amounted to Rs 28 only.

20. His evidence contains blank denials of the various incriminating portions of the evidence of the prosecution. His mind was almost invariably a blank in regard to any fact, by which he thought that his veracity might be tested. There seems to be small use in going over it in detail. The only really important points in it are his attempt to falsify the evidence regarding the loan, which the Chit (Exhibit Z) shows to have been raised on 1st September, and his reluctant admission that he was not prepared to swear, that he did not tell the Hon'ble V. Subba Rao that he had bribed the accused Sub Judge in the "Motaï" case.

21. The extraordinary confirmation of the case for the bribe, implied in that admission, must necessarily deprive any assault on the loan incident of nearly all its force or interest. But I shall now proceed to examine the evidence for the alibi. Rungasáyi alleges that he left Ellore with Rs 28 in his pocket on the 24th August 1894. It was probably two days later. His destination was Madras, and his object to instruct in person the Vakil who was to be engaged to argue his hopeless Revised Petition above alluded to. On the way, he states that he arranged with his brother-in-law to send by telegraph Rs: 75, from the funds of a branch timber yard, which is some ½ mile distant from Bezwada. This is said to have occurred during the time the train stopped. There seems to be no reason to doubt that Rangasáyi went to Madras and arrived about the 28th. It may, likewise, be conceded for the present purpose, that he was there up to the 30th, and that he hastily returned to Ellore, without ever personally instructing Mr M. O. Parthasarady Aiyengar, the Advocate, who is said to have been engaged to appear in support of his Petition. He assigns "urgent timber trade" as the cause of his abrupt departure, and of his abandonment of the sole reason for his long, and, for him, very expensive journey. He gives the date of his departure from Madras as the 5th or 6th September.

22. The Exhibits (X & Xa, XI & XIa, XII & XIIa, and XIII), which were at first filed by the defence, in support of their case against the loan through this witness, ~~were~~ are 3 letters and a postcard. The Madras postmarks on these are 29th and 31st August, and 1st September. It is attempted to extend the latter date up to 6th September, by means of the evidence of a 2nd grade Pleader, who was then a mere law tout, and needy hanger on of the needy Rangasáyi. I shall deal with his evidence later on.

23. Rangasáyi was under examination for portions of 3 days. On the last day, he filed through the Vakil for the defence Exhibits XV and XVI. These purport to be a Telegraphic money order receipt dated 30th August issued at Bezwada for Rs 75, ~~dated 30th~~ and Rangasayi's acknowledgment in Madras, which was returned to the

sender through the Post Office at Bezwada, dated 31st August. A curious feature of the case is that every one of these Exhibits bears signs of fabrication, except X and XV which are unimportant, ~~and~~ Exhibit XVI is also deposed to as fabricated, by the Postmaster of Cocanada, and it certainly appears on the very face of it to be so. Still the alibi appears to be true, as far as relates to the 1st September without doubt, and possibly up to 2d idem.

24 A very great deal of time was spent in fighting this subsidiary issue of the presence in or absence of Rangasayi from Ellore on 1st September. From information since received from the Controller of Post Offices, Calcutta, it seems certain that he signed an acknowledgment in Madras on 31st August. He could not therefore have been in Ellore before 2 P.M. on 2d September. I am likewise inclined to give the defence the benefit of the doubt, and to accept the suspicious Exhibits XII and XIII, a letter and postcard, as corroborating his statement of absence up to 2 P.M. on 3d. But his assertion that he did not return until the 6th, 7th or 8th is supported by no evidence whatever except the statements of Chobanadri, 1st witness for defence, his needy hanger on and factotum, whose demeanour under examination was not such as to give me the slightest confidence in his evidence. Moreover ~~he~~ Rangasayi himself alleges urgent timber business as having called him back. It is suggestive that he, who evidently keeps every scrap of paper, produces no letter or telegram from Ellore to prove this point, or the extent of his stay in Madras. The truth is that he had very pressing reasons for being in Ellore in the beginning of September, in the "Motai maintenance case", and three of his own appeals, which were all fast ripening for decision. Two of them, and the "Motai" case, were, as a fact, decided in September.

