Confdl.

Judicial (1896) Department.

ORDINARY PRINTED.

G.O., No. 1186

Dated 16th July 1896

[Despatch Abstract.]

NUZVID POLICE TORTURE CASE.

BACK PAPERS.

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

FURTHER PAPERS.

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

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Judicial DEPARTMENT.

G.O., DATED 16·7·96.

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[Despatch Abstract.]

Nuzvid Police Torture
Case.

Orders of Government, dated

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IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Friday, the thirteenth day of March,
One thousand eight hundred and ninety-six.

Present:-

The Honourable Sir Arthur J. H. Collins, Knight, Chief Justice~~s~~
and
The Honourable Mr Justice Davies.

Criminal Appeal No. 617 of 1895.

Kondaviti Kristnayya -------------- Appellant.
(Prisoner.)

Appeal against the sentence of the Court of Session of the Kistna Division in Case No. 24 of the Calendar for 1895.

This Appeal coming on for hearing on Wednesday, the 4th day of March 1896, Upon perusing the petition of Appeal, and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of Mr P. Subrahmania Aiyar, Attorney for the appellant, and of the Public Prosecutor in support of the conviction, and the case having stood over for consideration till this day, the Court delivered the following

Judgment:- The appellant was a Police Constable of the Nuzvid Station. He has been convicted of causing grievous hurt under section 325 of the Indian Penal Code to one Pulligadu, a yerukala, on the 28th of October 1894. The said Pulligadu was admittedly in the custody of the Police in the Nuzvid Station on the date mentioned on a charge of stealing goats. On the afternoon of that day he was sent by the Station House Officer for treatment by the Civil Apothecary of Nuzvid as he was said to be suffering from retention of urine. He was treated by the Civil Apothecary until the early morning of the 7th of November following, when he died in the Hospital at about 4 A.M.

The case for the prosecution is that the deceased was tortured by the Police when he was in their custody on the morning of the 28th of October and that his death was due to the injuries he then received. The effect of the Medical evidence in the case is to shew that the death of the deceased was due to a dislocation of a bone in the neck, discovered at the post mortem examination held by the Civil Apothecary of Bezwada. The Civil Apothecary of Nuzvid treated the deceased apparently for paralysis, which he thought might have been due to a spinal affection caused by a fall. Now, the case for the defence is that it was by a fall that the deceased received the fatal injury occasioned by his tumbling into a pit when he was chased by the police for the purpose of arresting him. The appellant denies that he in any way ill-treated the deceased at the station, and he alleges that the case was concocted against him by one Rajah Bapayya, a petty zamindar of Nuzvid. For the prosecution there were seven eye-witnesses, whose account of the assault commited by the appellant on the deceased is as follows. They say that when the deceased was brought to the station, the accused seized him by the hair of his head and beat him on the back with his fist outside the station and then dragged him by the hair inside the station. When the accused got the deceased inside the station, he went behind him, passed his arms under the deceased's arms, clasped his hands over the back of the deceased's neck and then forcibly bent the deceased's neck forwards and downwards until it came between his (deceased's) knees, kicking him in the meantime on his back with his knee. The deceased then fell down on his back saying he was killed, and he was unable to move. The Judge did not believe that four out of

these seven witnesses were eye-witnesses to the occurrence; but he was perfectly satisfied with the evidence of three of the witnesses, viz, the wife, the mother and a relative of the deceased, who was also in custody with him on account of the charge of theft of goats. There was another relative of the deceased who was afterwards taken into custody on the same charge, who states that he found the deceased lying on a cot in the station when he was taken there himself, and that the deceased complained to him that he had been beaten by the appellant and another and would not live. This man's testimony also the Judge saw no reason to disbelieve. The evidence for the defence that the deceased's injuries were caused by a fall is, on the other hand, of the weakest description. It mainly depends upon the statement of the Civil Apothecary of Nuzvid who says that the deceased told him that he had fallen into a pit when the police pursued him and that the deceased never complained to him that the police had beaten or in any way ill-treated him, and upon the statement of a woman who is employed in the Nuzvid Hospital under the Civil Apothecary, who states ~~says~~ that she found the deceased in a pit and helped him out of it. The evidence of this latter witness is palpably false as the Judge has found it, and we are not satisfied with the truth of the evidence of the Civil Apothecary for this reason. It is a certain fact in the case that, on the 4th of November, three days before the death of the deceased, his people had complained that he had been beaten by the police and had died or was dying. This complaint was made both to the Head Assistant Magistrate and to the Superintendent of Police who happened to be at Nuzvid at the time. In consequence of this complai~~na~~nt, the

~~the~~ Head Assistant Magistrate actually visited the Hospital on the evening of the 4th of November to ascertain if any yerukala man had died there. The Civil Apothecary himself admits the fact of this visit, and says that he told the Head Assistant Magistrate that the deceased yerukala man was in the Hospital suffering from paralysis of his hands and legs. It is impossible to believe that, when complaint had been thus publicly made against the police on the 4th of November and a visit had been made by the Head Assistant Magistrate to the Hospital in connection with it, ~~that~~ the Civil Apothecary was not also aware of the fact that the police had been complained against in connection with the injuries of the patient he was treating. We therefore agree with the Judge in discarding as false the story of the accidental fall as causing the injuries of the deceased.

The only other case accounting for those injuries is that put forward by the prosecution, and we see no reason for differing from the Judge and the assessors in believing that case to be true, although some of the witnesses who spoke to it may not be worthy of credit. We have the fact that, three days before the man's death, a complaint was made by the deceased's relatives of the treatment he had received at the hands of the police, and we have the further fact that, immediately after his death, the prisoner was named as the man who had caused the ill-treatment. It is probable that the appellant was actually named to both the Head Assistant Magistrate and the Superintendent of Police on the 4th of November; but owing to the neglect of both these officers to make a proper enquiry into the case and owing to their forgetfulness of the various circumstances connected with the complaint made to them, there is nothing on the record to show that the appellant was named

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earlier than the 7th. There is, however, no reason why the witnesses should have named the appellant, if he was innocent, rather than the police-man who was guilty, for it is clear that it was a policeman who caused the hurt. The explanation offered by the appellant for a false charge being made against him, is that, about two years before this occurrence, he had had some slight quarrel with one of the agents of the Zamindar Raja Bapayya already referred to. Though there is evidence to show that this Zamindar supported the case for the prosecution owing to his dislike to the Civil Apothecary, and but for whose assistance it is possible this case would not have been succesfully prosecuted, we do not for a moment believe that the petty quarrel the constable had had with the agent two years previously, even if true, would have led to the conviction of so grave a charge as this against him. Although the death of the deceased was undoubtedly due to the violence he used, we think the Judge and the assessors were correct in not convicting him of the offence of culpable homicide not amounting to murder, with which the appellant was originally charged, because he had no ground for supposing that his acts were likely to cause death. But he must have known and intended that they would cause severe bodily pain, and they did as a fact cause the dislocation of a bone which rendered the hurt caused grievous hurt.

The conviction under this count is therefore right, and we think the sentence is not excessive considering the results. We accordingly dismiss the appeal.

We observe that the Sessions Judge has stated that he was about to pass separate proceedings regarding the conduct of the magistracy, the police and the Civil Apothecary of Nuzvid, and in our opinion such proceedings were called for. As regards the Civil Apothecary of Nuzvid, ~~Mr P. Venkataramiah~~

Mr. P. Venkataramiah, we are forced to the conclusion that he was aware that an offence had been committed, and endeavoured to hush it up. His evidence in the case does not commend itself to us as at all satisfactory. As regards the two other officers, the whole of the difficulties in proving the truth of the case have arisen through their negligence. Mr. Oldfield, the Acting Head Assistant Magistrate, thought the complaint made to him sufficiently serious to induce him to visit the Hospital to find the injured man who, he says he supposed, was dead at the time. But, when he went to the Hospital and found the man still alive, he did not take the trouble to see him to ascertain what was wrong, and afterwards when he learnt of the death of the man, he took no further steps in the matter. Mr. Prendergast, the Superintendent of Police, professes that he was not aware that the complaint, which the yerukala made to him, was a complaint against the police. But there can be no doubt that it was such a complaint, for that was the very complaint admittedly made to the Head Assistant Magistrate about the same time. We consider that, when Mr. Prendergast was summoned to appear to give evidence in the case, he was further guilty of a dereliction of duty in not bringing with him and producing the notes which he had taken of his enquiry into the cause of the yerukala's death. His evidence without them is quite unreliable.

By the Court.
(Signed). C. G. Todhunter.
Dy Registrar,
Appellate side.

(A true Copy)

C G Todhunter
Dy ~~Acting~~ Registrar,
16.3. Appellate side.

13.3.
14.3.

Enclosure to Letter No.
Dated,

High Court Judgt
in Kistna Sessions
Case No 24 of 95

CURRENT No. 2226

Office of the
Collector and Magistrate
Kistna District
Camp. Bezwada.
Dated 9th May 1896.

From
J. N. Atkinson Esqr
Collector Kistna District

To
The Chief Secretary to Government
Judicial Department.

Sir

I have the honor to submit herewith copy of the judgment in Sessions Case No 8 of 1896 on the file of the Sessions 2d Court Godavari. In ordinary circumstances I should not have troubled Government in the matter; for the reasons upon which the Sessions judge, in accordance with the view of the assessors, found the accused not guilty and acquitted him appear to me conclusive.

2. But the circumstances are peculiar. ~~and~~ The case was a sequel to Kistna Sessions Case No 24 of 1895, wherein a

constable was convicted of torturing a yerukula under section 325 Indian Penal Code, and sentenced to five years rigorous imprisonment; which conviction and sentence were confirmed by the High Court in Criminal Appeal No 617 of 1895. But the Godavari Sessions judge has now found as a fact that there was no torture at all committed by any one. One or other of the findings must be wrong; either an innocent man is now suffering imprisonment, from which it is just that he should be released; or if his conviction and punishment were just, the acquittal in the present case proceeds on grounds which have no basis in fact.

3. The Godavari Sessions judge in para 20 of his judgment notes, that even if there had been torture the legal guilt of the accused before him is open to argument. But since he expressly declines to discuss legal question, and has acquitted the d on the merits, the dilemma remains s in the case disposed of in Kistna Sessions Case No 24 of 95, and High Cour appeal No 617 of 95, or in the case disposed of in Godavari Sessions Case No 8 of 1896. there has been a patent miscarriage of justice which should be rectified.

4. It would not be difficult to expand and give more point to the arguments of the Godavari Sessions judge. Highly tainted as it is by its intimate connectio with an "offended Zamindar", the prosecution evidence at its best was unsafe to rely upon; and I cannot help thinking that the accused was unintentionally prejudiced by a feeling on the part of the Kistna Sessions judge that the inaction of the Superintendent of Police, Head Assistant Magistrate and other officials had tended to shelter the accused constable. The judge's reprobation of what he terms the "callousness" of these officers insensibly prejudiced the accused. For my own part after the most careful consideration of the three judgments, in the light of my own knowledge, acquired long

before these cases occurred, of Raja Venkata Narasimha Apparow's preeminent predilection for underhand dealing and intrigue, and of his persistent efforts to injure the Nuzvid Civil Apothecary, I have formed a strong opinion that the charge of torture was absolutely false.

5. Under the circumstances I cannot conscientiously recommend an appeal against the acquittal, and I leave it to Government to decide whether any, and if so what action should be taken.

6. I request that the Copy of the Godavari Sessions Court's judgment may be returned soon when no longer required.

I have the honor to be
Sir
Your most obedient servant

J. N. Atkinson
9. 5. 96.
Collector

CURRENT No. 2226
P. Judl.

From
The Collector
Kistna

To The Chief Secretary to
Government
Judicial Department.

Dated 9-5-96.

Despd. 9-5-96
Recd 13 } May
Regd 14 }

13 MAY 1896

Dis No. 98/Jour of 96.

Abstract,—

Subject
Submitting with remarks copy of
Reference on the judgement
in Sessions Case No. 8 of
1896 of the Sessions Court
Godavari.

CURRENT No. 1813 of 1896
Genl

Camp No. D.

Office of the District Superintendent of Police
Kurnool District.
Camp Pendekallu
24th April 1896.

29 APR. 96
OFFICE OF THE INSPECTOR GENERAL OF POLICE
MADRAS.

From
H. G. Prendergast Esquire,
District Superintendent of Police
Kurnool

To
The Inspector General of Police
Madras.

Enclosure No. ~~one~~ 1
To letter No. 2003 d/15-5-96
From Inspector-General of Police.

Sir,

In Government Order R. No.
691 dated 7th April 1896, Government are
pleased to give me an opportunity of
submitting a further explanation[×], for which
concession I am very grateful. Government
are pleased to remark that the nature
and circumstances of the first complaint
made to me were such that no Super-
intendent of Police alive to his responsibilities
ought to have been satisfied without taking
pains to ascertain fully and immediately
the real character of the accusation.

× to six different charges.

2. I respectfully submit that it
was the circums[illegible]es in which the Com-
plaint was m[illegible] [illegible] [illegible]led me as to

its real character. Those circumstances I have fully detailed in my explanation dated 17th October 1895. I was fully convinced by those circumstances that the complaint was one of assault committed by the members of the complainant's family. I have, all my service, been accessible to all classes of the people and have always been ready to hear all complaints. It has never been my misfortune before to be misled in this way. My character for accessibility and my interest in the grievances and complaints of the people may be ascertained by reference to the District Magistrates under whom I have served: Messrs. J. Thomson, Arundel, Higgens, Atkinson and Wolfe Murray.

3. The Government are also pleased to remark that when I did know that a man had been killed and that the charge, whether true or false, was that the deceased had come by his death at the hands of the Police, I, beyond

making a departmental enquiry which was never completed, neglected to take any steps to prosecute the constables implicated, being equally inactive even when later I had the result of the postmortem examination before me, nor did I ever report the case for the orders of the Magistrate.

