28/1/26 V

C.F. 73.

DEPARTMENT.

Paper taken out of the Records from the charge of the Referencer.

Press / Miscellaneous / Routine No. 786, dated 29-4- ~~192~~ 1896

Date taken out.	For what purpose.			Initials of clerk taking the paper or of attender.	Date returned.	Initials of attender.
	Department.	C. No.	Year.			
~~30-7-28~~	~~Pub (X)~~	~~1738~~	~~28~~	~~S D Ayyar~~	6/11/1929	
~~27-11-30~~	~~Rev (L)~~	~~3674B~~	~~29~~	~~K. Sesha-ayyangar.~~		22-4-31

[G. / 11]
200—23-11-96.

Judicial (1896) Department.

ORDINARY Mis

G.O., No. 816

Confidential No. 61

DATED 4-5-96

[Despatch Abstract.]

Mr T. Varada Rao

Directing that — be transferred to South Arcot & requesting the Collector of that dist. to submit a report at the end of six months.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Con	131	J 96					

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Con	89	J 96					
Con	30	J 97					

D.O. d/ 14 . 2-96

My dear Mr Hewetson,

I write to remind you that a report regarding Varada Rao's work is just due from you – vide G.O. No. 1677 Jud dated 10th August 1895.

Yours Sincerely

12/2/96.

J Hewetson Esq ICS

Despd 14/2

J Hewetson Esq ICS

Calicut
10. March 96

11 MAR 1896

My dear Sir,

I venture to write these few lines to you with the request that you will be good enough to place them before H. E the Right Hon'ble the Governor. I would have gladly gone up to Madras to pay my respects to H.E before his departure and make any representations in person. The present state of affairs in Malabar prevents any officer from leaving his station – Mr Hewetson being away from Head Quarters and also as he is likely to be away for some time longer I have got to keep things going here at Calicut.

H.E is aware that almost from the day on which he assumed charge of the ad-

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until the Collr. had tried me as a Divisional officer for some time. I was accordingly placed in charge of a division for a couple of months and Mr. Hewetson was I believe satisfied with my work and was about to draft his report about me to post when the unfortunate occurrences at Ernad compelled him to give his sole attention to it and lay aside every other thing.

I do not think Mr Hewetson could have found time to send in the report. I rather think he has not. If the report is delayed it will have to be placed before H.E the new Governor and I shall be deprived of the advantage of the

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2/

consideration which H.E. Lord Wenlock with his knowledge of me and my municipal work in Calicut may be willing to bestow on the report.

Mr Hewetson if asked by wire, will I have no doubt gladly send in his report – even in the midst of his present anxiety and worry and H.E may then be pleased to dispose of my case as it deserves before his departure.

This is the request which I respectfully make to H.E.

I am aware that during the next few days H.E's time and attention will

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CURRENT No. 913
Pub

11 MAR 1896

Transferred to the C.S. for disposal

Mr. T Varada Rao has been informed accordingly with the remark that his letter has been received so late that it is impossible for His Exc. to give his personal attention to it.

C Mackenzie
P.S.G.

11. 3. 96

ministration of this Presidency I have been relegated to a subordinate position & deprived of the powers of a Divisional officer and debarred from promotion to which I would be ordinarily entitled *. HE was pleased to declare to me that if the Collector under whom I served reported favorably on my work, he would restore me to my former position.

Every six months a report used to be sent about me to Government. The report was marked 'confidential' and of course I knew nothing of its contents. Nor were the orders of Government upon these reports communicated to me. Hence I have been

until recently in utter ignorance of what was going on in regard to my prospects.

Mr Hewetson took charge of the District in September last. We had served in the same district viz Tinnevelly, under the same head, as Sub Collr & Head Assistant & had met each other in the performance of our work. Mr Hewetson at my request related to me the gist of the reports already submitted and gave me the following idea of my present position. Govt thought that the reports already submitted showed considerable improvement in my work but considered it inexpedient to promote me

be fully taken up by matters of far greater importance. As I have waited for 5 long years – which is a large slice out of a man's life – in the hope of redress I hope I may be pardoned if I respectfully venture to remind HE of the promise he made to me in 1893 in Calicut that he would promote me as soon as I was found fit.

I beg to remain Sir
Yours sincerely
T. Varada Rao

P.T.O.

[G./9]
4,000—28-1-96.

Current No. 913

Pub DEPART

From C. F. MacCartie. Esq. C.S.

No.

Dated "
Received "
Registered "
} 3.96.

Enclosures

SUBJECT.

Transferring letter from Mr T. Varada Rao reminding H.E. of the promise he made to him, of promoting him as soon as he was found fit.

US.

To await Mr Hewetson's report on this officer
12.3.96

FORM II.—CALENDAR AND JUDGMENT.

(For use in cases where, there are two or more accused persons.)

District of Malabar

Calendar of cases tried by the Asst 2nd Class Magistrate of Malabar ~~Taluk~~

Date of				Explanation of delay and Remarks.
Offence.*	Report or Complaint.	Commencing trial.	Sentence or Order.	
Before 3.6.95	3. 6. 95	18. 7. 95	12. 8. 95	

* The place of offence should also be noted in this column.