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25. The question arises, what is the effect, on the case for the prosecution, of the date in the chit which was found in the sealed bag containing the pledge, being proved to be wrong? For the defence, it is urged most strongly, that this, the only point by the way which they were able to make, shows the whole case under this charge to be false. The prosecution on the other argues that the defect in the date on the unsigned chit is quite consistent with the authenticity of the pledge and loan. It is pointed out that the date 1st September 1894, is in English, and that no Telugu date is added, as is usual. It is suggested that the chit was intentionally antedated at the instance of Rangasayi, for the purpose of providing himself with a defence against a prosecution for abetting bribery, or that the gumasta of the money lender, who wrote it observed a common practice of avoiding fractions of interest by dating the loan as from the 1st of the month in which it was contracted. Either or both these motives may have inspired the adoption of

the

date in question. Standing as it does, by itself, and there is nothing else, I do not consider that it affects the truth of the other evidence of the loan.

26. None of the witnesses who bear witness in regard to the transaction has committed ~~themselves~~ himself to this date. They have no discoverable interest in the matter. If the loan were false, the pledge must have been contributed by some one. It consists of jewels belonging to the plaintiff widow and her son-in-law. This is beyond all reasonable doubt. Venkatasami (her opponent) could hardly have obtained them in order to go through a false transaction. Besides that, he has shown no desire to press the case, but rather reluctance. Ramalingam, the Sowcar, in the same way seems to be quite independent of Venkatasami. Moreover, how was he to obtain possession of jewels belonging to the "Motai" family, except in the way of pledge as alleged? He has shown no sign of being interested in this case. Last of all we come to the Vakils. They are supposed to be at the bottom of the whole concoction, but irrespective of the difficulty of obtaining "Motai" family jewels, this theory requires us to believe that they would have put any date on the chit, which would not bear examination. Two of them (9th & 10th witnesses for ~~plaintiff~~ prosecution) were aware of Rangasáyi's movements at the time, ~~as~~ for they were conducting cases under his instructions, which were fast

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ripening for decision. They must have been cognizant, moreover, of his frequent absences at Madras, and would have paid special attention to the selection of a perfectly safe date. For these reasons, I am unable to connect the incorrectness of the date on the chit with any want of genuineness in the transaction of the pledge and loan.

27. In point of fact, if, as the defence allege, the Vakils have had to do with getting up the charge, the probability is that the transaction came to light through the revelations made by Rangasáyi himself. It is in evidence that the money lender, at last did not give any information. I am strongly inclined to believe that this was so. I am likewise of opinion that the prompt action which Rangasáyi took in sending for documents and accounts immediately the date of the 1st September 1894 came out, was caused by his recollection that he had originally fabricated that very date in order to meet a contingency like the present. It was objected by the defence that, if this were so, he would have written the chit (Exhibit I) himself. But he is far too cunning a man to commit himself in that way, and the record shows that he does not himself write even a letter, when he is able to command the services of an amanuensis.

28. I hold therefore that the pledge and the loan are proved.

29. I am likewise compelled to find that a

bribe of Rs: 1000 was, in fact, paid to the Sub Judge about the 3rd or 4th of September 1894. Either of these dates would be consonant with the time of the setting of the moon on the night that the money is alleged to have been paid (See evidence of 12th witness). I am compelled to take this view by the fact that the defence made no serious attempt to demolish the evidence of the 8th, 12th & 13th witnesses by cross examination or otherwise, that Rangasayi undoubtedly admitted the fact to two separate persons on two distinct occasions one year apart from each other, and that the demeanour of the plaintiff's party towards the case distinctly altered, at or about the time in question.