4. In reply I humbly submit that I did not consider that any report soliciting orders on the case was necessary as the Magistrate was already fully acquainted with the facts of the case, which had been taken cognizance of as soon as the postmortem certificate was received and a verdict arrived at on the inquest held by the Taluk Magistrate under Section 176 of Criminal Procedure Code. No reference had been made to me by the Magistrate for preliminary enquiry and prosecution under the terms of Police Order 302 and the addition made to that order

and the Magte says that he took no action as he supposed the Police were enquiring!

by order No 87 published in the Police Gazette of the 26th October 1895 did not then exist. The Magistrate had taken Cognizance of the case direct and it is not the practice for the Police to interfere in cases taken up direct without such reference. I Considered that the Magistrate was taking very desirable action in keeping the case entirely in his hands, because the result, whether Committal or discharge, would be less liable to be called in question on the ground of Police influence. In order that there should be as little room for suspicion as possible, I suggested to both the Taluk Magistrate and the Head Assistant Magistrate that the preliminary enquiry should be held by a European Magistrate. What my attitude in the matter was may be ascertained by reference to those two Magistrates. So far from wishing to have the case burked, as the Sessions Judge

? Even when their own men are charged?

Apparently a verbal suggestion. There seems to be no record of it.

believed, it was my earnest desire that there should be the fullest impartial enquiry, untainted by suspicion of Police interference. If I was wrong, I trust the Government will take a merciful view of my error. I have never had a case in all my long service of a charge of a man being done to death by the Police under me and was thus without any experience in such cases.

What nonsense!

5. As to the departmental enquiry not being Completed, I have to submit that my intention was to submit a Complete report on the subject as soon as the case was disposed of by the Magistrate, whose judgment I would have forwarded with my report; but I left[x] the district within six weeks after the Constables were suspended and the Magistrate's enquiry began and while the case was still proceeding. I drew my Successor's attention to the case and requested him to submit the final report

and the Magte was waiting for the Police report before beginning the case!

x The date of leaving was Jan. 9th '95, or two months after the Yerukala's death.

but he also was transferred before the Case was disposed of.

The neglect to return, with any Reply to the question endorsed on it, my Report for the week ending 10th November 1894 was an oversight, due to great pressure of work. In the interval between the return of that Report and the receipt of the order of my transfer to Kurnool, I was engaged daily in inspection which had been much neglected during my absence on leave, and afterwards I was exceedingly busy in putting all matters connected with the administration of the District in such order for my successor that he might have no difficulty in going on with it. 6

In Conclusion I pray that in deciding this Case the Government will take a merciful view of my Conduct in Consideration of my long Service which on several occasions has been of a Character that has received the Commendation of Government. 7

I have the honor to be,

Sir,

Your most obedient Servant.

J. G. Prendergast

District Superintendent of P.

Note.
The explanation contains no answers to points (c) & (d) in para 3 of G.O. 691/7.4.96 .J.

CURRENT No. 1813 of 1896
genl

From

H. G. Prendergast Esqr.
District Supdt. of Police
Kurnool Dt.

J. MEREDITH
29 APL 96

To

The Inspector General of Police
Madras.

Dated 24th }
Despd 24th } April 1896.

No. Camp C.

Subject

Respectfully submits an Explanation Called for in a murder case of Kistna Dt.

1896
Jud.
2291

Confidential.

No. O. 49.

CURRENT No. 2291

DEPARTMENT.

No. 2003.

CHIEF OFFICE OF THE INSPECTOR-GENERAL OF POLICE,
MADRAS, 15th May 1896.

6

FROM

M. HAMMICK, ESQ., I.C.S.,
INSPECTOR-GENERAL OF POLICE,
Madras,

TO

THE Chief Secretary
to Government
Ootacamund.

SIR,

Enclosures. 2 } × Confidential

With reference to G.O., No. 691, Judicial, dated 7th April 1896, regarding Mr. Prendergast's conduct in connection with a torture case against the Police of Nuzvid in Kistna District, I have the honor to submit Mr. Prendergast's explanation.

2. With regard to para 8 of the order, I have the honor to say that the Station House Officer of Nuzvid was prosecuted before the Sessions Court of Godavari and that he was acquitted by the Sessions Judge of that Court, who agreeing with the assessors found the prisoner not guilty. I enclose Mr. Mackenzie's judgment† for the perusal of the Government.

† Sent to Govt. Pleader

3. The result is an awkward one. Of the two constables, who must have been almost equally guilty, if the offence occurred

occurred at all, one is in jail for a period of five years, while the other is acquitted on the ground that the whole case against him is a concoction. Probably the best thing to be done now is to appeal to the High Court against Mr. Mackenzie's finding and leave it to the High Court to decide what should be done. I have instructed the Superintendent, Kistna, to ask the District Magistrate to apply to Government that this course should be taken.

In para 5. of Govt. 2226 the Dist. Magte. leaves it to Govt. to state what should be done in the matter.

4. As regards Mr. Prendergast's explanation it seems unnecessary to say much. Whether the case was true or false Mr. Prendergast's duty was clear. He should have made a full enquiry into it. This he failed to do, and although it is in Mr. Prendergast's favor that he was transferred from the District at the beginning of January 1895, as possibly, had he remained in the District, he would have brought to notice the delay that occurred after the beginning of the year, the fact remains that no proper enquiry was made by the Superintendent into a very serious charge against two of his own constables. Had Mr. Prendergast appreciated his duty as Superintendent in any proper degree, it is impossible to suppose that he

he could have left this obvious duty unperformed.

5. Mr. Prendergast left Kistna District in January 1895 and has since then been working in Kurnool. He has done fair work in this District, and has, I consider, always tried to do his best. He has, I believe, always been spoken of by the District Magistrate under whom he has served as a zealous officer, and though I do not consider him in any way to be a specially efficient Superintendent, I feel confident, after having had a year's experience of his work, that in this case he had no intention whatever of screening the constables concerned, or of hushing up the case. He thought the Magistrate had taken up the case himself and so did not trouble himself about it. Grave as was Mr. Prendergast's fault, I think it right to affirm my impression that he had no bad motive in what he did, and taking this view I hope that, if the Government is satisfied that it is the correct one, any punishment that may be awarded will be of a temporary nature and not affect Mr. Prendergast's permanent prospects.

I have the honor to be,
Sir,
Your most obedt. Servt.

M. Hammick

Inspector General of Pol

Judl. (1896) DEPARTMENT.

CURRENT No. 2291

FROM

M. HAMMICK, Esq., I.C.S.,
INSPECTOR-GENERAL OF POLICE,
Madras,

To

THE Chief Secretary to
Government
Ootacamund

CHIEF SECRETARY * GOVERNMENT MADRAS
17 MAY 1896
No. 2003

Dated 15th } May 1896.
Received 17 }

Rep 5-18
Encls.

SUBJECT.

Submitting Mr H. G. Prendergast's explanation with reference to G.O. No. 691 Judl. of 7 April 1896 with his remarks.

List of enclosures submitted to the Chief Secretary to Government with this office Dis No: 110/Four of 96 dated 13 May 1896.

No:

1. Copy of Head Assistant Magistrate's letter Dis No: 578/Magl dated 17-10-95.
2. Copy of Demi Official letter from the Collector to Mr. Oldfield the Head Assistant Magistrate dated 18-4-96.
3. Copy of another Demi Official from the Collector to Mr. Oldfield the Head Assistant Magistrate dated 23-4-96
4. do do do
5. Copy of Mr. Oldfield's Demi Official letter in reply to No: 2. dated 23-4-96
6. do do do in reply to Nos: 4 & 5. dated 26-4-96.
7. Copy of the Demi Official letter from the Collector to Mr. Oldfield the Head Assistant Magistrate dated 7-5-96.
8. Copy of letter Dis No: 274/Magl of 96 dated 6-5-96 from the Hd. Asst. Mag

Collector

J. D. Atkin
14/5
District Magistrate

Enclosure No: 1

Copy of letter Dis: No: $\frac{578}{Magl}$ dated 14 October 1895 from Francis Du Pre Oldfield Esq: Head Assistant Magistrate Kistna to the District Magistrate Kistna.

With reference to your Reference on Current No: $\frac{1238}{Magl}$ of 1895 dated 4-10-95, forwarding for explanation the Judgment and Proceedings of the Sessions Judge in Calendar Case No: 24 of 1895, I have the honor to submit the following. I shall endeavour with reference to each matter of criticism to decide to what each occurrence in fact amounts, and then to consider in what respect my action was wrong.

2. The first point taken by the Sessions Judge is my "extreme callousness in not taking the trouble to ascertain "in detail what these poor people had to say", and I take first word 'poor': that the poverty of the petitioners "influenced me is a surmise of the District Judge; "ch is unsupported by evidence, and was never suggested during my examination. I shall not attempt to discuss "ch.

? Meaning

Stripped however of this aspect, to what do the facts really amount? Certain persons, desiring to set the law in motion, complained to me orally that a cognizable offence had been committed. They were advised to complain to the officer whose business it is to investigate such offences. The Judge throughout his Proceedings has indicated in a general way only the course which should have be

and whose subordinates were accused. - This is an instance of the tendency to regard the Police & the Magistracy as entirely distinct.

Here it would appear, he conceives, a detailed statement should have been taken, or some investigation made by me. Had the first course been followed, the result would have been no more than what actually happened, a reference of the complainants to the Police. With regard to the second, an amateur detective enquiry made by me would, I submit, have been superfluous and unwarranted, when the District Head of the Police Department was encamped at the time in the village.

so

Why?

But the Magte did have seen that someone made enquiry. In this case no one did until afterwards.

3. The Judge comments next on the fact that an endorsement was sent to the Taluq Magistrate on 26-11-94 "snubbing him for doing his duty". Now the deceased died on 7 November and Taluq Magistrate's first report was dated the 10th November or 3 days afterwards. His subsequent arzi was dated 18th November or 11 days afterwards, and their object was to obtain a transfer of this case, which at the time did not exist, from his file. The case involved the conduct of two civil apothecaries, a constable and a Station House Officer. It was further complicated I have reason to believe by the intrigues of two Zamindars. 11 days, the time up to the Taluq Magistrate's 2nd arzi, was little enough for its consideration by the Police,

How can this be? A complaint had been made.

ud the Judge with the nearest approach

definite suggestion contained in his Pro-

ings, remarks that I took no steps "to

to the case myself or to order the Taluq

Magistrate

W. O. has already been urged D.O. by the Dist. Magte for the use of this expression.

"Magistrate to go on with the enquiry or to find out "what the Police were doing". The time which had elapsed, 20 days, was not more than the Superintendent might naturally take to work up this complicated case. The Police were the proper people to initiate the proceedings by presentation of a chargesheet or otherwise. I should have laid myself open deservedly to censure if by a premature trial held by myself or the Subordinate Magistrate without the Police as prosecutors, or with them, before they were ready, I had imperilled the success of their investigation. At the actual presentation of the Chargesheet, it would have been ~~time~~ enough, after perusal of the usual precis of witnesses' testimony, to order a transfer.

But what infn has W. O. to show that the police were doing anything at all?

trial was not wanted at once, but enquiry was.

4. The Judge throughout proceeds on an assumption, namely that I had no reason for believing that the Police were engaged upon the case, and that, having none I should have called upon that department to begin enquiries. The assumption however is unfounded and I may be permitted to refer to the Judge's judgment and ~~to~~ my deposition before the Magistrate and Sessions Court which were before the Judge himself. It might be sufficient to remark that in the nature

course of things the assumption that the District Superintendent was enquiring into this grave case would be a fair one. The Judge in para 4 of his proceedings states that Mr. Prendergast's conduct is without precedent in his experience. What is unprecedented in the Judge's experience I may be excused for never anticipating.

Why assume anything in so serious a matter?

I had however more ~~—~~ reason than — more general presumptions for supposing that the Police were at work upon the case. That reason is given in my deposition before, I believe, both the Magistrate and Sessions Court. It was therefore before the Judge at the time of writing these Proceedings. A few nights after my return to Bezwada from Nuzvid I met the District Superintendent of Police at the Bezwada Club and in answer to my queries, was assured that he was enquiring into the case. In the face of this assurance, I may be pardoned for supposing that for the present at least no further action on my part was necessary. Further I heard unofficially sometime after that Mr. Prendergast's subordinates were under suspension in connection with the business. posed then naturally that their conduct nder departmental or other prelimi- nquiry.

Mr. O. has also been wigged by the Dist. Magte. for this expression & told that it savoured of impertinence. see D.O.s below.

5. I,

5. I have now considered two of the points which the Judge has taken, and if the above remarks be accepted, the criticisms passed must be withdrawn from the transactions above considered, and left to stand or fall by their application to the remaining portion of delay, which occurred during my tenure of office. I propose to discuss the question, first as before removing certain ambiguities of ~~su~~expression.

I am the more handicapped as the events which I am called on to explain took place ten months ago; and since my recollection of motives and expectations must necessarily have become indistinct, I am moreover under a further disability. In the course of my examination at the Sessions Court, questions were asked me relative to these delays, and explanations so far as I could suggest them without papers or consideration and after a considerable lapse of time were given. Before I left the box, I understood the Judge to express an opinion that the delay so far as it regarded me had been satisfactorily explained. Had I known this statement was so thoroughly to be modified, I should have claimed to place on record on my deposition my unpreparedness for the discussion, and my desire to obtain information, and to clear my recollections in the matter.

The delay for which I am responsible may be held to have begun from the date at which it may be decided, ~~that~~ my suspicions should have been excited, and I should have invited the District Superintendent of Police to explain his inaction; and it ~~much~~ must be held to have ended when I left the division on privilege leave.

That was from the moment the people complained BA

To fix the former date, what was a reasonable time, ~~assumed~~ ×, as I was, for me to wait before addressing the Superintendent? I have pointed above the difficulty of the case owing to the conflicting interests and the number of public servants involved. It will certainly, I think, be conceded that 15–20 days will not err on the side excess. The date of the deceased's death 20th November. We arrive then ?–27th November for the beginning of of delay. I left the District on

× assurad

25th

25th January. The period to be counted for is a few days more or few days less than 2 months. The judge refers (para 7) to the way in which I "allowed the enquiry into this "important case to hang fire for months". The judge is literally correct.