Judgment in Calendar Case No. 13 of 1895, on the file of the Assistant 2nd Class Magistrate of Malabar

COMPLAINANT. Regina on complaint of K. Narayanan Nair

	Name of Accused.	Age.	Father's name.
1.	Tazhathepeedikayil moideen	35	Tarwai
2.	Parambil Kadri	48	Ammed kutti
3.			
4.			
5.			

	Caste or Religion.	Calling.	Residence.	Taluk.
1. 2.	mappilas	Cultivation	Nedianadamsam	Calicut Taluq
3.				
4.				
5.				

Offence Dishonestly retaining stolen property, Section 411 I.P.C.

Finding Not proved against 1st accused
2nd accused — guilty

Sentence 1st accused is discharged under Section 253 C.P.C.
2nd accused to undergo six weeks rigorous imprisonment
Judgment

Class Magistrate.

the Police charged J. P. moideen and P. Kadir for offences under Sections 403 or 379 I.P.C.

2. Prosecution 2d witness, Probationary Inspector K. Achutan nair, says that on the night of the 3rd June 1898 while he was returning home at about 10 P.m. he saw 1st accused moideen driving a cow of dark colour a little to the south of Natakavu Bazaar 1 – Calicut. Feeling suspicious witness told the accused to halt and asked him where he got the cow from and where he was taking it to. The accused said he was taking the cow to a butcher in the Big Bazaar to whom he had sold the cow. A torch was obtained with the help of which the witness examined the cow and found that it was the identical cow which his brother (Prosecution 1st witness) had lost some days previously. Witness asked the 1st accused to accompany him to his house with the cow which he did.

On reaching his house the Prosecution 2d witness sent for the adhigari, Prosecution 3d witness (C. Karunakaran Nair). Prosecution 1st witness. K. Narayanan Nair brother of the Prosecution 2d witness, before whom the Cow was produced, questioned 1st accused as to how he came by the cow. The answers given by the accused not being satisfactory the man was marched off to the Police Station. The Adhigari swears he was also present when the man was questioned.

4. Prosecution 1st witness says he lost the Cow when it was let out for grazing. The Cow was allowed to go abroad from about 3 months before the date of the Complaint (Ex. A). On two occasions the Cow appeared at the house and the second and last occasion on which it was seen was 15 days before the 3rd June 1895. Witness says he did make enquiries when the Cow did not appear for 15 days. Obviously, without avail. Witness says he did not complain or report about the loss to any body. The fact that no Complaint was made would under ordinary Circumstances appear to require explanation. In this case it seems to me that no Complaint was made partly on account of indifference, and partly on account of the triviality

of the

of the loss. The Cow cannot be worth more than 10 Rs

5. The reason why Moideen was taken up was that he gave varying explanations as to how he came by the Cow and also because he was unable to produce a "pas port. To prosecution 2d witness he seemed to have said that he purchased the cow 4 days before the 3rd June 1895 from one Kunhi Moideen Kutti Haji of Nediyanad after which he said he bought the Cow from one Tharuvayi and immediately afterwards he said he got the Cow from Taruvayi through the intervention of one Kadri. When the 1st accused was taken to the Prosecution 2d witness' house he again made discrepant statements to the Prosecution 1st witness. To Prosecution 1st witness he first said that he bought the Cow from Taruvayi of Nediyanad amsam, on the way to the Police Station he changed his ground and said he bought the cow from one Parambil Kadri. When the Adhigari, Prosecution 3d witness questioned

the accused in the presence of the Prosecution 1st witness accused said he purchased the cow from some person-a moplah whose name he (the Adhigari) does not remember.

6. Prosecution 4th witness Samy and Prosecution 5th witness C. Avaker were present when the prosecution 2nd witness Achutan Nair came across the 1st accused and the cow in the Natakavu Bazaar. Prosecution 4th witness says that the accused in response to the query where he got the cow from, said he purchased the cow from one Kunhi Moideen Kutti Haji of Nediyanad amsam. The Prosecution 5th witness says that the accused said he purchased it from one Tonvayi Thro' Kadri.

7. In regard to the Pass-port all the witnesses (Pro 1st to 5 witnesses) are agreed that the accused did not produce it when asked. The Prosecution 7th witness (K. Raman Nair, menon of Nediyanad) explains why these passports are necessary. He says "I have been the menon of Nediyanad amsam for the last 10 or 11 years. There is a rule

that

that every head of Cattle passing out of my amsam Should possess a passport. The pass-port is to be given by the Adhigari and in his absence by the menon". In this case the Prosecution 7th witness gave a passport Ex I to the 1st accused Moideen on 3d June 1895. This witness says" He and one Kadir (2 accused) came to me for the Rahadari and I granted it. I see the cow before the court. I am not sure whether this is the cow in respect of which I gave the passport. The cow for which I gave ~~the~~ a passport had one of its horns chopped off. I now find that both the horns of the cow before the court are chopped off. I granted the pass-port at noon. From Nediyanad to Nadakkavu the distance is about 10 or 12 miles.