30. I fully recognized the difficulty of meeting a charge of bribery, and made all allowance for it in the latitude I permitted to the defence. But, at the same time, it must not be overlooked that bribery cases are as a rule exceptionally hard of proof. The act takes place in a corner. Corroborative evidence is often impossible to obtain, yet it is present, to a somewhat unusual extent, in support of the charge now under discussion.

31. The defence had, moreover, a considerable advantage over the prosecution in three respects, which it may not be improper here to mention. In the first place, the Order of Government suspending the Sub Judge

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from office, did not reach Cocanada until the prosecution was closed. This could not fail to have an effect on the minds of native witnesses. Secondly, the Godavari District is distinctly priest-ridden, and the accused is a Brahmin. Thirdly, and most important of all, the Sub Judge had been removed for the past four months to Masulipatam, and the reason which, no doubt, actuated the bar and the litigants to agitate against his conduct, had disappeared along with his power to do them, or others, further mischief. Hence it came that, in this case, there was no complainant, interested in bringing the charge home, to instruct the Government Pleader, who, however, it must be recorded, conducted his case with commendable moderation and ability.

32. These remarks apply with even greater force to Charge III.

33. Charge II. The Government Pleader towards the end of the case asked permission to withdraw this charge. It had been found impossible to secure the attendance of the two chief witnesses in the case. One is absconding, and the other, who resides in Hyderabad, refused to attend. But there is a still more serious difficulty connected with this charge. The Government Pleader opened that the bribe was solicited from Bepin Behari Bhose, the Agent of the Defendant in O.S. No. 5 of 1893, by one Subbayya, the nephew of the Sub Judge. The latter is alleged to have gone to Bhose and shown him Court records in support of his allegations,

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that he collected bribes on the Sub Judge's account. No one, who has sat for a fortnight on this case, could entertain any doubt of the likelihood of this incident. But it is clear that even if the Government Pleader were able to fully prove the case set forth in his opening, the charge must fail, because there is no evidence to connect the Sub Judge with the solicitation in the clear and direct manner, which could alone be satisfactory, and which the law requires. The Sub Judge may therefore, I submit, be formally acquitted of that charge.

34. Charge III. In this case a rich widow had obtained a decree against two well-to-do Brahmin brothers from the District Munsiff of Ellore for Rs 2000 and odd. The other brother (2d Defendant) named Seshayya (15th witness for plaintiff) was exonerated from the suit. The plaintiff widow appealed to the Sub Judge (A. S. No 254 of 1893 Exhibit C.) and one at least of the defendants seemed to have sided with her against Seshayya. They alarmed him by declaring that they were preparing to spend large sums in order to get the decree as regards him reversed. He discovered through one Lakshmana Das, (1st witness for plaintiff), a Sudra friend, who lives in a village some 4 miles away from Kovvali, Seshayya's village, that bribes could be given to the Sub Judge through his servant "Narayudu" – that is – Narayanasami Pillai, (2d witness for Defen~~dant~~ce). In point of fact, a relative of the plaintiff seems to have been giving out an intention on their part to bribe. This precipitated matters. Lakshmana Das was commissioned to do the needful. He describes vario interviews with Narayudu, and his failure to get at the Sub Judge direct. A bargain was eventually struck for Rs: 400. Seshayya borrowed this sum for "Court expenses" from the 2d witness for plaintiff, who is a money lender of his village. The Pro: Note then executed, was witnessed by 3d & 14th witnesses, cultivators residing near 2d witness's house, who were called in for the purpose as they passed down the street. The loan is alleged to have been since discharged, so the Pro: Note is not available. But I can detect nothing in any way suspicious about the evidence of this transaction. The practice in the Godavari District is that if a pledge is given, or a document executed, in consideration of money lent, the transaction does not find a place in the money lenders' books. No hostile conclusion is therefore deducible from such a circumstance. The date is given as during the hearing of the appeal by the Sub Judge, but cannot be more accurately identified. The persons engaged in the transaction under notice are not all of the same caste, or village, and they do not seem to be mixed up with parties in Ellore. The cross examination by the defence Vakil elicited nothing at all compromising.