The judge proceeds "It was left for "a Native Divisional Officer to put the "law in motion". The intention of this implied comparison is not plain. In completeness of treatment I remark merely that the facts are incorrect, and that the order to take up the case was made by my successor Mr. Hughes, a European, and ~~that~~ the mere signature of a [illegible] by a Deputy Magistrate in charge is presumably the origin of the mistake.

It seems plain enough. Very plain BA

Coming however to the actual delay, I must at once admit that after 10 months I cannot profess to recollect what reasons may have led to the failure to address the Superintendent. If I am to hazard a conjecture for what it may be worth, I imagine Mr. Prendergast's transfer gazetted a December and my intention to ad

Successor demi-officially and the intervention of Christmas holidays may have been the cause for inaction. That, however is conjectural — my motive may have lain merely in Mr Prendergast's statement that the case was under enquiry, and the information I received regarding the suspension of his subordinates. After this length of time I can offer no certain explanation. I can only submit respectfully that the delay is not as might be supposed from the severity of the Judge's criticisms, in some personal dilatory disposal but consists merely in the failure to suspect excep-tional incompetence and to call on a District Head of a Department, an officer of seniority and experience to do his duty.

This is no excuse at all JHS

X.

But surely it is the Dist. Magte's business to see that the Police do their work properly however senior or experienced they may be.

6. To what then have the Sessions Judge's strictures amounted. The extreme callousness attributed to me has consisted in the reference of certain oral complainants to the Officer competent to enquire into their complaint. The "Snubbing a subor. dinate Magistrate for doing his duty" in a efusal to take on my file a case which did at the time exist, and to hurry a depart. t which I was assured on the best authority was at work. The comparison with

Quite so — that is what he is paid for JHS

But the case was not taken on Mr. O's own file as it shd have been, & no complaint was even recorded by him.

Just so JHS

---

with a native Officer, whatever its meaning, has been shown to possess no relation to actual fact. The "matters for which the case has been allowed to hang fire" have dwindled to two, the lowest number compatible with the literal accuracy of the expression. The delay itself has been shown to have consisted in no personal or direct procrastination in the disposal of work actually before me; but in the failure to anticipate conduct acknowledged to be unprecedented, and to call on a senior experienced officer to make good his assurance and to perform his own duties. Of that delay I can after this lapse of time profess to offer no explanation beyond conjectures and must accept such censure as it deserves.

J. B. Atkinson
14/5
District Magistrate

13/5

Enclosure No: 2

Bombay
18 April 1896.

Confidential.

My dear Oldfield:-

For four months or more I have been carrying about your letter Disposal No: $\frac{578}{Magl}$ of 1895 of 17 October 1895, in which you gave your explanation in regard to certain strictures of Hammett on your conduct in the Nuzwid torture case. I have been meaning to speak to you about it, but whenever I met you I forgot the subject, and when I remembered it I was either in Bandar or camp other than Bezwada. I do not know whether you intended it, but your explanation reads rather flippant, or cheeky. I think probably you did not mean it, and that is why I would have preferred to talk the matter over, rather than write about it. When next we meet if you will remind me, I will show you what parts I refer to in your letter.— As to Hammett's strictures, technically you may have been justified in not taking the complaint against the police on your own file, but in so serious a case you would have exercised a wise discretion to have taken it away from the Sub Magistrate, the moment you knew how serious the charge was. I am not prepared to say that you should have undertaken the investigation, i.e. the

But he was not justified,
even technically. He sh'd
have taken cognizance under S.
191(a) & have recorded complaint
under S. 200. Then, but only if
he saw reason to distrust the truth
of the complaint, he might, under
S. 202, have referred the case for
enquiry to the Police or to the Tahsr.
Magte.
WB

part of the business, putting Prendergast on one side, Indeed I don't think you could have done so, without getting my orders first; and so far as I know there was nothing to lead you to suppose that Prendergast was not conducting the investigation properly and thoroughly. I think he would have had a just cause of complaint if you had put him on one side.

You say in your explanation, that if you had taken a detailed statement from those who came to you to complain of the torture, you would have referred it to the police for investigation. A general reference to the Police i.e. inclusive of subordinate police, would have been very inadvisable. You might have referred the complaint to Prendergast for personal investigation, though not even this would have been right, if you had had reason to think that Prendergast was prejudiced. In that case if you doubted your own capacity to investigate, a reference to

nor unless he saw reason to doubt the truth of the complaint JNA

The Taluq Magistrate, Balajee Row Naidu himself a former police Officer, but as ar as I know thoroughly unbiassed and liable, would perhaps have been the course. However it is little use discussing ight have been. Your prime mistake was

was in not getting the case on to your own file as sharp as possible, when you could not help but keep a sharp watch over the course of the subsequent investigation. Government in its review on Police Administration (?) last year drew attention to the increasing disinclination of Divisional Magistrates to take serious cases on their own file. I communicated this to you, and I hope you will lay the lesson to heart.

I would like to have a talk over the whole case with you when we meet: so please remind me.

My wife has gone in the Australia and I have that dreadful return journey before me.

Yours sincerely

(Sd) J. N. Atkinson

P.S. I shall keep this in case you are in Bezwada on my return

True copy

J. N. Atkinson 14/5
District Magistrate

16/5

1896
Jud Dept.
Enclos. No. 7
To
C. No. 2307

Enclosure No. 3

Bezwada April 23, 1896.

Confidential.

My dear Oldfield:

I wrote you four or five days ago in regard to the explanation you gave in answer to Hannett's strictures on your conduct in the Nuzvid torture case (your letter Dis. No: $\frac{578}{Magl}$ of 95 dated 17-10-95). I have now received a G.O. calling on me to submit your explanation on certain points. I will send you extract from the G.O. as soon as possible, but meanwhile I write to explain more clearly my own criticisms on your explanation quoted above, since it seems to me that that explanation is open to unfavourable construction. It was because of the possibility of misconstruction that I wished to talk the matter over with you: and if you could now come in and see me it would ~~possibly~~ probably be best. If you cant get away from ~~the~~ Jamabandi the following may show you where your explanation already given (your letter quoted above) is open to unfavourable comment.

2. I

2: Para 2 of your letter, first clause – The language is obscure and may be misconceived. "I note first word "poor": that the poverty "of the petitioners influenced me" is a surmise "of the district judge." These words are unintelligible to me.

Second clause – In my last letter I gave my opinion that when the Yerukulas made their oral complaint to you, you should have taken it up.

3. Para 3 of your letter – You say that the Taluq Magistrate applied for the transfer of a case "which at the time did not exist". Are you quite sure? The records have been passing about from the Magistrate's Court to the Sessions Court, High Court and to the Inspector-General of Police, and I have not been able to get hold of them; but Hammett told me that the case had been filed when the Sub Magistrate applied to you for transfer. Whether filed or not you could have issued orders to the Police and Sub Magistrate at you would take it up yourself- judge with the nearest approach

to

"to a definite suggestion contained in his proceedings" – these words are one of The instances of what I described I think as "cheekiness" in my last letter – Possibly you did not mean to be impertinent.

4. Para 4 of your letter. The last sentence of clause 1 is epigrammatic, but "smart" sayings from an inferior about a superior officer run the risk of being considered impertinent. As to the rest of this para I admit you had ground for thinking that the police subordinates' "conduct was under departmental or other preliminary inquiry". What was wanted was that you should be certain that no delay should occur in prosecuting them for any criminal offence they might appear to have committed. You would have secured this if you had ordered in the first instance that the case was to be reported to you and such to the Taluq Magistrate –

5 – Para 5 of your letter – clause 8 contains a clerical error apparent "What was a reasonable time assum "as I was". Is "assumed" righ

The last sentence of the same clause "The Judge is literally correct" is another Smart saying that verges on impertinence.

6. The general tenour of para 6 of your letter savours also of "Smartness."

7. The above are my own criticisms on your explanation - I can't say what view Government will take - Government has directed me to send copies of any correspondence that may have passed between you and me on the subject. So please either return the letter I wrote you from Bombay or send a copy thereof.

Yours sincerely

(Sd) J. N. Atkinson

(True copy)

J. N. Atkinson
14/5
District Magistrate

13/5

6
6
Enclos. 6
To
O. No. 2302

Enclosure No: 4

Bezwada April 20. 1896.

Confidential

My dear Oldfield,

Since writing to you this morning, I have found in my Tappal copy of the High Court's judgment in the appeal from the conviction in the Nuzvid torture case. The judgment is going on to you for perusal and return. In the last para but one, the High Court says:- "Mr Oldfield, the acting Head Assistant Magistrate thought the complaint made to him sufficiently serious to induce him to visit the Hospital to find the injured man, who, he says, he supposed was dead at the time. But when he went to the Hospital and found the man still alive he did not take the trouble to see him to ascertain what was wrong."

I don't know if this is a correct representation of your action and motives. Did you go to Hospital on purpose to see if the man about whom complaint had been made was dead or not? If so surely you ought to have taken up the complaint at once. If it was serious enough for a special visit to the Hospital, it was serious enough to be taken up at once.

Yours sincerely

(Sd) J. N. Atkinson

True copy J. W. Atkinson 14/5
District Magistrate

13/5

1896
Jud No. 5
Jud 62
O. No. 2301

Enclosure No 5

Camp Repali
23-4-96.

Dear Mr. Atkinson,

Yours of the 18th regarding the Nuzwid affairs. I of course accept what you say, and thank you for writing at such length. There are parts of the case which I gather I may be able to explain when we meet; meantime there are two things — (1) when I wrote of referring the Complainant to the police, I was certainly inaccurate. I think however I may be credited with not meaning that I should have referred it, a complaint of police oppression to the very persons complained against. I should certainly have sent it ~~to~~ Superintendent or Inspector against whose partiality I know nothing. (2) I may be mistaken but I gather that you believe that I had some reason at the time for thinking Prendergast was prejudiced. In case I am not wrong in doing so, I had better say that I had no idea then that he would not do his work properly. I do not now know why he failed. I do regret very much that any part of my explanation should have appeared improperly worded. I put every point as strongly as possible, since it seemed to me at the time that a great part of the proceedings was worde in an extremely strong way; I regret great anything unsuitable should have been

× × × × × × × × × ×

(The remaining portion of the letter does not relate to the subject in hand and hence omitted).

I am
yours sincerely
(Sd) Francis Dupre Oldfield

/True Extract/

J. N. Atkinson
14/5
District Magistrate

Dld
13/5

1896
Judl
4
2302

Enclosure No: 6

Camp Repalle
26-4-96.

Dear Mr. Atkinson,

Both yours of 23rd reached me this morning. I return them and also yours of 18th. I do not know to what extent this correspondence is official and therefore reply at length:-

1. In para 5 of my original explanation 'assumed' should be "assured". The draft is not here but "assured" must be the word.

2. Para 3. 'The case which at the time &c'. Hannett is perfectly correct if he refers to the Yerukulas' petition presented to me at Gollapalli, which, I believe, (I have not the registers here) I referred to Balajee Row, and on which Balajee Row made the reference, which led to the endorsement, objected to by Hannett in I think the para under explanation, that I would pass orders in due time. But throughout I have implied, if not stated, that what I waited for was the Police case — their charge sheet in proper form, which I had reason to believe was under investigation. The Police, I suppose, were working, and I do not think I could have allowed enquiry into a complaint petition to go on, which would have anticipated, and prejudiced their case.

Mr. O. seems quite ignorant of the fact that it was for him to direct the Police

3. The High Court's statement as to my motives and actions is quite wrong. I went out with the Assistant Manager, a Sunday at dawn, to inspect the Union. Yerukulas complained at the Bungalow gate an sent them to Prendergast. We went through

and at last, so far as I remember, without my expecting it, (it was my first visit to Nuzvid) found ourselves at the Hospital; being there I went in and asked the civil apothecary, if a man had died. He said 'no'; and whether I asked what was the matter with the man, and whether I saw him I do not remember. Probably I did not see him. I went in and enquired, so far as I remember, from mere curiosity, and probably without any special motive, except perhaps to know any news there might be. I certainly did not start out to go to the Hospital: I had inspected it in the morning; and I do not think I thought of going in till I saw it before me. I believe that in the District Court I deposed that I went out to inspect the Union. If the High Court got their impression from my evidence, it does not convey my meaning.

+ The Yerukalas' complaint was that one of their men had been killed by the Police

!

He said in the Sessns. Court that he went in to enquire because he had been told a man had died.

The evidence supports the High Court's impression (see deposition, marked with red tape in the file of prosecution evidence).

I remain
yours sincerely
(Sd) Francis Dupré Oldfield

P.S. I do not at all want to leave the Jamabandi and come back to Bezwada, unless it is necessary.

× × × × ×

(The remaining part of the letter does not refer to the subject in hand & hence it is omitted)

[True copy]
J. N. Atkinson
14/5
District Magistrate

14/5 3

2302

Enclosure No: 7

Guntur – 7 May 1896.

My dear Oldfield

I send herewith Copy of Mackenzie's judgment in the Supplemental Nuzvid torture case: as it may be of service in sending in your explanation which Government has called for. Let me have the judgment back when done with.

When was it that the Yerukulas presented the petition to you at Gollapalli, before or after you had been at Nuzvid? Can you give me the exact date? How many days were you at Nuzvid?

Yours sincerely
(Sd) J. N. Atkinson

True copy
J. N. Atkinson
14/5
District Magistrate

13/5

8

Print this

Enclosure No: 8

17 S.P.

Copy of letter Dis: No: $\frac{274}{Mag^l}$ of 96 dated 6th May 1896 from Francis Dupre Oldfield Esq^r Head Assistant Collector and Magistrate Kistna to the District Magistrate Kistna.

With reference to your C. No: $\frac{15}{Conf^l}$ of 1896 dated 25th April 1896, I have the honor to submit the following. Take the questions of Government in their order.

(a) The Yerukulas made an oral complaint to me on the evening of the 6th March that their relative was dead. The District Superintendent of Police was encamped at the other end of the village, and I referred them to him as the alleged offence was cognizable. He was a senior* officer, whose competence or accessibility I had no reason for doubting. I had no idea then, or indeed for several months, that he refused to listen to them.

Nov?

* Nothing to do with it.

!