8. With regard to the above all the Prosecution witnesses from 1 to 5 are agreed that when the 1st accused Moideen was asked to produce his pass-port on the night of the 3d June 1895 he was unable to do so. All these witnesses Say that he declared he had no passport. In his Statement

before the Court 1st accused Moideen says "I said I would produce the pass-port. had kept it inside my cap. I looked for it, but could not find it. I said 'it may be in my house and that I would produce it. The Inspector would not let me go." He explains this statement by a further statement viz that on his way to the Big Bazaar he halted at his house at Karaparamba and laid himself down for a few minutes on a mat. The pass-port which accused had kept in his cap slipped off and was discovered [illegible] mother 2 or 3 days after his arrest [illegible] produced before the Town magistrate [illegible]ugh his Vakil.

9. It remains for me to consider which of these statements is true. For two reasons, I have been obliged to reject the story given by the accused. If the accused had said that he had obtained a passport and that he had mislaid or lost it in his house, I certainly think that the Pro: 2d witness who is a probationary Inspector of Police would have allowed him to go to his house at Karaparamba

which

which is not very distant from the pla where the Inspector met the accused and confirm his statement by the produ of the pass-port. On the 4th June, 895; th 1st accused was produced before the Town magistrate and was remanded to the gail. On 7th June 1895 he was allowed to go at large on bail: the reason being that the pass-port Ex I was produced before the magistrate who accepted it as prima facie proof of the legal possession of the Cow by the accused. Now if this passport was produced before the magistrate on 4th June 1895 or if the accused said that he had obtained a passport which he could find in his house, the Town magistrate could not have remanded the man to the gail. The Town magistrate was examined as court 2d witness. Unfortunately he does not remember whether the accused told him at the time of the remand that he had a pass-port or that he had lost it. Notwithstanding this, I am of opinion that the probabilities are that no mention of the passport was made at first either to the

Prosecution witnesses or to the Town magistrate.

10. In regard to this pass-port it will be observed that the Prosecution 7th witness says that he is not sure whether the cow produced in Court and declared to have been found in the possession of the 1st accused on the night of the 3rd June 1895, was the cow for which he had given a passport. It seems to me that there can hardly be a doubt on the point. His reason that the cow produced in Court had both the horns chopped off and that the cow he gave the pass-port for had only one short horn seems to be absurd: there was nothing to prevent the other horn being chopped of a bit. Besides Prosecution 7th witness is obliged to admit that the cow before the Court possessed all the marks mentioned in the pass-port. The Town magistrate says that the Prosecution 7th witness, the menon, told him that the cow produced before him as being the object of the theft was the same cow for which he had given the pass-port.

11. It would also appear from the evidence of the Prosecution 7th witness and Court 1st witness Chappunni Nair, the Adhigari of Nedriyanad amsam that the passports are usually granted by the Adhigari. The Passports which are in print contain the designation of the

Adhigaris

Adhigaris in the place where his signature ought to be. Prosecution 7th witness, the menon says he signed Ex I in the absence of the Adhigari, but he is unable to say whether there is any Taluk order authorising him to sign passports in the absence of the village headman. Again it is not proved that the Court 1st witness the permanent adhigari was absent from the village on 3rd June '95. Taking all these circumstances into consideration I think that there is a good deal of suspicion about this passport. For the purpose of this Case, it is sufficient to note the reasons which compel ~~him~~ me to reject Ex I as a false document.

12. Although the Passport Ex I has to be rejected as unreliable, the 1st accused transfers the responsibility to the 2d accused which is fully accepted by the latter. 1st accused says "I bought the cow from Parambil Kadri of Nedriyanad the 2d accused for Rs 5-10-0 on a monday before the date of the Ramzan." This is admitted by the 2d accused. As the 1st accused has given an explanation of his possession which is borne out by the 2d accused, I was bound to discharge him under Sec. 253 CPC

13. As regards the 2d accused it must be

remembered that he admits having sold the cow. The cow he says belongs to him and was born in his herd.

14. He examines three witnesses.

15. Defence 1st witness Unichathan Nair, a resident of Nediyanad amsom says that the cow in question belongs to the 2d accused, that it was sold to the 1st accused for 5-10-0, that he was present at the sale and that defence 2d witness and others were present. Defence 2d witness, A. Kanaran Nair says that the cow belongs to the 2d accused but that he was not present at the sale. Defence 3d witness Kunhayan a moplah says he as well as defence 2d witness were present at the sale and that he can identify the cow which belongs to the 2d accused. It thus appears that Defence 2d witness who seems to be a respectable man is contradicted by defence 1 and 3 witnesses.