35. Seshayya and Lakshmana Das set off to the Sub Judge's house with the Rs: 400, and arrived there at 6 o'clock in the evening apparently. Lakshmana

Das went to the front door[×] of the house, and was ordered by Narayndu to go round to the backyard door. Admitted through it, he was taken to a verandah attached to the dining room, in which he states that he found the Sub Judge seated on a chair. This is how the witness describes what took place: "I and Seshayya went to the back "door[×]. Narayndu opened it, and I went in with the "bag of rupees, leaving Seshayya at the door. I "took the money from him there. Narayndu had "told Subbayya not to go inside. The Sub Judge "was sitting on a chair in a verandah[×]. I placed "the bag on a pial on which the Sub Judge's chair "was. I placed it close to the chair. The Sub Judge "asked me "How much". I said "400". I asked him "to support Seshayya. He said, "No matter, go" "I further told him that I also had cases, and "that he should favor me. He said "I shall see". "I went away by the back gate, leaving the "money beside the Sub Judge. I found Seshayya "in the place where I had left him."

× N.B. Marked with a red cross on the plan.

× N.B. Marked with two red crosses on the plan.

× N.B. Marked with three red crosses on the plan.

36. I have quoted this passage at length, because the witness' account of the same has been denounced as a palpable concoction by the defence. On the contrary it appears to me a simple and a natural story, devoid of exaggeration. Narayndu (2d witness for defence) denies that anything of the sort ever took place. That was to be expected. He is a Tinnevelly man,

who has been the Sub Judge's "Dressing Boy" for 15 years, and has accompanied his master ~~in~~ to his appointments in seven districts. In Salem, he obtained the office ~~appointment~~ of Court-keeper, which he relinquished when the Sub Judge was transferred to Cocanada.

37. He supports the defence in asserting that no sudras could ever come to the place indicated, which is the place where the grinding stone and water is kept, and adjoins the dining, worshipping, and cook rooms. On the other hand, it is in evidence that there were two sudra concubines, and a child, living with the Sub Judge, and it is extremely unlikely that in such an establishment caste restrictions were really observed to the extent claimed. The house is upper storied, and the tiled building referred to is connected with it by a short covered way. It is likewise easily accessible from the back door. It was therefore exactly the place which would be chosen for transactions requiring secrecy and seclusion. It is, moreover, obvious that, supposing the Sub Judge to be capable, in his lust for gain, of betraying his trust, and defying the Penal Code, he is hardly likely to have thought much about caste observances.

38. The only discrepancy in the evidence of 1st and 14th witnesses is, that, whereas the former says that the latter was left in a position from which he could observe what took place in the verandah, the latter gives a different spot as that at which he awaited the reappearance of 1st witness. This does not bear out the theory of concoction

urged by the defence, but is a variation, which rather favours the conclusion that the witnesses were giving their own independent ~~accounts~~ recollections of what took place.

39. Then, the 14th 15th was a most extraordinarily unwilling witness. The Sub Judge had confirmed the decree of the Munsiff, but had deprived him of his costs. The High Court restored these to him in appeal. Whether he was actuated by the fear that he would imperil the success obtained in the action, by confessing to having paid a bribe, or what other motive dictated his conduct, does not appear. Certain it is that, for many months past, he has been feigning sickness and pretending that he had lost power in his limbs, and that any attempt to move him from his bed induced dangerous convulsions. Mr. Meyer was, on this account, unable to examine him, and it was only after I issued a warrant for his being brought before me in custody that he appeared, the Civil Apothecary having certified that there was nothing the matter with him. There was clearly no opportunity or reason for the collusion insinuated by the defence, and, when this witness came into Court, the Government Pleader could have had only the most general idea of what evidence he was likely to give. Under the circumstances, therefore, the close correspondence of his evidence with that of the other witness is evidence of the very strongest character of the truth of the third charge against the Sub Judge.