(b) As stated under (c), I had good reason for believing that the Superintendent of Police would report upon the case, and was awaiting the charge sheet, which I assumed that he would send.

(c) As stated, (I believe*) before the Sessions Court, and in my Dis: No: $\frac{578}{Mag^l}$ of 95 para 4 I was assured orally a few days after leaving Nuzvid by the District Superintendent that he had been at Nuzvid, enquiring into the case.

* qu. (bottom of page 4 of evidence)

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2302

I therefore had good reason to suppose that the necessary chargesheet would be submitted. The case, as appears from the Sessions Judge's judgment, and as I knew, was a difficult one. The conduct of a Civil Apothecary, two Zamindars, two constables, and a Station House Officer would, I heard, be in question, and it was natural to suppose that Departmental enquiry would precede the trial of the last three persons; it was, I submit, natural that having the assurance of the District Superintendent I should wait sometime for the chargesheet.

Naturally, after the lapse of some time. But why didn't he enquire at once? WS

(d). In replying to this question, I would respectfully submit that my responsibility extends between November 7th 1894 and January 25th 1895 on which date I left the division on Privilege leave. Some part of the period must further be deducted for the time during which I was entitled to await the chargesheet, preparatory to which, I understood, enquiry had been made, and police Constables suspended. A considerable delay however undoubtedly remains; and for that after this lapse of time I am able now to suggest no motives that would be more than mere conjectures. I

n say only that for some time, confident

the District Superintendent's statement, I

ted for the chargesheet, and that the

may then have passed from my recollection;

for

18.

for this failure in memory I must accept such censure as may be awarded.

J. N. Atkinson
14/5
District Magistrate

AOS
14/5

Encl No 8

1896
Jud
1
2302

CURRENT No. 2302

12 P

Office of the Collector and District
Magistrate Kistna. Camp Bezwada
13th May 1896.

Confidential

From

J. N. Atkinson Esquire
Collector and District Magistrate
Kistna

To

The Chief Secretary to
Government
Judicial Department.

Sir,

I have the honor to submit the report and explanations called for in G. O. No: 691 dated 7th April 1896.

2. The Government observes in para 6 that I appear to have taken no action of any kind when Mr. Prendergast's diaries referring to the case passed through my hands, on which occasion, the Government considers that I should have seen that active steps were taken to bring the offenders to justice. I have now scarcely any remembrance of the manner in which Mr. Prendergast referred to the case of alleged torture in his diaries; nor in how many diaries any such reference appeared. I gather, however, from the G.O. under reply, and the Kistna Sessions Judge's fact: Proceedings dated 16th September 1895, the

sions

the complaint of torture was never registered as a crime by the Police, and would therefore not appear in Part II of Mr Prendergast's Weekly diaries. Whatever references there were in the diaries – must have been in Part I, and I cannot say whether any of those references were of such a nature as should have impelled me to insist on a charge sheet being at once filed before a Magistrate.

3. What I did know, and of this alone I have a clear remembrance, was that Mr Prendergast was making an investigation into the matter, and that he had formed an opinion that the complaint of torture was false, and due to the machination of Venkata Narasimha Apparow, the Nuzvid Zamindar, whose name appears so often in the judgments of the Sessions Courts of Kistna and Godavari.

4. Government is good enough to suggest that in the press of business the matter might have passed out of my mind, when the Superinten-dent's diary left my hands. I am giving my explanation solely from the indistinct remem-brance of what happened 18 months ago; and so far as I can remember, it was not so uch that the matter passed out of my – d, as that it never made any very strong sion, as a case in which I should interfere. ot the remotest ground, then, as I have not

Please see Mr. Prendergast's diary for the 10th Nov. 94 in the file. It contains a complete statement of the case with the post mortem certificate. –

not now, to doubt either Mr Prendergast's sincerity or his acumen. He was investigating the matter, and his opinion was that the whole story of torture by the Police, was the fabrication of a Zamindar, of whose character as an intriguer and a promoter of false complaints I had had ample evidence. This very Zamindar was at about that very time busily engaged in trying by means of Mahazarnamas, petitions, and the like to get the Nuzvid apothecary, whose names figures in this case, departmentally disgraced and transferred. The Surgeon-General was so impressed with his unscru-pulousness in that matter, that he, the + Surgeon General, asked me to move Govern-ment to deprive the Zamindar of his title.

+ He has no title

5. There seemed to me therefore no a priori reason why the charge of torture should not be, as Mr Prendergast thought, a fabrication. In any case Mr Prendergast, an officer of great experience in whom I had full confidence, was, as I believed, devoting his attention to the case; and I submit respectfully that I had no possible reason for thinking otherwise, than that active steps were being taken to bring to justice any persons that might be found to have offended.

6. Government further remarks that facts all the more incumbent on me to have b the – the matter to the notice of [illegible]

I received the judgment and Proceedings of the Sessions Court in the case. I did formally report the case to Government, and submitted a copy of the Sessions' Court's judgment with my letter Ref No: 1261/Magl dated 25-10-95, disposed of in G.O. Judicial No: 2339 dated 15th November 1895; and in my letter I wrote: "This was a sensational case against a police Constable who was accused of beating an Yerukula man suspected to have stolen goats, and of causing his death. × × × ×. It was alleged against the former (Civil Apothecary of Nuzwid) that he helped the police in hushing up the case". I trust therefore that Government will acquit me of having left it "to learn of the case from outside sources," and neglecting to bring the case to the notice of Government.

As to this, please see note for orders, below.

7. The Sessions Court's judgment spoke of the "extreme callousness" of the Superintendent of Police, and the Head Assistant Magistrate – and a note was appended to it, that the judge would pass a separate proceedings about the part played in the case by the Magistracy, Police and Civil Apothecary of Nuzwid: ud I anticipated that Government would e called on me or the Sessions judge to uish a copy of this Proceedings. But no direction reached me, and it seemed to me that, before deciding what action I should take against Mr Oldfield, I must get his explanation. Mr Prendergast had left the District many months before I got the Sessions Court's judgment or Proceedings: I had no authority to call for his explanation; so far as he was concerned it would have been an impertinence on my part to have usurped the authority of his departmental superior the Inspector General of Police, either by calling for his explanation or reporting him to Government.

! | Wrong – his duty to send it up at once HS

This again seems a wrong view of the respective positions of the Dist. Magte. & the Supt. of Police. – Yes HS

8. I received the Sessions Judge's Proceedings on 3rd October; and on 4th I communicated a copy thereof to Mr Oldfield, for explanation. Copies of his explanation, and of the subsequent correspondence that has taken place between him and myself is forwarded herewith. Mr Oldfield's first explanation Enclosure No 1 was received on 20th October. I was annoyed at what seemed its impertinent tone and I drafted a sharply worded reply; – but on reconsideration I thought that possibly Mr Oldfield did not mean to give offence, and I destroyed the draft and took time for further consideration. Mr Oldfield's version of the facts was in some points at variance with the

Sessions

Sessions Judges; on this and other matters I spoke to Mr Hannett once or twice, and then learnt that the records had been forwarded to the High Court. Before passing final orders on Mr Oldfield's explanation, it occurred to me that it would be well to await the High Court's judgment in the appeal: but subsequently I deemed it best to speak to Mr Oldfield on the whole matter: the more so because I felt satisfied that whatever errors he had committed were the result of inexperience: and certainly not of callousness as the Judge had assumed.

9. Enclosure No 8 is Mr Oldfield's explanation called for in para 7 of the G.O. under reply. It is merely a reiteration of what he has written in his various explanations to me. Mr Oldfield's style is concise to the verge of curtness, and I trust that Government will not attribute this to any improper feeling on his part. I am satisfied that I at first misjudged him in this particular. In October 1894 he had only been a month in the District, and less than 4 years in the country. He can hardly be blamed for having placed confidence

in

in a Superintendent of Police of 18 years service, of which some 7 or 8 had been passed in the Kistna District.

10. I trust that I may be excused for referring to one point in the charges against Mr Prendergast. Mr Hannett in para 6 of his judgment speaks of Mr Prendergast "jumping to the conclusion" that the complaint made to him by the Yerukulas was one of petty assault by some of their own people. I claim to have some knowledge of colloquial Telugu, and I say positively that, on the words reported to have passed between Mr Prendergast and the Yerukulas, he had no alternative but to conclude that they complained of such a petty assault among themselves. The Yerukulas came crying to him, saying "Kottivésináru"; and this word, as used, could only refer to the speakers as the recipients of the beating: "they, (or some people) have beaten us", that was the plain meaning, that any one acquainted with colloquial Telugu would attach to the words. Then followed the question "Evaru?" – "who (have beaten you)?" and the answer "Maávallu" – "our people (have beaten us)". The Police were never mentioned, and considering that Mr Prendergast had (so far as appears in the judgments of the High Court and the two Sessions Courts), up to then had

no
MA

This can't have been the word used
MA

no

no inkling of any charge against the Police, I must with all respect say that I can see no ground for charging him with callousness, because in this simple complaint of assault he failed to perceive a charge against the Police.

Para 5. of the G.O. acquits him of callousness but says that he sh^d have taken pains to ascertain fully & immediately the real character of the complaint.

11. I am tempted to ask Government to consider some of the many places where Mr. Hammett in his judgment has jumped to conclusions, but doubtless they have already attracted Government's attention; and I will only add that in my humble opinion, even if the charge of torture was not absolutely false, as I believe it to have been, at least the evidence was such as did not warrant a conviction.

I have the honor to be
Sir,
Your most obedient Servant
J. M. Atkinson
14/5
District Magistrate

14/5

CURRENT No. 2302

Judicial 896

CHIEF SECRETARY
18 MAY. 1896
GOVERNMENT OF MADRAS

From
The District Magistrate
Kistna

To
The Chief Secretary to
Government
Judicial Dept.

Dated 13 } May, 1896
Despd 14 }
Received 18 }
Regd — 19 }

Enclosures 8.

Dis: No $\frac{110}{\text{Tour}}$ of 96

Subject

Submitting report on the Nozwid torture case called for in G.O. No. 691 Judicial dated 7-4-96.

CURRENT No. 2

Kistna Collectorate
Masulipatam 27 May 1896

Confidential

From
J. N. Atkinson Esquire
District Magistrate Kistna

To
The Chief Secretary to Government
Judicial Department

Sir,

In continuation of my letter Dis: No: $\frac{110}{\text{Tour}}$ of 1896 dated 13 May, in reply to G.O. No: 691 dated 7 April 1896 I have the honor to forward the accompanying extract from a demi official received from Mr. Oldfield, containing his replies to the questions in my demi-official of 7 May (Enclosure No: 7 ~~of~~ to my letter quoted supra).

I have the honor to be
Sir,
Your most obedient servant
J. N. Atkinson
District Magistrate

18 May 1896
Bezwada.

Dear Mr. Atkinson,

With regard to yours of 7th, your questions are answered as follows:—

(1) I was in Nuzwid from 3 November 1894 evening to 6th November, morning. I was at Gollapalli from 6 November morning till 9 November morning.

(2) The petition was presented at Gollapalli after leaving Nuzwid. The exact date of presentation cannot be ascertained, as it was registered evidently after delay on 11th. Probably it was received on 7th or 8th.

Yours sincerely
(Sd) F. D. P. Oldfield.

True Extract
J. A. Atkinson
District Magistrate

URRENT No 2471

Confidential

1896

19

From
The District Magistrate
Kistna

To
The Chief Secretary to Govt.
Judicial Department

CHIEF SECRETARY
31 MAY 1896
GOVERNMENT OF MADRAS

Dated 27 }
Despd. 27 } May 1896.
Received 31
Regd 1/6.

Dis No —/Conf. of 1896.

Enclosure

Subject

Abstract

Submitting an extract from ~~copy of~~ a demi offl. letter from the Head Asstt. Magt.'s ~~demi official~~ ~~with~~ on the subject of the ~~regard to~~ the Nuzvid Police torture case

Note for Us.

The file connected with this is with the C.S. This ~~will~~ may be submitted then.

Paper recd from C.S.

3/6

There can be no doubt, I think, that the acquittal of the S.H.O. shd be appealed against. It is the only way of getting out of the dilemma in which we now are in consequence of the different views taken by Mr. Hamnett (~~and~~ backed by the H.C.) and Mr. Mackenzie as to the fact of the death of the deceased having been caused by illtreatment on the part of the Police.

But whatever may be the ultimate finding as to the fact of the alleged Police torture, there is no reason, that I can see, why orders should not at once issue on the conduct of Messrs. Prendergast, Oldfield and Atkinson.

As to Mr. Prendergast, I am glad to see that the I.G. speaks well of him on the whole. Making every allowance for this, I cannot see that he has in the least cleared himself from the charges brought against him on which I commented in my note in G.O. 691/7.4.96. I then proposed & H.E. the late Govr. agreed with me that he should be reduced from the 4th (acting 3rd) grade on Rs 800 to the bottom of the 5th grade on Rs 600. But perhaps, in view of what the I.G. says, it will suffice to reduce him to his own (the 4th) grade & to keep him there for not less than 12 months. This would be equivalent to a fine of Rs 1200 and is, I think, the least that should be done, for it is a very bad case — just the case for the disaffected Native Press to point to.

As to Mr. Oldfield, the C.S. speaks of him as "an inexperienced youngster and not remarkable for intellect". I find, however, that at the time of this occurrence he had been acting as Head Asstt. for more than ~~22~~ 20 months and had been 3 years & 9 months in the service. The C.S. himself was confirmed as Head Asstt. when of less than 3 years and six mths service, and acted as Sub Collr. after 20 mths as Head Asstt. I do not know what his then feelings wd. have been if called an inexperienced youngster. As to Mr. Oldfield's intellect, there can be no doubt that he considers himself smart, and I see no reason

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Judicial Dept.

Curt. Nos 2226. 2291. 2302. –

For orders.

The last two currents contain the explanations of the Dist. Magte. of Kistna, the Head Asst. Magte. & the Dist. Supt. of Police in answer to G.O. 691.T./7.4.96 on the Kistna Police Torture case.

The currents require to be read in the original, & orders ~~upon~~ with regard to each of the gentlemen in question are solicited.