16. The question as to whom the cow belongs is entirely a matter of identification. We have Prosecution 1st witness, the owner of the cow, his brother, prosecution 2d witness, a police Inspector, Prosecution 6th witness Krishnan nair, a

neighbour

neighbour of the first two and the Adhig Prosecution 3rd witness all swearing tha the cow belongs to the prosecution 1st witn Tarwad. The adhigari gives what appear to me to be a very satisfactory corroborative proof of his statement. The adhigari says "It (this cow) was twice impounded in my pound. I have it registered in my pound register. Narayanan Nair (Prosecution 1st witness) paid the fine on both occasions. I see the pound register page I No. 816. Col 2 1 cow of dark ~~colour~~ color. Col 3 18th May. 94 5 Pm, Col 4 Karulali Achuthan the seizer. Col 5. K. K. Gopalan nair is an anandravan of Narayanan Nair. Col 6. 19th May 94 date of release 12 noon. Col 7 as 4, Col 8 as 3 feeding charges. On the 2d occasion, it was impounded on 4th August 1894 at 10 a.m. The entries relating to it are found in page 8 of the register, Ex C. It was released on that occasion by one of Narayanan nair's men."

17. There is on the one hand the testimony of the Prosecution 1st witness, 2d witness, 3rd witness and 6th witness that the cow belongs to the Prosecution 2d witness's

Tarwad

Tanwad. The Prosecution 1st witness does not seem to be a person who will swear a false hood for the sake of a cow which is hardly worth Rs10. Prosecution 2nd witness is a Probationary Inspector of Police, Personally known to me as trustworthy and reliable, Prosecution 3rd witness is the Adhigari who supports his evidence by reference to documents of a date long anterior to the date of occurrence and nothing has been said against prosecution 6th witness a neighbour of the Prosecution 1st witness. On the other hand there is the statement of the 2nd accused confirmed by the evidence of his 3 witnesses. The only witness that requires consideration is the Defence 2nd witness. It is possible he may be mistaken in his identification. Defence 1st and 3rd witnesses are men of straw and their demeanour in the box was that of tutored witnesses.

18. After a careful consideration of the evidence and the probabilities of the case I am of opinion that the 2nd accused is guilty of the offence of

dishonestly

dishonestly retaining stolen property an offence punishable under Section 411. I sentence him to suffer 6 weeks' rigorous imprisonment.

(Sd) Harada Row
Asst. Magistrate
2d Class

Calicut
12 augt 1895

(True copy)

(Sd) R. Ramachandra Row
14th august
For Asst. Magistrate

(True copy)

V Ringappukulu

Malr. Dt. Magtes Office
Calicut 20th March 96

For Dt. Magistrate

Ch
St
20 mar
M

No 27

In the Court of the District **Magistrate of Malabar.**

PRESENT :— J. Henderson, Esquire.

JUDGMENT.

IN CRIMINAL APPEAL NO. 12 OF 1895.

Date of Presentation.	Date of Filing.	Date of Notice issued by Court to appear.	Date on which Appellant ordered to appear.	Date of Hearing.	Date of Order.	From what Court the appeal is preferred.	No. of the Case on that Court	No. of the Appeal.	Name and description of the Appellant.	Sentence and Law under which it was imposed in the Lower Court.	Whether confirmed, modified or reversed.	If modified, the modification.
23.8.95	30-8-95	31-8-95	9-9-95 30-9-95	30-9-95	1-10-95	Court of the Assistant 2nd Class Magistrate of Malabar	C.C. no 130 of 1895	C.A. no 12 of 1895	Parambil Kadir of Nediyanad Amsam Calicut Taluk	Six weeks rigorous imprisonment Section 411 I.P.C.	Reversed	

The appellant has been convicted of dishonestly retaining stolen property and sentenced to six weeks' imprisonment.

The 1st accused, who has been discharged was found driving a cow at night by the Probationary Police Inspector. The Inspector recognized the cow as belonging to his brother and arrested the 1st accused. He gave contradictory accounts of the way he came by the cow but eventually said he bought the cow from the 2nd accused, present appellant. Against the appellant there is not a scrap of evidence. The person who gave a passport for a cow bought from appellant was unable to identify the cow in court as that sold by the appellant. That being so, the appellant ought to have been at once discharged. Instead of doing so, the Assistant Magistrate, Mr. Varada Row, questioned him as follows:—

"Q. Did you sell the cow before the Court to the 1st accused?"

"A. Yes.

"Q. How did you get it?

"A. The cow belongs to me & it was born in my herd"

Thereupon the 1st accused was discharged & the 2nd accused put on his defence. He called witnesses to prove that the cow was his, but the magistrate disbelieved them and convicted him.

From first to last the magistrate seems never to have asked himself what evidence there was against the appellant: he charged him on the contradictory statements of the 1st accused & on

on

on his own admission which ought never to have been extracted. Accused are to be examined to enable them to explain evidence given against them, not to supply the want of evidence.

As there is absolutely no evidence against the appellant, the finding and sentence of the Lower Court are reversed and the bond cancelled.

(Sd) J. Hewetson
Calicut
1-10-95
ag Dt Magistrate

To
The Registrar. High Court
appellate side
Madras
" Asst 2d Class Magistrate
Malabar
with records returned

(True Copy) V [illegible]

Calicut
20-3-96
For ag Dt Magistrate

20/3

30

FORM II.—CALENDAR AND JUDGMENT.