14th Aug. 18

40. As in the first charge, so in this, the appeal judgment of the Sub Judge throws no light upon the case. At first sight, it might appear that the order depriving Seshayya of his costs shows that the decision was passed with impartiality. But, on the other hand, it should not be forgotten that it was almost absolutely certain that the case would be taken to the High Court, where any mistake in the exercise of the discretion vested in the lower appellate Court would certainly be corrected at no extra expense to Seshayya, who would require to enter an appearance in any event. This is precisely what happened. No inference, either for or against the charge, can therefore safely be drawn from the manner in which the case was dealt with by the Sub Judge.

41. Taken by itself, this charge might not lead to a conviction in a Criminal Court. However, probable and consistent the story, the accused Sub Judge would be entitled to the benefit of the element of doubt, which would legally arise as to the probative force attributable to the direct evidence of the 1st witness, the only eye witness, when weighed against the denial of the accused, and the contradiction given to the 1st witness by the accused's servant. But, for the purposes of this report, the circumstances of this case may not unfairly be associated with those disclosed by the evidence under the first charge. The witnesses have, moreover, shown no hostility to the Sub Judge. There is an almost

entire absence of any conceivable motive for making a false charge. On the contrary, positive unwillingness to give evidence has been exhibited. My finding is that the accused Sub Judge did, as a fact, receive an illegal gratification of Rs 400 from Somayajulu Seshayya, through Lakshmana Das, as charged.

I have the honor to be
Sir
Your most obedient Servant

C. S. Crole
First Member, Board of Revenue, and
Commissioner under Act XXXVII of 1850.

21

CURRENT No. 2655

Judicial

~~From~~ confidential No. 172

The Hon'ble Mr C. S. Crole
1st Member – Board of
Revenue & Commr.
under Act XXXVII of 1850

To

The Chief Secretary to Govt.
Judicial Depart.

[illegible]

in judicial capacity

Dated 13th June 1896
Recd 15 }
Regd 16 } " "

Encs. (40) sent separately
63,

Submits the report of his enquiry into certain charges against Sub Judge M.R.Ry. Swaminatha Aiyar

---

G.
25 A.
1,000—21-3-26.

J. DEPARTMENT

C. No. 2655
& 2629

FOR ORDERS.

Mr. Crole's report is, as might have been expected, concise & clear — When final orders are passed he should be thanked for it.

I do not myself doubt that the Sub Judge took the bribes, but I sh.d ask the H.C. to favour us with their view. ~~[illegible]~~

As to the crim.l prosecution of the Sub Judge, I am doubtful — I should certainly not ~~[illegible]~~ order it without asking for the opinion of the Govt. Pleader, and, I think, also of the Adv. Genl. — That is, as to charge I. I should not advise a prosecution on charge III.

The competence of Mr Crole's inquiry & the ability of his report sh.d certainly be acknowledged. I concur in all his conclusions. The H.C. sh.d be asked for their opinion. I am very doubtful of the expediency of criminally prosecuting the Sub Judge, but the High Court's report sh.d be considered before that point is decided. I think Rangasayi sh.d be prosecuted. Before Mr Crole he said that he was only acquainted with the Sub Judge from seeing him on the Bench. From Mr Meyer's inquiry it appears that there is abundant

Orders are solicited as to what course should now be taken.

Mr. Crole's report is clear, & the Subjudge's guilt proved.

Govt. alone has the power of dismissing the Subjudge. Should it first consult the H.C. as it has done throughout this case? This wd. delay final orders, as the Court wont sit again until July 6th.

If Govt. decides itself, the only question seems to be whether the Sub Judge should be merely dismissed or prosecuted as well for charge No. 1. This seems good enough to stand a prosecution upon it.