With reference to para 8. of the G.O., current No 2226 shows that the Nuzvid S.H.O. was prosecuted, & with what results.

With refce. to para 9., the S. Genl.'s letter in G.O. 792.J./4.5.96 shows that he is giving attention to the matter.

~~Apart from the explanations of~~ ~~the three~~ officers, only two other matters appear to require notice here.

One is the statement

of the Dist. Magte. in para 6. of Curr. 2302 that he has already brought this case to the notice of Govt. & that Govt. was not left to learn of the case from outside sources as is stated in para 6. of G.O. 691 J./7.4.96 — He says he brought it to notice in his letter in G.O. 2339 J./15.11.95. Particular attention is invited to this letter. It merely asks that sanction may be accorded to the payment to the Pub. Prosr. of a fee of Rs 150. for prosecuting in the case. — Dist. Magtes. can only sanction payment of such fees up to Rs 100, & every week applications for sanction of an excess, similar to this one, are received. A rule has been laid down that except in unusual circumstances a fee of more than Rs. 25 a day will not be passed to Public Prosecutors, & all that is usually done with such applications is to see that on each day for which fees are claimed a fair day's work was done & that no more than Rs. 25 a day is passed. Dist. Magtes usually accompany such applications with some such short explanation of the unusual nature of the case as appears in the present letter of Mr. Atkinson's, this being done to show that the case is really one in which an enhanced fee is fairly demandable. If they often send the judgment with the same motive. H.M. has directed that all such papers should be disposed of by C.S. as a rule.

This being the condition of matters, all that was done by the office when the paper came up was to see that the fee asked for was claimable under the rules. Mr. Atkinson's letter never mentioned a word about the H.A. Magte. and the Supt. of

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for supposing that he ~~to~~ is in anyway wanting in intelligence. What he seems to be wanting in is the desire to do his work properly. I don't think his explanation clears him in the least of the charges brought against him. He did not trouble himself to see what was the matter when the people complained to him, but neglected his plain duty to make an enquiry, and that neglect he continued for months. I would reduce him to Asst. for six months, during which time I would place him under some smart Collr. who would teach him how to behave himself — say Mr. Stokes in Tanjore.

As to Mr. Atkinson, I don't think I have for a long time read anything more astonishing than his attempt to make out that he had reported this grave case to Govt. by forwarding an application for the payment of the pleader's fees in which a copy of the S. J.'s judgment was enclosed. A man of his length of service cannot be supposed to be ignorant of the fact that matters of that kind are necessarily dealt with as matters of routine, ~~[illegible]~~ and would therefore hardly come even before the C.S., much less before a member of Govt. I can quite understand the U.S. failing to read the judgment in a case in which the D.M.'s letter gave no hint whatever that there was anything in it needing special attention. The D.M.'s letter explained the length of the trial, & the fact that a conviction had resulted showed that the prosecution had been properly conducted & that the pleader had earned his fees; so there was no need to read the judgment. But putting this aside, Mr. Atkinson should have been aware that in a case in which the Sess. J. had brought serious charges, couched in terms of considerable severity, against a Divl. Magte. & the Supt. of Police, one of two things followed; that is, either those officers must be subjected to the censure of Govt. or the Sess. J. must be called on to withdraw his charges against them

That some explanation was called for from the officer in question, Mr. Atkinson seems to have apprehended, for he called on Mr. Oldfield for explanation which, having received, he kept from about Oct 20 to April 18 (that is, for six months) without taking any action whatever. I really do not see what excuse can be found for Mr. Atkinson —

As to his not keeping the Police up to the mark when he heard of the torture case, he has evidently no explanation to offer — He did nothing, though he knew of the case, & can only plead his confidence in Mr. Prendergast. That is what ~~his~~ it really comes to. Well, his confidence turns out to have been misplaced, & he must take the consequences.

I consider he should be severely censured.

The papers show in numerous places the failure of the magistracy to understand their proper position as regards the Police — I should remark on this.

The order issued on this case should in my opinion be in such a form that it may be placed on the E.T. leaving names — The native papers are constantly abusing us on account of what they would, I suppose, call our "callous indifference" to the oppression of the people by the Police & other subordinate employés of Govt. I think we should show them that our desire is, though we may often fail, to do justice in such cases —

I observe ~~that~~ H.E. Lord Wenlock (to whom the former papers went last) ~~[illegible]~~ noted on March 6, but the G.O. of April 7 was not issued until more than a month later. Why this?

4/6/96

I agree that there must be an appeal against the acquittal of the S.H.O. (if

Police having been severely censured by the Sessions Court, & the U.S. admits that a perusal of the judgment was not necessary to the disposal of the ~~case~~ paper he never looked at it. It is submitted that in these circumstances Mr. Atkinson is putting a very ~~narrow~~ literal interpretation on the ~~meaning~~ expression "bringing a matter to the notice of Govt." It seems possible that if the case had only occupied 4 ~~5~~ days instead of 6, & the P.P.'s fee thus been Rs 100 & within the Dist. Magte's powers of sanction, Govt. wd. never have heard anything about it. It is submitted that the Dt. Magte. may be told that this is not the way in which so serious a matter should be brought to the notice of Govt.

The other matter to be considered is the desirability or otherwise of appealing against Mr. Mackenzie's acquittal of the Nugvid SHO. (Please see current No. 2226.).

Mr. Atkinson is strongly of opinion that Mr. Mackenzie's view of the case is correct. It is submitted, however, that his judgment is by no means as impressive as Mr. Hamnett's careful work, & that most of his arguments for the acquittal are open to discussion. They have been annotated in places where this seemed most obvious.

If however an appeal against the acquittal is ordered it wd. seem to be desirable that orders on the present explanations should be postponed until the High Court's order on appeal is received. This does not, however, seem to be necessary, as the question whether the case was true or not does not affect the conduct of the three officers. They are charged with neglecting to

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the H.C. has not already called up Mr. Mackenzie's case for revision), & that whether the case is true or false, Mr. Oldfield & Mr. Prendergast both acted wrongly with very serious results, making it difficult if not impossible to determine the truth as to an alleged heinous offence, and throwing grave discredit on the Police & Magistracy, while the attention of the Native Press has been attracted, so that it "trusts ~~that~~ Govt. will do something to reform the Police, as such a thing has become very necessary".

A complaint that Puligadu had been tortured to death by the Police was admittedly made to Mr. Oldfield, the No. Hd. Assist. Mag. whilst Puligadu was still alive & in the hospital. Mr. O. says it is his "custom" to tell people who came to him complaining of simple offences about which they shd complain to a Sub. Mag. to go to the Sub. Mag. having jurisdiction, but this was not a "simple" offence. The complaint was one of torture & murder. It was against policemen, & a Mag. has peculiar responsibilities with regard to the Police. Mr. O. shd have at once taken up the case, & when he found that the man was still alive in the hospital, he shd have taken a statement from him. Afterwards, though his attention was called to the matter more than once, & though no charge sheet &c was submitted he did not think it necessary to interfere with the Supdt., because he was junior. This was contrary to his duty as a Divisional Mag. There wd have been some palliation if Mr. O had been a very junior Assist. Mag., but he was not. He was made Assist. Mag. in Feb '91, & No. Head Assist in Feb '93, & he had had plenty of time

Mr. Hamnett spent 6 days over the case. It does not appear how long Mr. Mackenzie took over it

DA

to learn what a Divl. Mag. ought to do. The Hon: Mr. Bliss thinks he shd be punished by being reduced to the rank of Assist. Mag. for 6 mos. This will be a heavy penalty. It is inconvenient, too, for we are very badly off for Head Assts. Still, the punishment must be severe, & I do not see how it could be inflicted in any other way than that designated by the Hon. Mr. Bliss, though perhaps the period might be reduced by 2 months, or so. Mr. Hamnett says that his conduct in this case shows "that Mr. O. has not yet learnt his duties & his grave responsibilities as a Divl. Mag. It is high time that he did". I agree with Mr. Hamnett in this dictum, & my opinion

Extra in Abstract
DA

is confirmed by the tone of Mr. O's explanations &c.

see that the case was properly enquired into. None of them say that they didn't enquire into it because they believed it false. So its truth or falsity does not affect the questions here in issue.

I submit that as the High Court believed the case against the constable to be true an appeal should be preferred - notwithstanding opinion of the Dt. Magistrate - against the acquittal of the Station House Officer. If the Constable was guilty the Station House Officer must be so of having concealed the offence committed &c. If Mr Mackenzie's view is the correct one the appeal against the acquittal of the S.H.O will afford the High Court an opportunity of reconsidering matters regarding the Constable though it cannot revise or alter the previous judgment. But whatever may be the truth - whether the charge of torture was true or false - the ~~q~~ ~~decision~~ question as to what ~~[illegible]~~ notice should be taken of the conduct of the Dist. & Hd Asst. Magtes and the Supt. of Police respectively ~~[illegible]~~ can be dealt with quite apart from that whether ~~the~~ an appeal should be made or not. The case appears to have been treated as "a no man's child". The explanations of Mr. Oldfield and the Supt. do

WF 27/5/96

Kistna Police Torture Case. -

(for orders)

H.M & circ.

Mr. Prendergast erred, as pointed out by Mr. Hammick. He should have made some inquiry when the people complained to him that "koti vesinaru". He says he did not know then that this was a complaint against the Police, but he did know a day or two afterwards that there was a complaint of torture & murder against the Police, & he shd then have registered the case & held an inquiry under the Crim. Pro. Code. He did not. He shd have reported so important a matter specially both to the Dt. Mag. & the Insp. Genl., but he did not. In such a case he shd have made a full & complete inquiry. He did not. He shd not have taken away the record of such inquiry as he did make to Kurnool when he was transferred there, & he shd have brought it with him when he knew he was to be examined about the case by the Sessions Court. He is in the 4th grade, acting in the 3d. The Hon. Mr. Bliss at first thought that ~~he~~ he shd be very severely punished by being reduced to the bottom of the

[G. / 25 A.]
1,000—21-3-96.

DEPARTMENT

C. No.

5th grade. As it now appears that Mr. P., though he did wrong, did so with no wrong intention, the Hon Mr. Bliss thinks it will be enough to ~~reduce him~~ take away his acting appointment in the 3d grade & keep him in the 4th for a year. I agree.

As regards Mr. Atkinson, he ought to have seen that the case was properly dealt with at first, he ought to have reported the case specially, & he ought to have told Govt. of the Courts' strictures on the H. A. Mag. & the Supdt. of Police, & I think he shd be told so, but I don't think we shd do more. With his letter applying for a fee of R 150 for the Govt. Pros., he sent a copy of the Court's judgment, & said it was a sensational case, that a Police Constable was charged with beating & causing the death of a Yerukala & sentenced to 5 years rig. impt. for inflicting grievous hurt, that the Apothecary of Nuzvid was alleged to have helped the Police to hush up the case, & that the Hd. Mag. & Supdt. of Police had been examined. Under these circumstances I am not surprised at his thinking the case had been brought to the notice of Govt. If he had only asked for an extra fee for the Govt. Pros. it wd have been a different matter.

JG 8/6/96

FOR ORDERS.

not by any means satisfactory account for what took place and they both appear to have been exceedingly remiss in the performance of what was their manifest duty. For Mr Oldfield there was some ~~[illegible]~~ little excuse as he was an inexperienced youngster and not remarkable for intellect but with Mr. Prendergast the case was different as he was an old hand knew the people the language the ways of the police and the law and procedure perfectly well. He no doubt from the very first regarded the case as concocted and did not think it worth while to put himself out about it. His explanation all through appears to be a reckless one & he evidently feels that it is. He has not even yet replied to all the points raised against him. As for Mr Atkinson who has the

Kistna Police Torture Case

FOR ORDERS.

reputation, I believe justly, of being a sharp and energetic Officer, he seems to have when he received the Prendergast's diaries to have done nothing without taking further action but pass them on. He probably did this believing that the D. S. in whom he had the greatest possible faith would deal with the matter in a fitting manner. ~~He [illegible]~~

[illegible]
2/6/96.

Note.

Curr. 2471 (since received) ~~also~~ submitted

W.C. 8/6/96

1. I agree that an appeal against the acquittal of the S.H.O should be made.

2. In the case of Mr. Prendergast, I agree in the view taken by Hon. Members as to the degree of the offence, and as to the punishment to be imposed. I would further order that the I.G. P. should take very special attention to the way in which Mr. P. discharges his duties, and report at the end of 12 months.

3. As regards Mr. Oldfield, I am of opinion that he has been shown guilty of the acts of neglect of duty set forth in the Order of the 7th April 1896 No. 691. I agree with Hon. Members, that he should be reduced to the grade of Asst. Collector, and this for six months as advised by the Hon. Mr. Stokes. He

H. M. & Cive.

He should be posted either to Nellore, if Mr. Meyer stays there. If Mr. Meyer goes to Simla, Mr. Oldfield should be posted to ~~Tanjore~~.

4. In regard to Mr. Atkinson, I am of opinion, having regard to his reputation and all the circumstances of the case, that the course proposed by the Hon. Mr. Grose will ~~[illegible]~~ mark sufficiently the disapproval of Government.

A.G.H
15.6.96

C 4/6

[G. / 24.]
500—22-4-96.

Jud. DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 7th April 1896, No. 691. J. (P. of the curr. in it, and A of the order)
Again G.O., dated 189 , No.
Current No. 2226 of 1896, dated , from — P.
" " 2291 " 1896, " , " A., (with A of encl. No. 1 & Q of encl. No. 2)
" " 2302 " 1896, " , " A (with A of encl. No. ~~2~~ 8. only).
" " 2471 " 1896 — P.

W.P.
20/6/96

A.G.H
22.6.96

ORDER. No. 1186 d/ 16 July 96.
P.S.

In the order read above the Govt. called upon Mr. Prendergast, formerly Supt. of Police in the Kistna District, & Mr. Oldfield, acting Head Asst. Magte. of the same district, to submit their explanations with regard to certain ~~charges~~ matters set out therein in which their conduct in ~~respect to~~ dealing with a case of the death of a man of the Erukala caste when in the custody of the Nuzvid police appeared to be ~~open to censure~~ deserving of serious notice. Mr. Atkinson, the Magistrate of the District was ~~further~~ also requested to report what action he took in the matter & why he omitted to bring the case to the notice of Govt.