(For use in cases where, there are two or more accused persons.)

District of Malabar

Calendar of cases tried by the Assistant 2d Class Magistrate of Malabar ~~Taluk.~~

Date of				Explanation of delay and Remarks.
Offence.*	Report or Complaint.	Commencing trial.	Sentence or Order.	
28. 6. 95	28. 6. 95	17. 7. 95	12. 8. 95	Fine paid

* The place of offence should also be noted in this column.

Judgment in Calendar Case No. 12 — of 1895, on the file of the Assistant 2d Class Magistrate of Malabar

COMPLAINANT. Regina on complaint of K. Kumaran, Sub Inspector of Salt & Abkari Revenue

	Name of Accused	Age.	Father's name.
1.	Pookot Koda	53	Ayyappan
2.	Do. Korappan	45	Ayyappan
3.	Do. Kuttappan	17	Koda
4.	Vengalath Kuttappan	21	Ayyan
5.	Kurumba (female)	28	Sami
6	Mawadi alias Kali (female)	40	Krishnan

	Caste or Religion.	Calling.	Residence.	Taluk.
1. 2. 3. 4.	Tiyyas	1, 2 Tapping 3 Cooly 5, 6 nil	Beypore amsam	Calicut Taluk

Rioting and using criminal force to a public servant the discharge of his duties - section 147 & 353 I.P.C.

…cused to undergo rigorous imprisonment for six mo…

…ine of Rs 10, in default to undergo rigorous imprisonment…

…nd 6th to undergo rigorous imprisonment till the rising …

…urt -

~~Class Magistrate.~~

Judgment

On the night of 28th June 1895 at about 8. P.m the Prosecution 1st witness K. Kumaran, Sub Inspector Salt and Abkari Revenue, on the strength of information that No. 1 accused Kodu was selling fermented toddy without a license in his house, proceeded to the spot accompanied by Prosecution 2d witness, Ramunni a poli officer and 5 peons belonging to his Department. On arriving at the spot he saw 1st accused delivering a bottle containing about 1 gallon of fermented toddy to a fisherman and receiving some money in return. Witness seized the bottle from the fisherman which 1st accused tried to wrest from his hands. The bottle which was secured by the witness was handed to one of the peons for safe custody. The 1st accused was also found in possession of 9 pies which the fisherman handed to him.

2. The witness desired to search the house of the 1st accused. The latter said he would not permit it. The witness made a show of the authority under which he professed to act by drawing his sword from the scabbard with one hand and laying ~~drawing~~ hold by the other of the 1st accused and formally insisted upon the search being conducted without molestation as there were sufficient materials for suspecting the 1st accused of having committed an offence against the Abkari laws.

3. Meanwhile accused Nos. 2, 3 & 4 appeared on the scene of offence attracted thereto by the cries of accused Nos. 5 & 6 — two women, wives of Nos. 2 & 1 accused respectively. These men asked witness to release the 1st accused which the former refused. They began to offer criminal force to the witness. No. 2 accused beat the Sub Inspector and was followed by Nos. 3 and 4. They all caught hold of the sword and pulled

it out from the Sub Inspector breaking the guard. Prosecution 1st witness says that the two women nos. 5 & 6 also assaulted him from behind, besides calling loudly for help. Eventually the Sub Inspector was dragged into the yard where nos. 2 & 3 beat him and no. 2 pulled away witness's forage cap and threw it away. Meanwhile no. 4 accused called for his tapping knife which no. 5 female brought from within. One of the peons however succeeded in snatching it away. The Sub Inspector shouted to a peon to fetch the Adhigari. Instantly accused nos. 2 & 4 (and one witness says also accused no. 3) ran into the house and ran away with 2 pots of toddy. 2 or 3 moplahs came to the help of the Sub Inspector who was released from his persecutors and he sat down and wrote a yadast to the Adhigari which he despatched by another peon. The Adhigari arrived and with his help a search was held and a few contraband articles discovered. A search list was drawn up and with a complaint Ex: A the parties were sent to the Kallai Police station.

4. Prosecution 2d witness is Ramunni, the petty officer who accompanied the Sub Inspector. He corroborates closely the facts related by the last preceding witness. On the Sub Inspector's refusing to let go the 1st accused he says 2 accused beat him. Sub Inspector warded off the blow. 3 & 4 accused also began to beat the Sub Inspector. 5 & 6 accused came into the melee and from behind began to attack the Sub Inspector. The females cried to gather a crowd. Some 5 or 6 Tiyans

came running. They joined the party of the accused". Regarding the disposition of the men in his charge witness says. "I and one of the peons Sankunni Nair were in charge of the bottle got from the fisherman, the pot and the records. Two peons got on the verandah to assist the Sub Inspector. Two peons were deputed to watch the northern door of the house to prevent contraband articles from being taken away from the house. The two peons on the verandah were unable to help the Sub Inspector. The Sub Inspector and the peons succeeded in getting hold of the 1st accused and handed him to us". The Sub Inspector was then hustled into the yard where 2 & 3 accused again attacked him. Witness says he went to his superior's help but was beaten back. He was told by the Sub Inspector to go back and secure the 1st accused and the contraband articles already seized by the Abkari men. This witness also refers to the incident of the tapping knife. Witness shouted to the bye-standers for help which was given by some moplahs. Witness says that 2, 3 & 4 accused ran into the house and ran out of it with 2 pots of toddy.