If a bribe-taking official is merely dismissed he doesn't suffer much. He has usually feathered his nest so well that the loss of pay & pension doesn't much matter. But if he gets a substantial term of imprisonment – specially when a Brahman – it does much to encourage the others".

W 17.6.96

Current No. 2679 has since arrived. Mr. Meyer's report has not yet been returned by the Govt. Pleader.

The Subjudge is not entitled to a perusal of any of the evidence taken by Mr. Meyer, & seeing that the Commr. took all the evidence over again & that the Subjudge was represented at that hearing by several vakils his contention that he was prejudiced by the procedure followed seems quite groundless. There seems to be no possibility of his benefitting by being now given copies of depositions taken by Mr. Meyer, & it is submitted that this petn. of his should not be allowed to postpone orders on the Commr.'s report.

W 18.6.96 I have read through the evidence in the first case which is evidently that considered by Mr. Cole as the best. The impressions left upon my mind

---

Subjudge Saminatha Aiyar. –

FOR ORDERS.

x Since recd. & put up. – 20/6

H. E. THE GOVERNOR. 3

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE, C.I.E.

BS

JG

[G. / 25 A.]
1,000–21-3-96.

DEPARTMENT

C. No.

FOR ORDERS.

We don't know in such cases what the ins & outs may be, nor whether the "Tappal" man was still in the same service

BS

Mr. Meyer says that the man stated he was then a cooly in Rangasami's employ. I agree with Mr. Grose that he probably spoke the truth.

But the parcel was sealed with the widow's own seal which has not been questioned – In the face of this I don't think the discrepancy as to the date of much importance.

BS
22/6/96

1. I agree that the Report of the Commissioner should, under the authority of Section 22 of Act XXXVII of 1860, be referred to the High Court, for their opinion on the case.

2. I see no objection to the Subjudge being furnished with a copy of the evidence taken by Mr. Meyer.

A.H.
24.6.96

is that the Subjudge did take a bribe but I do not feel at all certain that if I tried him for doing so I would convict him. I don't like the evidence of the "Tappal" man (8th witness): I ~~don't~~ do not understand his giving evidence against his master: it's quite against one's experience of natives. The evidence of the 12th seems to me also to be too good. Then there is the queer circumstance of the chit in the parcel of jewels being dated 1st Septr. when there seems but little if any doubt that Rangasami was in Madras on the 31st August at any rate. If he was he could not have been present on the 1st Septr. when the loan was made. There is something queer about this. ~~[illegible]~~. I think that the case is not altogether a safe one for prosecution and submit that the opinion of the Govt. Pleader thereon should be taken.

Of course if the case is a good one a prosecution is highly desirable not only as an example but also as rendering - if a conviction is obtained - an appeal against an order of dismissal useless.

How far case III is a good one is matter of opinion. I should be inclined to regard it as a rather poor one: it is certainly not a safe one for prosecution. It is however to be observed that the officer who holds an enquiry is always in a better position to form an opinion on the case before him than one who has to do so merely on reading the evidence and without having had an opportunity of observing the demeanour of the witnesses.

[illegible]
19/6/96

FOR ORDERS.

H. M.

c. 92/6

---

x will be filled in

I would not grant the copies without at least a refce to the Govt. Pleader & Mr. Cole. I presume the notes of evidence taken by Mr. Meyer were not filed before Mr. Cole, so they cannot have influenced his judgment & may be regarded simply as notes furnished by the Govt. for the prosecution to Counsel, which certainly wd. not be placed at the disposal of the defence.

What was done in this respect on former similar occasions?

Statets made to Mr. Meyer ~~were~~ are not privileged & the Sub Judge can sue everyone who made them. I dont see how we can expect to get at the truth in such cases in future, if we now proceed to publish statets made in the preliminary enquiry

[illegible]
26/6/96

I agree

J. G.
26/6/96

~~In view of [illegible] given, I agree.~~

A. H.

Judicial Dept

C. No. 2679

Order
[illegible]

Copies of the evidence referred to will be furnished ~~on~~ ~~MRRy. N. Swaminatha Aiyar~~ ~~for remitting the copying fee which amounts to Rs.~~

(Sd.)