2. The papers read above contain the explanations submitted by ~~of~~ these three officers ~~accordingly~~ in accordance with that order.

3. In forwarding Mr. Prendergast's explanation ~~to~~ the I.G. of Police submits for the orders of Govt. a copy of the judgment of the Godávari Sessions Court in Sessions Case No. 8 of 1896, in which the S.H.O. of Nuzvid has been acquitted of complicity in the maltreatment of the Erukala ~~for~~ of which a constable of the same station was found guilty in Kistna Sessions Case No. 24 of 1895 & sentenced to five years' Rig. Imp.; — a conviction & sentence which were upheld by the High Court on appeal. The Govt. Pleader will be requested to prefer an appeal to the High Court against ~~this~~ acquittal.

4. The Govt. does not consider that the ultimate decision of the judicial tribunals as to the truth ~~of~~ or falsity of the charge brought against the Nuzvid police ~~of mal-treating the E Erukala~~ can in any way affect the degree of culpability attaching to the officers whose conduct is now in question, & it accordingly proceeds to deal with the case of each of them.

2!

5. The charges against Mr. Prendergast are set out in the order already referred to, and the Govt. has arrived with regret at the conclusion that the explanation which he has now submitted fails ~~entirely~~ to exonerate him from blame, ~~&~~ that the charges made against him in paras 3. 4 & 5 of that order are established. There appears, however, to be no reason to suppose that in ~~acting~~ proceeding as he did Mr. Prendergast was actuated by any desire to screen the subordinate officers of his department who were implicated in the case of the maltreatment of the Erukala, and in view of this ~~Govt~~ ~~th~~ fact, & in consideration of the recommendation in his behalf which has been made by the Inspector General of Police in his letter read above, the Govt. is prepared to take a more lenient view of his case than would otherwise have been possible. Mr. Prendergast is now in the fourth grade of Dist. Supts. of Police &

is acting in the 3rd grade. He will ~~be~~ revert be reduced to the 4th grade & will be debarred for a period of not less than 12 months from acting in any grade higher than the fourth.

The I.G. of Police will be to ~~issue~~ take the necessary ~~orders~~ steps to effecting this reduction, and requested to submit to Govt. a report upon Mr Prendergast's ~~his~~ work after the lapse of 12 months. —

6. The explanation submitted by Mr. Oldfield ~~to~~ upon the points set out in para 7. of the order already referred to similarly fails, in the opinion of H.E. the G. in C., ~~in~~ to clear ~~[illegible]~~ him of the charges which ~~have been~~ were preferred ~~made~~ therein ~~brought against~~ against him. It is evident that though a complaint of torture & murder against the Police was made to him in person, he neglected, and continued ~~for months or [illegible]~~ neglect, to make any proper enquiry into it, & that he has no adequate explanation to offer in palliation of his conduct. Mr. Oldfield is now acting as a Hd. A. Collr. & Mag. He ~~He~~ will revert be reduced to the ~~rank~~ post of ~~[illegible]~~ Assistant Collector & Magte for six months, & will be transferred

to

to the District of Tanjore ~~in that capacity~~.

7. Mr. Atkinson, the Magte of the District, was asked to report what action he took in this case & why he omitted to bring ~~the~~ it to the notice of Govt. Upon a consideration of his reply H.E. the G. in C. is of opinion that it wd. have been far more satisfactory if he had personally assured himself at the outset that the case was being ~~[illegible]~~ properly enquired into by the Police & the Magistracy, instead of taking it for granted ~~proceeding on the assumption~~ that justice would be done. He should moreover, have specially reported the case to Govt., calling attention to the strictures passed by the Sessions Judge upon the Supt. of Police & the H. A. Magte. These strictures were ~~clearly~~ either well founded or the reverse. ~~If the former~~ It should have been obvious to the Dist. Magte. that if they were deserved they called for action on the part of Govt.; while

if they were without foundation the Sessions Judge should have been ~~compelled~~ called upon to withdraw them. The course adopted by the Dist: Magte of enclosing a copy of the Sessions judgment in a letter to Govt. upon another matter without making any reference to the strictures contained in it was clearly insufficient.

8. The explanations in this matter furnish, it is observed with regret, still further instances of the growth of the tendency on the part of the magistracy and officers of the police to regard themselves as belonging to distinct departments which should acting independently. The matter has already been referred to in para 3. of G.O. 692 J. / 7.4.96 and the Govt. trusts that there may ~~in~~ ~~future~~ be no further occasion to remark upon the harmful ~~erroneous~~ nature of this ~~principle~~ tendency.

WE 18.6.96

19/6/96

Draft 24/7

To the I.G. of Police with one sp. copy & 28 [illegible] G.O. No 5911 [illegible] 95 [illegible] (advance copy)

— — Dist. Magte of Kistna with one S.C. [illegible] copy of Godavari judgment

St. Magte of Godavari with 4 S.C.

— — Public Dept. for note & issue of notifn. in the gazette in the case of Mr. Oldfield

— — Acct. General.

— — Rev. Dept. with one S.C.

" " Govt. Pleader

~~Gazette. Notifns~~ with one S.C. & Godavari sessions judgment

& Editors' Table. —

[G. / 75.]

NOTE FOR THE UNDER SECRETARY.

With reference to the Hon. Mr. Bliss's note as to the delay in the issue of G.O. 691 / 7-4-96 the following is submitted:—

Lord Wenlock noted on the papers on the 6th March (Friday) but the papers were not returned to office till Monday the 9th March. They were immediately submitted to the U.S. who put up a draft order that very day — if I remember right. The papers were then submitted to Mr. Forbes who ~~[illegible]~~ revised and broke up the draft order into two G.O.s (691 & 692), got them typewritten and sent them down to the office on the 23rd March. They were then submitted to the Hon. Mr Bliss on the following morning and were returned to office on the 27 March. In accordance with H.M's. instructions (vide red ink note in G.O. 692 / 7-4-96) the papers were on the 27th submitted to ~~the new Governor~~ H.E. Sir Arthur Havelock who ~~noted~~ returned them to office on the 6th April (5th being Sunday).

G.O.

Note for H.M.

With reference to H.M's note as to the delay in issuing G.O. ~~[illegible]~~ 691. J. / 7.4.96 an explanation by the office is submitted. It w[illegible] seem that the office is not to blame. Mr. Forbes had the draft from orders for some 14 days & the issue of the G.O. was further delayed by the necessity of sending it to H.E. the Governor.

WC 18.6.96

19/6

Definite orders are solicited as to the way in which this should be printed in the E.T. Should names of places as well as persons be omitted with refce. to Hon. Mr. Grose's note. It is submitted that no real concealment of the names is possible as the case is notorious & moreover Mr. O's reduction will be in the Gazette.

WC 18.6.96

19/6

if they were without foundation the Sessions Judge should have been ~~compelled~~ called upon to withdraw them. The course adopted by the Dist: Magte. of enclosing a copy of the Sessions judgment in a letter to Govt. upon another matter without making any reference to the strictures contained in it was clearly insufficient.

8. The explanations in this matter furnish, it is observed with regret, still further instances of the growth of the tendency on the part of the magistracy and officers of the police to regard themselves as be distinct departments which should acting independently. The matter has already been referred to in para 3. of G.O. $\frac{692}{7.4.96}$ J. and the Govt. trusts that there may ~~in~~ ~~future~~ be no further occasion to remark upon the ~~erroneous~~ harmful nature of this ~~principle~~. tendency.

19/6/96

WF 18.6.96

G.O. $\frac{691}{7\text{-}4\text{-}96}$ was then numbered, copied &c on the following day. The C.S. to whom the faircopies were submitted for signature was, however, unable, on account of the Legislative Council Meetings, to sign them till the night of the 10th April & they were despatched the following morning.

16/6

Seen

For my part, I should publish all the names

also Mr. Oldfield's

20/6/96

Is it expedient to publish at all? I am inclined to think not.

A.S.H
22.6.96

I think it will be best to

Note for H.M.

With reference to H.M.'s note as to the delay in issuing G.O. ~~692~~ $\frac{691.\text{J.}}{7.4.96}$ an explanation by the office is submitted. It wd. seem that the office is not to blame. Mr. Forbes had the draft from orders for some 14 days & the issue of the G.O. was further delayed by the necessity of sending it to H.E. the Governor.

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WF 18.6.96 19/6

publish the Order without the names of persons or places. It contains animadversions on weak points such as may often occur in administration, & it will have a good effect to draw general attention to them. Any publication ~~of~~ of names whether of persons or places will show that Messrs Oldfield Prendergast & Atkinson are the persons indicated, & I don't think they need be subjected to the additional & severe punishment of public exposure. It is true that the persons immediately interested will know what case & what persons are referred to in the G.O. but the general public will not. The reductions will be notified in the Gazette, but nothing will appear in those notifications to connect them with this case.

J G
27/6/96

With Mr. Grose's assurance that the officers concerned will not be gibbeted before the public by the publication of the Order, I can no longer object.

A.G.H
3.7.96

Kistna Police Torture Case

(Draft from orders)

1. ~~H.E.~~
2. ~~H.E. the Governor.~~

Submitted to Hon. Mr. Grose with reference to the notes regarding the publication of the G.O. on the last page within.

23.6.96 24.6.96

C. 28/6 C 25/6
R 29/6 R 29/1

[G. / 25 A.]
1,000—21-3-96.

Jud^l. DEPARTMENT.

C. No.

FOR ORDERS.

I have nothing to add to or take away from, what I stated before.

1/7/96

Resubmitted to Hon. Mr. Bliss and H.E. the Governor with refce to notes on the question of the publication of the order.

29.6.96 30/6/96.

Kistna Police Torture Case. —

FOR ORDERS.

H. E. THE GOVERNOR. ②

THE HON'BLE MR. H. W. BLISS, C.I.E. ①

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

Office/ See notes within. Tell Press to strike off two proofs of the order as it stands and I will then mark one of them to show the way it is to be printed for C.P.

W.C. 3.7.96

1/7

O despd 16/7.

Telegram to
Collector, Kistna

Oldfield transferred to Tanjore as Assistant Collector - order follows -

(Sd. W. S.

80. No 1186 d 16-7-96

despd to D.M., Kistna 16/7.

recd 24/7

D.O. d/ 24 July 96

My dear Stokes,

I send herewith a copy of G.O. No. 1186 Judl. d/ 16-7-96 which refers to Oldfield's reduction and transfer to Tanjore which has been already gazetted.

Yours Sincerely

Sd. A. T. Arundel

[G./75.]

NOTE FOR THE UNDER SECRETARY.

Perhaps the last para of this order may be communicated to all Dt. Magtes (except Kistna & Tanjore) in continuation of G.O. No 692 d/ 7-4-96

NS
24/7

Unnecessary

they've had instructions already

[G./75.]

NOTE FOR THE UNDER SECRETARY.

copies of the G.O. submitted for signature Signed

I will put a copy of the G.O. in the Council Box for next Council to decide the E T question. So there [illegible] C.S.

Perhaps there is no need to send the G.O. to the D.M., Godavari. No

I will send a copy of the Godavari Sessions court judgment to the Govt. Pleader. Yes The other records which the I.G. of Police sent & which refer to the Kistna Sessions case will be returned to that officer? Yes

AS
23/7

Send at last

INDIAN TELEGRAPHS

Monthly Number. 856

Code Class. P

To (Office) Ootacamund

From (Office) Bezwada

Words.	Day.	Hour.	Minute.	Official Instructions.
15	17	14		Aponeka

To (Person) Madras

From (Person) Oldfield

CHIEF SECRETARY 17 JUL. 1896 GOVERNMENT OF MADRAS

Ootacamund ~~[illegible]~~

Cuming joining here where do

[illegible] Tanjore orders

As and go [illegible]

17/7

32 Word Form.

Copy of the order in the case to Collector of Tanjore

Perhaps [illegible] here yesterday [illegible] C.S.

Recd. from ... LN. ... At ... Hrs. ... Mts. by ...

Sent to ... LN. ... At ... Hrs. ... Mts. by ...

Telegraph Master.

F.C.I.

G G P.-No. 494 T-27 4 96 4000000.

OOTACAMUND 17-7-96

*He returned by this week's mail

CS

Apparently the G.O. was not sent to the Govt. Pleader as it shd have been

AS
21/7/96

It has been sent already

AS

[illegible] appointment has already been published to Bezwada but he does not appear to have joined yet. Mr. Oldfield has been told by telegram that he has been transferred to Tanjore

CS
17.7.96

AS
18/7/96

An advance copy of the G.O. [illegible] Mr. Oldfield has gone to the Colr. & Dist Magte

18/7/96

INDIAN TELEGRAPHS

Code Class. P

Monthly Number. 856

To (Office) Ootacamund

From (Office) Bezwada

Words.	Day.	Hour.	Minute.	Official Instructions.
15	17	14		Aponeka

CHIEF SECRETARY
17 JUL. 1896
GOVERNMENT OF MADRAS

To (Person) Madras

From (Person) Oldfield

Ootacamund ~~Jt~~

Cuming joining here where do

Deputy as Asst Tanjore G.O. 17/7

32 Word Form.

Copy of the order in the case to Collector of Tanjore

Perh. Regarding G.O. here issued yesterday. Have told C.S.

Recd. from LN. At Hrs. Mts. by

Sent to LN. At Hrs. Mts. by

Telegraph Master.

F.C.I.

O G P.-No. 494 T-27 4 96 4000000.

OOTACAMUND 17-7-96

Perhaps the last para of this order may be communicated to all Dt. Magtes (except Kistna & Tanjore) in continuation of G.O. No 692 d/7-4-96

NS
24/7

Unnecessary they've had instructions already

NOTE FOR THE UNDER SECRETARY.

copies of the G.O. submitted for signature Signed

I will put a copy of the G.O. in the Council Box for next Council to decide the E T question. Do. Have done C.S.