5. Prosecution 3d witness Chemporakil Mammad is one of the Moplahs who came to the help of the Abkari Department. When he first came to the spot attracted by the noise, he saw Prosecution 1st witness and 1st accused struggling to get hold of a white bottle. He repeats what Prosecution 1st witness and Prosecution 2d witness

relate regarding the subsequent events. This witness was instrumental in restoring the broken sword to the Prosecution 1st witness. He says that 2, 3 & 4 accused ran into the house and escaped with one pot. He also speaks of the Adhigari's arrival and the search.

6. Prosecution 4th witness Karapunni nair, is the Adhigari of the Beypore amsam. On receipt of the Urzadast from the Sub Inspector he proceeded to the spot which is about a mile from his house. He saw on his arrival the Prosecution 1st witness, Pro: 2nd witness, some peons and a crowd of 50 persons. There were also present 1, 3, 5 & 6 accused, 1 & 3 in the custody of the Abkari men and 5 & 6 sitting or standing in front of the threshold to prevent any person from entering the house. The Sub Inspector told him that he wished to search the house. The Adhigari ordered the women to get up. They did so and the search was proceeded with.

7. Before the search was begun the Prosecution 1st witness told him that the 1st accused and others refused to let him search the house, also that they created a riot and assaulted him and his peons. He showed his sword which was broken in the guard and said that his forage cap was thrown away and his jacket torn – The Adhigari says that the Sub Inspector had only his shirt. Witness was also shown a tapping knife which he was told was snatched from one of the accused. The knife is shown and identified –

8. The evidence set forth above established to my satisfaction that the accused no. 1 [illegible] 6 had committed offences punishable under secs 147 & 35[illegible] I.P.C and a charge was accordingly framed –

9. The Defendants pleaded not guilty –

10. The defence on behalf of the 2nd accused is a plea of alibi – which is spoken to by Defence 1st witness & 2nd witness viz Koran and Koru. Def: 1st witness's evidence does not establish the alibi at all and Defence 2nd witness, I do not believe –

11. Defence 3rd witness Thuntuvayan, a Moplah, and Defence 4th witness, Chandu, say that they were present when the Sub Inspector's party visited the house of the 1st and 2nd accused and that no rioting or row took place. Defence 4th witness goes so far as to say that he was present when the Adhigari arrived and only left the spot with him. Then he could not have failed to observe the clear and many indications of an assault on the Abkari officers and peons. I am compelled to reject the testimony of this man as untrue. As regards Defence 3rd witness I find the following note on record. "This witness changes his words much quicker than I can record and is by demeanour &c utterly unreliable!".

12. I am of opinion that the charges framed against the accused have not been rebutted and Convict the 1st accused under sec 147 and the rest under sections 147 & 353 I.P.C. In awarding sentences, the following [illegible]

to be borne in mind. accused Nos 5 & 6 are women. It is in evidence that they assaulted the Prosecution 1st witness and I see no reason to disbelieve it. It would seem, however, from a reference to the Adhigary's deposition that they ~~were~~ were anxious to prevent an entry into the house at all risks and sat down in front of the threshold, forming a barricade which the Abkari Sub Inspector and his peons found impregnable until the arrival of the Adhikary. It cannot be supposed that any serious physical injury was caused by the women to the Sub Inspector. No 6 accused is enceinte and seems otherwise physically incapable of offering much force. A nominal punishment will be awarded to her.

13 I sentence the 1st to 4th accused to suffer six months rigorous imprisonment. The 5th accused will pay a fine of Rs 10 or suffer rigorous imprisonment for 2 weeks; the 6th accused to suffer rigorous imprisonment until the rising of the Court.

Calicut
12-8-95

Sd/ T. Varada Rao
Assistant Magte
2nd Class.

P.S. The sentence against 1st accused Kota is to commence on the expiry of the period of imprisonment he is now undergoing and awarded to him in C. Cas 1590 on the file of the Town Sub-magistrate

Sd/ T Varada Rao
Asst Magte 2nd Class

6
Jnd
4
1416

(True Copy)

T. Varadarao.
for District Magte

In the Court of the District Magistrate of Malabar.

PRESENT:— J. Hewetson Esq.

JUDGMENT.

IN CRIMINAL APPEAL No. 13 OF 1895.