W. 25-6-96

[illegible]
25/6/96

MRRy. N. Swaminatha Aiyar

Al.

Note

The above draft follows the note of H.E. the Governor. The witnesses named in the list appended to the memorial are marked with blue chalk in the list at the beginning of Appendix III (with blue cover) to Mr. Meyer's report.

on the note for orders. Reading Mr Cole's report I then understood thoroughly it unnecessary to give the copies. It is submitted that it is perhaps as well to let the Sub Judge have them.

An order forwarding the

[illegible]

Hon Mr Crole's report to the Hon the Judges for opinion is issuing -

25.6.96

Ind 25/6/96

Mr R Ry. Swaminatha Aiyar -

For approval

Hon Mr Bliss C.I.E. 1
Hon Mr Grose C.I.E. 2

e. 26/6
2. 26/6

[G./25]
1,000—5-11-95

J. DEPARTMENT

C. No. 5
2679
& 2802.

FOR ORDERS.

With reference to H.M.'s note dated 26.6.96 within, a search has been made among the records at Madras for precedents on the point referred to. No case can be found in which copies of records of preliminary enquiries were asked for or granted. - In G.O. 485. Pub / 26.6.93 Mr. Rámachendra Ráo was granted copies of records of the Commissioners' enquiry, but that is of course a different matter.

As soon as H.M. has seen this note the papers will be resubmitted to H.E. the Governor.

2.7.96.

Mr. Crole's report has already gone to the High Court. Please see G.O. 1070. J. / 26.6.96

2.7.96. 2/7/96

Seen -

The more I think of it, the more inadvisable does it seem to me to grant copies of statts made at Mr. Meyer's enquiry or of his report

3/7/96

In view of the reasons given, I agree.

A.E.H.
6.7.96

Grant of copies of records to Saminatha aiyar, suspended Subjudge of Masulipatam. —

Note FOR ~~ORDERS.~~ H.M.

E

~~H. E. THE GOVERNOR.~~

~~THE HON'BLE MR. H. W. BLISS, C.I.E.~~

~~THE HON'BLE MR. J. GROSE.~~

Re-submitted to H.E. the Governor with reference to the notes of Hon. members.

3.7.96.

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26-6-96

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26/6

CS

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Judicial Dept.

C.R.O. 2655.

Order mis No 1070 d 26 June 1896

The Hon'ble Mr Crole's report will be forwarded to the Hon'ble the Judges of the High Court with the request that they will be good enough to favour Govt. with their opinion on the ~~case~~ matter ~~for~~ (F.O.) ~~to whether~~

25.6.96

25/6/96

The Hon. the Chief Justice with C.L. & with report and its 63 encls

Sent separately by parcel post

Note Govt. cannot ask the H.Ct. if a prosecution is advisable as it is the Court of appeal.

It is presumed that the opinion of the Ag. Govt. Pleader and the Advocate Genl. as to prosecuting the Subjudge is to be taken only after the High Court replies. 25.6.96

The Court [illegible] the Law Officers until the return from the High Ct 25/6/96

Grant of copies of records to Saminatha aiyar, suspended Subjudge of Masulipatam. –

Note ~~FOR ORDERS.~~ H.M.

~~H. E. THE GOVERNOR.~~

~~THE HON'BLE MR. H. W. BLISS, C.I.E.~~

~~THE HON'BLE MR. J. GROSE.~~

[illegible] to H.E. the Governor [illegible] with reference to the notes of Hon. members

3.7.96.

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He cannot send [illegible] to the law officers until the [illegible] from the H.C. [illegible]

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[Despatch Abstract.]

Pithapuram Succession Suit

Recording letter from Mr G. T. Mackenzie stating that paragraph 134 of his judgement in the — is part of Mr Wedderburn's speech and not his own opinion