Perhaps there is no need to send the G.O. to the D.M., Godavari. No

I will send a copy of the Godavari Sessions Court judgment to the Govt. Pleader. Yes The other records which the I.G. of Police sent & which refer to the Kistna Sessions case will be returned to that officer? Yes

Send at least

NS
23/7

[G.
25 A.]
1,000-21-3-96.

Public DEPARTMENT

C. No.

FOR ORDERS.

A minute of appointment transferring Mr. Oldfield to Tanjore as Assistant Collector in accordance with the decision arrived at in G.O. No. 1186 Judicial dated 16th July 1896 is submitted for His Excellency's signature.

Mr. Cumming's appointment to Bezwada has already been published but he does not appear to have joined yet.* Mr. Oldfield has been told by telegram that he has been transferred to Tanjore

C.S.
17.7.96

*He returned by this week's mail
C.S.

18/7/96

An advance copy of the G.O. removing Mr. Oldfield has gone to the Colr. & Dist. Magte
18/7/96

Apparently the G.O. was not sent to the Govt. Pleader as it shd. have been

21/7/96

It has been sent already
NS

Mr Oldfield's transfer to Tanjore

FOR ORDERS.

~~H.M.~~

H.E. the Governor (thro' the P.S.) & Circ

Strike off & sen
please AD 16/7

H 18/7/96

WT 16/7/96

No.   , JUDICIAL,   1896.

S ~~CONFIDENTIAL.~~

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following paper:—

G.O., No. 691, Judicial, dated 7th April 1896.

Read—again the following paper:—

G.O., No. 2530, Judicial, dated 6th December 1895.

Read—also the following paper:—

From the Inspector-General of Police, Madras, dated 14th December 1895, No. 5965.

S ABSTRACT.—Submitting, with reference to G.O., No. 2530, Judicial, dated 6th December 1895 ~~(Confidential)~~, a report regarding the police torture case referred to in a fortnightly report on native newspapers.

Order—No. 691, Judicial, dated 7th April 1896.

In the order read above the Government called upon the Inspector-General of Police to report the true facts of an alleged case of the torture of a man of the wandering Erukala caste by the police of Nuzvid, Kistna district. The above letter is the Inspector-General's reply.

2. With this letter are enclosed the judgment and record in Kistna Session case No. 24 of 1895, the proceedings of Mr. Hamnett, the Sessions Judge, dated the 16th September 1895, and the explanation which Mr. Prendergast, the then Superintendent of Police, furnished to the Inspector-General with regard to his conduct in the matter. These documents have been carefully considered by His Excellency the Governor in Council and it appears to the Government that serious notice of their conduct in the case of both the Superintendent of Police and Mr. Oldfield, the Head Assistant Magistrate at Bezwada, is called for.

3. The main charges against Mr. Prendergast, as embodied in the proceedings of Mr. Hamnett, to whom the Government is indebted for his thorough investigation of the matter, may be thus summarized:—

(*a*) that he showed great callousness in that when the relations of the deceased Erukala made a complaint to him at Nuzvid on the 6th November 1894 that the police had ill-treated the deceased, he took no notice beyond referring them to the magistracy;

(*b*) that when he was informed of the deceased's death he took no steps to prosecute the accused members of the police force or to report on the case to the magistrate;

(*c*) that he never registered the case as a crime at any station;

(*d*) that he carried away with him, when he left the district, instead of leaving them in the Superintendent's office, the records of his inquiry into the case;

(*e*) that he never sent to the Divisional Magistrate, at the close of his inquiry, any final report on the case; and

(*f*) that he wrote a very improper order to the Gunnavaram Sub-Magistrate on the 26th November in connection with the case.

4. With regard to the last charge, the Government is willing to believe that Mr. Prendergast was not actuated by any improper motive and only meant to call the attention of the Magistrate, in view of the discrepancies that existed, to the necessity of a careful examination of the apothecary. The language in which the memo was couched was, however, open to misinterpretation and should not have been used.

5. With regard to the other charges embodied in the proceedings of the Judge, the Government has very carefully considered Mr. Prendergast's explanation, dated the 17th October 1895 and furnished to the Inspector-General of Police, but before passing final orders, which may involve him in serious consequences, the Government will give him an opportunity of submitting any further explanation which he may desire to offer. In the view of Government the gravamen of the charges is that Mr. Prendergast, if he cannot be accused of personal callousness, exhibited throughout the case the most highly culpable indifference to the performance of the plain duties of his office. The nature and circumstances of the first complaint made to him were such that no Superintendent of Police alive to his responsibilities ought to have been satisfied without taking pains to ascertain fully and immediately the real character of the accusation. Further, when he did know that a man had been killed and that the charge, whether true or false, was that the deceased had come by his death at the hands of the police, Mr. Prendergast, beyond making a departmental inquiry which was never completed, neglected to take any steps to prosecute the constables implicated, being equally inactive even when later he had the result of the *post-mortem* examination before him; nor did he ever report the case for the orders of the Magistrate. The particular faults of procedure have been already summarized; but to these may be added the neglect to return to the Inspector-General, who had refrained from endorsing the Superintendent's opinion as to the falsity of the case, a reply to the question noted on the diary for the week ending the 10th November 1894.

6. The Government observes that the District Magistrate, Mr. Atkinson, appears to have taken no action of any kind in the matter either when Mr. Prendergast's diaries referring to the case passed through his hands, or when he received the judgment and proceedings of the Sessions Court in the case. On the first occasion he should have seen that active steps were taken to bring the offenders to justice. If in the press of business the matter passed out of his mind when the Superintendent's diary had left his hands, after which there was nothing to remind him of the case, it was all the more incumbent on him on the second occasion to bring the matter to the notice of Government. It should have been evident to him that charges so serious as those which were made by the Sessions Judge against Mr. Oldfield and Mr. Prendergast could not be allowed to pass without notice. Either these officers were deserving of the censure of Government, or the charges were unfounded and the Sessions Judge should have been called upon to withdraw them. In either alternative the Government should have been informed and not left, as it has been, to learn of the case from outside sources. The District Magistrate will accordingly be now requested to report what, if any, action he took in the matter and the reason why he neglected to bring the case to the notice of Government.

7. The District Magistrate will also be requested to obtain and submit to Government with his remarks and copies of any correspondence which may have passed between him and Mr. Oldfield on the subject, an explanation from that officer upon the following points:—

(*a*) Why he took no notice of the complaint of the Erukalas that their relative had been killed by the police which was made to him in person at Nuzvid in November 1894?

(*b*) Why, being the responsible Divisional Magistrate, he did not himself assume cognizance of the case or take steps to ascertain for certain whether the Superintendent of Police would inquire into and report upon the case?

(*c*) Why, when he received no report from the Superintendent, he neglected to cause an inquiry to be made into the case?

(*d*) Why he permitted several months to elapse before the formal preliminary inquiry into the case was undertaken by a Magistrate?

Upon receipt of this explanation Mr. Oldfield's conduct will be dealt with.

8. The Inspector-General of Police does not state in his report whether any action was initiated against the station-house officer of Nuzvid under sections 201, 202 and 203, Indian Penal Code, as suggested in paragraph 3 of the Sessions Judge's proceedings. Information on this point should be furnished.

9. Finally the Surgeon-General will be requested to report whether anything has been done with reference to the Sessions Judge's remarks in regard to the conduct of the civil apothecary at Nuzvid. The Surgeon-General should deal with him as the circumstances may require.

(True Extract).

(Signed) J. F. PRICE,
Chief Secretary.

To the Inspector-General of Police.
" District Magistrate, Kistna.
" Surgeon-General.
" District Judge, Kistna.

Read—also the following papers:—

From the Collector of Kistna, dated 9th May 1896, Dis. No. 98/Tour.

Abstract.—Submitting with remarks copy of the judgment of the Sessions Court, Gódávari, in Sessions Case No. 8 of 1896.

From M. HAMMICK, Esq., I.C.S., Inspector-General of Police, to the Chief Secretary to Government, dated Madras, 15th May 1896, No. 2003.

With reference to G.O., No. 691, Judicial, dated 7th April 1896, regarding Mr. Prendergast's conduct in connection with a torture case against the police of Nuzvid in Kistna district, I have the honour to submit Mr. Prendergast's explanation.

2. With regard to paragraph 8 of the order I have the honour to say that the station-house officer of Nuzvid was prosecuted before the Sessions Court of Gódávari and that he was acquitted by the Sessions Judge of that Court, who, agreeing with the assessors, found the prisoner not guilty. I enclose Mr. Mackenzie's judgment for the perusal of the Government.

3. The result is an awkward one. Of the two constables, who must have been almost equally guilty if the offence occurred at all, one is in jail for a period of five years, while the other is acquitted on the ground that the whole case against him is a concoction. Probably the best thing to be done now is to appeal to the High Court against Mr. Mackenzie's finding and leave it to the High Court to decide what should be done. I have instructed the Superintendent, Kistna, to ask the District Magistrate to apply to Government that this course should be taken.

4. As regards Mr. Prendergast's explanation it seems unnecessary to say much. Whether the case was true or false Mr. Prendergast's duty was clear. He should have made a full inquiry into it. This he failed to do, and, although it is in Mr. Prendergast's favour that he was transferred from the district at the beginning

of January 1895, as possibly had he remained in the district he would have brought to notice the delay that occurred after the beginning of the year, the fact remains that no proper inquiry was made by the Superintendent into a very serious charge against two of his own constables. Had Mr. Prendergast appreciated his duty as Superintendent in any proper degree, it is imposible to suppose that he could have left this obvious duty unperformed.

5. Mr. Prendergast left Kistna district in January 1895 and has since then been working in Kurnool. He has done fair work in this district, and has, I consider, always tried to do his best. He has, I believe, always been spoken of by the District Magistrate under whom he has served as a zealous officer, and, though I do not consider him in any way to be a specially efficient Superintendent, I feel confident, after having had a year's experience of his work, that in this case he had no intention whatever of screening the constables concerned, or of hushing up the case. He thought the Magistrate had taken up the case himself and so did not trouble himself about it. Grave as was Mr. Prendergast's fault, I think it right to affirm my impression that he had no bad motive in what he did, and taking this view I hope that, if the Government is satisfied that it is the correct one, any punishment that may be awarded will be of a temporary nature and not affect Mr. Prendergast's permanent prospects.

ENCLOSURE.

From H. G. PRENDERGAST, Esq., District Superintendent of Police, Kurnool, to the Inspector-General of Police, dated Camp Pendekallu, 24th April 1896, No. D.

In G.O., R. No. 691, dated 7th April 1896, Government are pleased to give me an opportunity of submitting a further explanation, for which concession I am very grateful. Government are pleased to remark that the nature and circumstances of the first complaint made to me were such that no Superintendent of Police alive to his responsibilities ought to have been satisfied without taking pains to ascertain fully and immediately the real character of the accusation.

2. I respectfully submit that it was the circumstances in which the complaint was made that misled me as to its real character. Those circumstances I have fully detailed in my explanation, dated 17th October 1895. I was fully convinced by those circumstances that the complaint was one of assault committed by the members of the complainant's family. I have all my service been accessible to all classes of the people and have always been ready to hear all complaints. It has never been my misfortune before to be misled in this way. My character for accessibility and my interest in the grievances and complaints of the people may be ascertained by reference to the District Magistrates under whom I have served—Messrs. J. Thomson, Arundel, Higgens, Atkinson and Wolfe-Murray.

3. The Government are also pleased to remark that, when I did know that a man had been killed and that the charge, whether true or false, was that the deceased had come by his death at the hands of the police, I, beyond making a departmental inquiry which was never completed, neglected to take any steps to prosecute the constables implicated, being equally inactive even when later I had the result of the *post-mortem* examination before me, nor did I ever report the case for the orders of the Magistrate.

4. In reply, I humbly submit that I did not consider that any report soliciting orders on the case was necessary, as the Magistrate was already fully acquainted with the facts of the case, which had been taken cognizance of as soon as the *post-mortem* certificate was received and a verdict arrived at on the inquest held by the Taluk Magistrate under section 176 of Criminal Procedure Code. No reference had been made to me by the Magistrate for preliminary inquiry and prosecution under the terms of Police Order 302 and the addition made to that order by Order No. 87 published in the *Police Gazette* of the 26th October 1895 did not then exist. The Magistrate had taken cognizance of the case direct and it is not the practice for the police to interfere in cases taken up direct without such reference. I considered that the Magistrate was taking very desirable action in keeping the case entirely in his hands, because the result, whether committal or discharge, would be less liable to be called in question on the ground of police influence. In order that there should be as little room for suspicion as possible, I suggested to both the Taluk Magistrate and the Head Assistant Magistrate that the preliminary inquiry should be held by a European Magistrate. What my attitude in the matter was may be ascertained by reference to those two Magistrates. So far from wishing to have the case burked, as the Sessions Judge believed, it was my earnest desire that there should be the fullest impartial inquiry untainted by suspicion of police interference. If I was wrong, I trust the Government will take a merciful view of my error. I have never had a case in all my long service of a charge of a man being done to death by the police under me and was thus without any experience in such cases.

5. As to the departmental inquiry not being completed, I have to submit that my intention was to submit a complete report on the subject as soon as the case was disposed of by the Magistrate, whose judgment I would have forwarded with my report; but I left the district within six weeks after the constables were suspended and the Magistrate's inquiry began and while the case was still proceeding. I drew my successor's attention to the case and requested him to submit the final report, but he also was transferred before the case was disposed of.

6. The neglect to return, with any reply to the question endorsed on it, my report for the week ending 10th November 1894 was an oversight due to great pressure of work. In the interval between the return of that report and the receipt of the order of my transfer to Kurnool, I was engaged daily in inspection which had been much neglected during my absence on leave, and afterwards I was exceedingly busy in putting all matters connected with the administration of the district in such order for my successor that he might have no difficulty in going on with it.

7. In conclusion I pray that in deciding this case the Government will take a merciful view of my conduct in consideration of my long service which on several occasions has been of a character that has received the commendation of Government.

Judgment of the Court of Sessions, Gôdávari, dated Rajahmundry, 11th April 1896.

From J. N. ATKINSON, Esq., Collector and District Magistrate, Kistna, to the Chief Secretary to Government, dated Camp Bezwada, 13th May 1896.