Date of												
Presentation.	Filing.	Notice issued by Court to appear.	On which Appellant ordered to appear.	Hearing.	Order.	From what Court the appeal is preferred.	No. of the Case on that Court	No. of the Appeal.	Name and description of the Appellant.	Sentence and Law under which it was imposed in the Lower Court.	Whether confirmed, modified or reversed.	If modified, the modification.
31-8-95.	5-9-95.	9-9-95.	19-9-95 30-9-95	19-9-95 30-9-95	1-10-95	Court of the Assistant 2nd Class Magistrate of Malabar, Calicut	C. C. No. 12 of 1895	C. A. No. 13 of 1895	1. Pookot Kota 2. Do Korappan 3. Kuttappu 4. Vengalath Kuttappu of Beypore amsom Calicut Taluk.	1st to 4th sentenced to undergo rigorous imprisonment for six months.	Reversed.	

Judgment

The 4 appellants, together with two women who have not appealed, have been convicted of rioting and using force to a public servant while in execution of his duty. The Sub Inspector, a petty Officer and 5 peons went to the 1st appellant's house and found him, as they swear, Selling.

39

Selling toddy. Thereupon the Sub Inspector wanted to search the house, drew his sword, and tried to effect his object by force.

Now before a search could be legally made, without warrant, the Abkari Officer must, under section 31 of Act I of 1886, "record his reasons and the grounds of his belief." Under Section 36 he is also bound by the provisions of the Criminal Procedure Code i.e. before commencing the search, he must secure the presence of at least two respectable witnesses. The Sub Inspector did neither of these things, and his procedure was therefore grossly illegal: he was not acting in the execution of his duty, and the appellants were justified in preventing the search until the requirements of the law were fulfilled. It does not appear that they used more force than was requisite for the purpose: the Sub Inspector's sword was damaged, his cap lost, and his coat torn, but no wounds or bruises are alleged. As soon as the Adhikari came, the search was made without opposition.

It therefore seems to me that even if the appellants did all that the prosecution alleges, they committed no offence, and must be acquitted. I reverse the finding and sentence of the Lower Court and cancel the appellants' bail bonds. A copy of the judgment will be sent to the Assistant Commissioner. The Sub Inspector's conduct in drawing and brandishing his sword was particularly foolish.

40

(Signed) J. Hewetson
acting Dist. magistrate.

(True Copy)

To
The Asst magistrate Malabar
with records returned

T. Varadarao
for as Dist magte

1896
Jud. Dept
Enclos. 1
O. No 1416.

Confidential

No. 2
Confl.

Malabar Collector's Office
Camp. Manjeri. 17th March 1896

CURRENT No. 1416

From,

J. Hewetson Esq. I.C.S.
Ag. Collector & Distt. Magistrate
Malabar.

To,

The Chief Secretary
to Government,
Madras.

Sir,

I have the honor to submit the prescribed half yearly report on the work of ~~the~~ Assistant Collector Mr. Varada Row.

The Submission of the report has been delayed by the Moplah outbreak and as I am Still in Camp, I have to write without reference to previous reports and orders which are locked up in Calicut.

During the whole half year, the Assistant Collector was Chairman of the Calicut Municipality and Second in charge of Sea Customs work in the Collector's office. From the 9th December to the middle of February he was in charge of the Calicut Division in consequence of my absence in the Laccadive Islands; from the 14th to 16th October, and from the 30th October to 4th November he was in charge of the Treasury and from the 20th to 29th October he supervised the Special Tests at Palghat. While in charge of the Calicut Taluk Mr. Varada Row spent several days in Camp, but I have not been able to arrange for his going into Camp with myself. With all his Revenue and General work, I have been well pleased.

As a Magistrate Mr. Varada Row tried 11 cases besides 42 cases as Chairman of the Calicut Bench. In two cases appeals have been made to me and in both I had to reverse the conviction of the Lower Court. In one case I held that there was absolutely no evidence against the appellant, and in the other grossly illegal conduct of the Salt and Abkari Department had been overlooked

Vide G.O. 544 / 16-3-96.

overlooked (In the latter case Govt. has appealed against my decision) – Copies of the Judgments of both Courts are enclosed. I do not consider Mr. Varada Row to be a good Magistrate.

I have the honor to be,
Sir,
Your most obedient Servant.

J Hewetson
Ag. Collector &
District Magistrate

D.A.

Judicial Department

CURRENT No. 1416

CHIEF SECRETARY
25 MAR. 1896
GOVERNMENT OF MADRAS

Confidential No: 113

FROM

THE COLLECTOR / DISTRICT MAGISTRATE OF MALABAR.

To

THE Chief Secretary to Govt.
Judicial Dept
Madras

Dated 14th }
Despatched 23rd } March 1896.
Received 25 }
Regd: 26.

No. 2 / Contl.

Enclosure. 4

Subject.

Asst. Collector, Mr Varada Rao

Reports on the work done by — during the half year ending 31st Decr 95.

[G. / 25]
1,000—5-11-95

Judicial DEPARTMENT

C. No. 1416

FOR ORDERS.

Mr. Hewetson's report on Mr. Varada Rao (vide G.O. No. 1677 d 10-8-95) is submitted for orders.