I have the honour to submit the report and explanations called for in G.O., No. 691, dated 7th April 1896.

2. The Government observes in paragraph 6 that I appear to have taken no action of any kind when Mr. Prendergast's diaries referring to the case passed through my hands, on which occasion the Government considers that I should have seen that active steps were taken to bring the offenders to justice. I have now scarcely any remembrance of the manner in which Mr. Prendergast referred to the case of alleged torture in his diaries; nor in how many diaries any such reference appeared. I gather, however, from the Government order under reply and the Kistna Sessions Judge's proceedings, dated 16th September 1895, that the complaint of torture was never registered as a crime by the police and would, therefore, not appear in part II of Mr. Prendergast's weekly diaries. Whatever references there were in the diaries must have been in part I., and I cannot say whether any of those references were of such a nature as should have impelled me to insist on a charge sheet being at once filed before a Magistrate.

3. What I did know, and of this alone I have a clear remembrance, was that Mr. Prendergast was making an investigation into the matter and that he had formed an opinion that the complaint of torture was false and due to the machination of Venkata Narasimha Appa Rao, the Nuzvid Zamindar, whose name appears so often in the judgments of the Sessions Courts of Kistna and Gódávari.

4. Government is good enough to suggest that in the press of business the matter might have passed out of my mind when the Superintendent's diary left my hands. I am giving my explanation solely from the indistinct remembrance of what happened eighteen months ago, and, so far as I can remember, it was not so much that the matter passed out of my mind as that it never made any very strong impression as a case in which I should interfere. I had not the remotest ground then, as I have not now, to doubt either Mr. Prendergast's sincerity or his acumen. He was investigating the matter, and his opinion was that the whole story of torture by the police was the fabrication of a zamindar, of whose character as an intriguer and a promoter of false complaints I had had ample evidence. This very zamindar was at about that very time busily engaged intriguing by means of mahazarnamas, petitions, and the like to get the Nuzvid apothecary, whose name figures in this case, departmentally disgraced and transferred. The Surgeon-General was so impressed with his unscrupulousness in that matter that he (the Surgeon-General) asked me to move Government to deprive the zamindar of his title.

5. There seemed to me therefore no *a priori* reason why the charge of torture should not be, as Mr. Prendergast thought, a fabrication. In any case Mr. Prendergast, an officer of great experience in whom I had full confidence, was, as I believed, devoting his attention to the case, and I submit respectfully that I had no possible reason for thinking otherwise than that active steps were being taken to bring to justice any persons that might be found to have offended.

6. Government further remarks that it was all the more incumbent on me to have brought the matter to the notice of Government when I received the judgment and proceedings of the Sessions Court in the case. I did formally report the case to Government and submitted a copy of the Sessions Court's judgment with my letter, Ref. No. 1261/Magl., dated 25th October 1895, disposed of in G.O. No. 2339, Judicial, dated 15th November 1895, and in my letter I wrote: "This was a sensational case against a police constable who was accused of beating an Yerukula man suspected to have stolen goats and of causing his death . . . It was alleged against the former (civil apothecary of Nuzvid) that he helped the police in hushing up the case." I trust therefore that Government will acquit me of having left it "to learn of the case from outside sources" and neglecting to bring the case to the notice of Government.

7. The Sessions Court's judgment spoke of "the extreme callousness" of the Superintendent of Police and the Head Assistant Magistrate, and a note was appended to it that the Judge would pass a separate proceedings about the part played in the case by the Magistracy, Police and Civil Apothecary of Nuzvid, and I anticipated that Government would have called on me or the Sessions Judge to submit a copy of this proceedings; but no such direction reached me, and it seemed to me that, before deciding what action I should take against Mr. Oldfield, I must get his explanation. Mr. Prendergast had left the district many months before I got the Sessions Court's judgment or proceedings. I had no authority to call for his explanation; so far as he was concerned it would have been an impertinence on my part to have usurped the authority of his departmental superior, the Inspector-General of Police, either by calling for his explanation or reporting him to Government.

8. I received the Sessions Judge's proceedings on 3rd October and on 4th I communicated a copy thereof to Mr. Oldfield for explanation. Copies of his explanation and of the subsequent correspondence that has taken place between him and myself is forwarded herewith. Mr. Oldfield's first explanation (enclosure No. 1) was received on 20th October. I was annoyed at what seemed its impertinent tone and I drafted a sharply-worded reply; but, on reconsideration, I thought that possibly Mr. Oldfield did not mean to give offence, and I destroyed the draft and took time for further consideration. Mr. Oldfield's version of the facts was in some points at variance with the Sessions Judge's; on this and other matters I spoke to Mr. Hamnett once or twice, and then learnt that the records had been forwarded to the High Court. Before passing final orders on Mr. Oldfield's explanation, it occurred to me that it would be well to await the High Court's judgment in the appeal, but subsequently I deemed it best to speak to Mr. Oldfield on the whole matter; the more so because I felt satisfied that whatever errors he had committed were the result of inexperience and certainly not of callousness as the Judge had assumed.

9. Enclosure No. 8 is Mr. Oldfield's explanation called for in paragraph 7 of the Government order under reply. It is merely a reiteration of what he has written in his various explanations to me. Mr. Oldfield's style is concise to the verge of curtness, and I trust that Government will not attribute this to any improper feeling on his part. I am satisfied that I at first misjudged him in this particular. In October 1894 he had only been a month in the district and less than four years in the country. He can hardly be blamed for having placed confidence in a Superintendent of Police of eighteen years' service, of which some seven or eight had been passed in the Kistna district.

10. I trust that I may be excused for referring to one point in the charges against Mr. Prendergast. Mr. Hamnett, in paragraph 6 of his judgment, speaks of Mr. Prendergast "jumping to the conclusion" that the complaint made to him by the Yerukulas was one of petty assault by some of their own people. I claim to have some knowledge of colloquial Telugu and I say positively that, on the words reported to have passed between Mr. Prendergast and the Yerukulas, he had no alternative but to conclude that they complained of such a petty assault among themselves. The Yerukulas came crying to him, saying "kottivésináru," and this word, as used, could only refer to the speakers as the recipients of the beating "they (or some people) have beaten us"; that was the plain meaning that any one acquainted with colloquial Telugu would attach to the words. Then followed the question "evaru?" "who (have beaten you)?" and the answer "mívállu" [" our people (have beaten us)".] The police were never mentioned, and, considering that Mr. Prendergast had (so far as appears in the judgments of the High Court and the two Sessions Courts) up to then had no inkling of any charge against the police, I must with all respect say that I can see no ground for charging him with a c~~o~~llousness, because in the simple complaint of assault he failed to perceive a charge against the police.

11. I am tempted to ask Government to consider some of the many places where Mr. Hamnett in his judgment has jumped to conclusions, but doubtless they have already attracted Government's attention, and I will only add that, in my humble opinion, even if the charge of torture was not absolutely false, as I believe it to have been, at least the evidence was such as did not warrant a conviction.

ENCLOSURE.

From F. D. OLDFIELD, Esq., Head Assistant Collector and Magistrate, Kistna, to the District Magistrate, Kistna, dated 6th May 1896, Dis. No. 274/Magl.

With reference to your C. No. 15/Confdl. of 1896, dated 25th April 1896, I have the honour to submit the following. I take the questions of Government in their order. (sic)

(*a*) The Yerukulas made an oral complaint to me on the evening of the 6th March that their relative was dead. The District Superintendent of Police was encamped at the other end of the village and I referred them to him as the alleged offence was cognizable. He was a senior officer, whose competence or accessibility I had no reason for doubting. I had no idea then, or indeed for several months, that he refused to listen to them.

(*b*) As stated under (*c*), I had good reason for believing that the Superintendent of Police would report upon the case and was awaiting the charge-sheet, which I assumed that he would send.

(*c*) As stated (I believe) before the Sessions Court and in my Dis. No. 578/Magl. of 1895, paragraph 4, I was assured orally a few days after leaving Nuzvid by the District Superintendent that he had been at Nurvid, inquiring into the case. I therefore had good reason to suppose that the necessary charge-sheet would be submitted. The case, as appears from the Sessions Judge's judgment, and as I knew, was a difficult one. The conduct of a civil apothecary, two zamindars, two constables, and a station-house officer would, I heard, be in question, and it was natural to suppose that departmental inquiry would precede the trial of the last three persons; it was, I submit, natural that having the assurance of the District Superintendent I should wait some time for the charge-sheet.

(*d*) In replying to this question, I would respectfully submit that my responsibility extends between November 7th, 1894, and January 25th, 1895, on which date I left the division on privilege leave. Some part of the period must further be deducted for the time during which I was entitled to await the charge-sheet, preparatory to which, I understood, inquiry had been made and police constables suspended. A considerable delay however undoubtedly remains, and for that, after this lapse of time, I am able now to suggest no motives that would be more than mere conjectures. I can say only that for some time, confident in the District Superintendent's statement, I waited for the charge-sheet and that the case may then have passed from my recollection; for this failure in memory I must accept such censure as may be awarded.

From the District Magistrate, Kistna, dated 27th May 1896, Dis. No. 5/Confl.

ABSTRACT.—Submitting an extract from a demi-official letter from the Head Assistant Magistrate on the subject of the Nuzvid police torture case.

ORDER—No. 1186, Judicial, dated 16th July 1896.

In the order read above the Government called upon Mr. Prendergast, formerly Superintendent of Police in the Kistna district, and Mr. Oldfield, acting Head Assistant Magistrate of the same district, to submit their explanations with regard to certain matters set out therein in which their conduct in dealing with a case of the death of a man of the Erukala caste when in the custody of the Nuzvid police appeared to be deserving of serious notice. Mr. Atkinson, the Magistrate of the district, was also requested to report what action he took in the matter and why he omitted to bring the case to the notice of Government.

2. The papers read above contain the explanations submitted by these three officers in accordance with that order.

3. In forwarding Mr. Prendergast's explanation the Inspector-General of Police submits, for the orders of Government, a copy of the judgment of the Gódávari Sessions Court in Sessions case No. 8 of 1896, in which the station-house officer of Nuzvid has been acquitted of complicity in the maltreatment of the Erukala of which a constable of the same station was found guilty in Kistna Sessions case No. 24 of 1895 and sentenced to five years' rigorous imprisonment—a conviction and sentence which were upheld by the High Court on appeal. The Government Pleader will be requested to prefer an appeal to the High Court against this acquittal.

4. The Government does not consider that the ultimate decision of the judicial tribunals as to the truth or falsity of the charge brought against the Nuzvid police can in any way affect the degree of culpability attaching to the officers whose conduct is now in question, and it accordingly proceeds to deal with the case of each of them.

5. The charges against Mr. Prendergast are set out in the order already referred to, and the Government has arrived with regret at the conclusion that the explanation which he has now submitted fails to exonerate him from blame, and that the charges made against him in paragraphs 3, 4 and 5 of that order are established. There appears, however, to be no reason to suppose that in proceeding as he did Mr. Prendergast was actuated by any desire to screen the subordinate officers of his department who were implicated in the case of the maltreatment of the Erukala and in view of this fact, and in consideration of the recommendation in his behalf which has been made by the Inspector-General of Police in his letter read above, the Government is prepared to take a more lenient view of his case than would otherwise have been possible. Mr. Prendergast is now in the fourth grade of District Superintendents of Police and is acting in the third grade. He will revert to the fourth grade and will be debarred for a period of not less than twelve months from acting in any grade higher than the fourth. The Inspector-General of Police will be requested to take the necessary steps to effect this reduction and to submit to Government a report upon Mr. Prendergast's work after the lapse of twelve months.

6. The explanation submitted by Mr. Oldfield upon the points set out in paragraph 7 of the order already referred to similarly fails, in the opinion of His Excellency the Governor in Council, to clear him of the charges which were therein preferred against him. It is evident that though a complaint of torture and murder against the police was made to him in person, he neglected, and continued to neglect, to make any proper inquiry into it, and that he has no adequate explanation to offer in palliation of his conduct. Mr. Oldfield is now acting as a Head Assistant Collector and Magistrate. He will revert to the post of Assistant Collector and Magistrate for six months, and will be transferred to the district of Tanjore.

7. Mr. Atkinson, the Magistrate of the district, was asked to report what action he took in this case and why he omitted to bring it to the notice of Government. Upon a consideration of his reply His Excellency the Governor in Council is of opinion that it would have been far more satisfactory if he had personally assured himself at the outset that the case was being properly inquired into by the police and the magistracy instead of taking it for granted that justice would be done. He should, moreover, have specially reported the case to Government calling attention to the strictures passed by the Sessions Judge upon the Superintendent of Police and the Head Assistant Magistrate. These strictures were either well-founded or the reverse. It should have been obvious to the District Magistrate that if they were deserved they called for action on the part of Government, while if they were without foundation the Sessions Judge should have been called upon to withdraw them. The course adopted by the District Magistrate of enclosing a copy of the sessions judgment in a letter to Government upon another matter without making any reference to the strictures contained in it was clearly insufficient.

copy sent to

8. The explanation in this matter furnish, it is observed with regret, still further instances of the growth of the tendency on the part of the magistracy and officers of the police to regard themselves as belonging to distinct departments which should act independently. The matter has already been referred to in paragraph 3 of G.O., No. 692, Judicial, dated 7th April 1896, and the Government trusts that there may be no further occasion to remark upon the harmful nature of this tendency.

(True Extract).

(Signed) J. F. PRICE,
Chief Secretary.

To the Inspector-General of Police.
" District Magistrate of Kistna.
" Public Department for note and issue of notification in the gazette in the case of Mr. Oldfield. 8
" Revenue Department.
" Accountant-General. 4
" ~~Editors' Table.~~
" Dt. Magte, Tanjore
" Govt. Pleader
8

Exd. S. J. Pereira.

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Judicial (1896) Department.

ORDINARY Mis

G.O., No. 1195

Confidential No. 98

DATED 18-7-96

[Despatch Abstract.]

Vivesection

Recording letter from the Govt of India forwarding copy of correspondence with the Secy of State re the framing of rules for the guidance of officers whose physiological investigations might involve —.