Having been written without reference to preceding reports it altogether omits mention of the most important point in them — Mr. V. Rao's physical fitness to be a Dist. officer. Mr. Bradley (Moberly) said that he drank & couldn't walk half a mile without being knocked up as he was so grossly fat. He was told to take him out on tour with him & see if he could move about at all. (G.O. $\frac{1677}{10.8.95}$) but Mr. Hewetson says that he "has" not been able to arrange for his going into camp with myself". This is not satisfactory, & Mr. Hewetson gives no reasons. It will postpone once more the question of what is to be done with Mr. V. Rao, as apparently his physical condition is the chief thing against him.

Mr. Moberly said he had "certainly shown improvement" in his Magisterial work. Mr. H. thinks he is not a good Magistrate. Mr. M. was not satisfied with his work as Chairman of the Calicut Municipality, & complained that he would not send in diaries. Mr. H. says "with all his Revenue & General work I have been well pleased". Nothing could be more contradictory.

Submitted that the first thing to be done is to test his capability for getting about & that the Collector must be told at once to take him out with him & report.

1.4.96

Mr. Varada Row is a mountain of flesh and would probably if taken out at this time of the year at once succumb. Mr. Moberly spoke to me about him a day or two ago and said that he does not think that on the West Coast Mr. V. Row

~~5~~ 49

Mr. Varada Rao.

FOR ORDERS.

H. E. THE GOVERNOR. (3)

THE HON'BLE MR. H. W. BLISS, C.I.E. (1)

THE HON'BLE MR. J. GROSE, C.I.E. (2)

50

[G. / 25 A.]
1,000—21-3-96.

DEPARTMENT.

C. No.

FOR ORDERS.

I am sorry to say that I don't believe Varada Row will ever be fit for employment as a divl. officer. I am sorry, as he has certainly managed well ~~as~~ in regard to the [illegible] grounds in Calicut. But his obesity is against him - He has, however, never had a real trial - I agree that he should be moved.

H.B.
6/4/96

I think he shd be tried on the East Coast.

J.G.
9/4/96

I agree that he should be transferred to the East Coast, and I think he should at once be placed in charge of a Head-quarter Division, - the Collector being called upon to report on his work, at the end of six months.

17.4.96

has a fair chance of showing whether he is worth anything. He has been also Calicut for some considerable time and the Collectors of Malabar have as a rule too much to do to be able to take Asst. about the country and watch their work. If Mr. Varada Row is to go elsewhere Mr. Atkinson in the Kistna would probably soon find out whether he is fit for restoration to a divisional charge.

6/4/96

Mr Varada Rao

⑦

FOR ORDERS.

H. E. THE GOVERNOR. 3

THE HON'BLE MR. H. W. BLISS, C.I.E. 1

THE HON'BLE MR. J. GROSE, C.I.E. 2

Council

South Arcot
N. Arcot
Tanjore
Nellore.

Mr. Varada Rao to go to
South Arcot.
(In Council)
[illegible]
1/5/96.

Tell the Coll: when writing
to him to take him
out in Camp and to
see whether he can
ride & walk 1/5/96

C 6/9
R 18/4

Ootacamund
1st May 96.

My dear Dance,

It has been decided that T. Varada Rao, the Statutory Civilian, is to be transferred to S. Arcot in order to afford him an opportunity of showing what he is worth

You will receive a formal order on this subject in due course – I am to tell you that in addition to what will appear in the order Govt. wishes the Collector to take Varada Rao into camp and see whether he can ride and walk to an extent sufficient to allow of his performing his duties as a Revenue Officer efficiently.

When making the report which the G.O. will require mention of this point should not be overlooked.

Kindly hand this over to Stuart when he resumes charge.

Yours sincerely
Sd. J. J. Price

G. W. Dance Esq I.C.S.
Despd 1/5

Judicial Dept

C.No. 1416.

No. 816 dated 4th May 1896

Order

Before deciding finally as to ~~With a view of finding out~~ clearly ~~whether~~ Mr. Varada Rao's ~~is~~ fitness for holding charge of a subdivision ~~or not~~ H.E. the Govr. in Council ~~is pleased to~~ resolves to give him a further opportunity of showing his capabilities by ~~transferring~~ moving him to a ~~transfer him to another~~ district on the East Coast.

He will accordingly be transferred to South Arcot where he should be placed in charge of the head quarter division under the immediate supervision of the Collector & Dt. Magte. A full report on all branches of Mr. Varada Rao's work should be submitted to Govt. by the Collector at the ~~end~~ expiry of six months.

(From orders)

2.5.96

4/5/96

D.M., Malabar } Despd 5/5
D.M., S Arcot
Public Dept in origl. — CMS 6.5.96
Rev Dept Despd 8/5

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Returned for Signature.

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ORDER OF GOVERNMENT .. .. ..

LETTER OF GOVERNMENT.

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N.B.—

A = Print in full.
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Q = Print heading only.

CONFIDENTIAL.

F. 73.

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Press / Miscellaneous / Routine No. 89, dated 2[illegible]

Date taken out.	For what purpose.			Initials of clerk taking the paper or of attender.	Da	
	Department.	C. No.	Year.			
14/2/36	for D[illegible]					

C.F. 73.

Date