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TAMIL NADU ARCHIVES

GOVT OF TAMIL NADU

JUDICIAL DEPT

G.O. NO :- 476 (138/139)

DATE :- 18.3.1874.

25

*Proceedings of the Madras Government, Judicial Department,
18th March 1874.*

No. 138. Read the following letter from G. D. LEMAN, Esq., District Magistrate of Kistna, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort Saint George, dated Jaggaiyapett, 17th December 1873, No. 1350:—

I have the honour to forward the accompanying correspondence.

2. Mr. Gibson, my Acting Head Assistant Magistrate, considers it necessary that a fee under Act VII. of 1870 (Court Fees Act) be demanded before the copy of sentence ordered in Section 464* of the Criminal Procedure Code is given to the accused.

* "The judgment or order shall be explained to the accused person, or person affected by it; and a copy shall be given him in his own language as soon as possible."

3. My view of the matter is that the document named in Section 464 being a copy of the judgment in the person's own language (in fact generally a translation) is not a document anywhere named in the Court Fees Act (VII. of 1870), and the wording is imperative that it shall be given.

4. Mr. Gibson's that it is included in Section 9, Schedule I., of Act VII. of 1870, and that the wording is to be imperative only after the fees are paid.

5. I have pointed out to Mr. Gibson, that, as the matter would seem to be under reference by Government,† it would be well that he should, for the present, be governed by my opinion that such copy is not liable to a fee, but his conscience will not, as his letter shows, allow of this.

6. I request the Government will, if they see fit, refer the matter to the Advocate-General.

From F. E. GIBSON, Esq., Acting Head Assistant Magistrate of the Kistna District, to G. D. LEMAN, Esq., District Magistrate of Kistna, dated Bezwada, 28th November 1873, No. 89.

With reference to your recent order published in District Gazette, No. 20 of October 4th, 1873, page 305, Circular Order 25, 1873, I have the honour to report that considerable doubt and difference of practice seems to exist amongst the Subordinate Magistrates both in this division and in the Joint Magistrate's, of which I am at present also in charge, and I request you will issue further instructions to secure uniformity and accordance with law.

2. I have directed several Magistrates in both divisions that all copies of judgments and sentences given to accused persons or others should invariably be on stamped paper only, and that the cost of copying should be paid by applicant in all cases, except only when the accused is sentenced to imprisonment or is actually in confinement under order of the Court.

3. The reasons that support this interpretation are as follow:—

First, as to the Court fees for copies *prima facie* under the Court Fees Act, all copies taken by any person out of any Court (criminal or otherwise) are liable to the payment of these fees; or in other words can only be given on stamped paper.

4. Exemption is not conferred in any case by the Criminal Procedure Code; and it has been conferred by the Governor-General in Council under the powers given by Section 35, Court Fees Act, in case of copies of judgments or orders passed by a Criminal Court furnished under Section 276, Code of Criminal Procedure, or what seems to me the same under Section 464, Code of Criminal Procedure, to accused persons only when they are in jail, unless the Court for some special reason sees fit to grant such copy free of expense.

5. From this, it seems clear beyond dispute on the general principle *expressio unius excludit alterum* that all copies although given to accused persons must be given only on stamped paper.

*Proceedings of the Madras Government, Judicial Department,
18th March 1874.*

except when such persons are sentenced to imprisonment, unless the Court exempts for some very special reason.

6. Similar reasoning applies with reference to the cost of copying about which Section 464, Code of Criminal Procedure says nothing, but it is here to be noted that Section 276 of the Code of Criminal Procedure does itself expressly state that "such copy" (i.e. of judgment) shall be made at the expense of the person applying for it unless he is in jail, or there is some other reason sufficient in the opinion of the Court for exemption.

This principle is followed by the Governor-General's Notification regarding Court Fees.

7. It is very important that this, if it is the correct view of the law, should be strictly carried out both in the interests of the revenue (under Court Fees Act) and in the interests of the over-worked office establishments of the Sub-Magistrates, and as some of them are under the impression that they are in all cases bound to give all accused persons, however dealt with, copies both of judgment and sentence free of all charges, I request, if you concur with me, and the matter seems to me clear beyond a doubt, that you will issue early instructions on the point for the whole district, as your Order No. 25 of 1873 merely says that copy in his own language is to be given (always) to the accused person.

From G. D. LEMAN, Esq., District Magistrate of Kistna, to F. E. GIBSON, Esq., Acting Head Assistant Magistrate of the Kistna District, dated Ibrahimpatam, 1st December 1873.
No. 1317.

In reply to your letter, dated 28th November 1873, No. 89, I have the honour to state that the matter does not seem to be so plain as you suppose. Had it been, the High Court would not, while answering the one question put by Mr. Thomas (quoted in Madras Government Proceedings, Judicial Department, 18th July 1873, in the affirmative, have left him to exercise his own judgment in the matter of stamps.

2. Further, the Government have endorsed Mr. Thomas' opinion in the matter by referring the matter with a view of putting the difficulty before the Government of India.

3. The Sections 276 and 464 are not as you suppose identical. Section 276 refers to appeals and is to be read with the rest of the chapter in which it comes. The copy referred to therein is specifically for the purpose of appeal, and for that purpose it is to be presumed the stamp is remitted by the G.O., No. 996, 6th June 1873. It is noteworthy also that the copy is only to be given on application.

4. Section 464 is a general section, and the instruction in it is, as the High Court of Madras say, plain that a copy in his own language shall be given, &c., i.e., neither application nor payment of fees are to be waited for.

5. Finally, it is to be noted that the copy mentioned in Section 464 is absolutely a different copy to that in Section 276; the latter is to be a copy of the judgment and sentence as passed by the Court; the former a copy in the man's own language, i.e., a translation in very many cases, and not a copy at all.

6. I request you will amend your instructions to the Magistrates under your orders, and direct that the copy under Section 464 is to be given, free of charge, of all kinds, until further orders, where possible.

From F. E. GIBSON, Esq., Acting Head Assistant Magistrate of the Kistna District, to G. D. LEMAN, Esq., District Magistrate of Kistna, dated Bezwada, 4th December 1873.
No. 91.

With reference to your letter, dated 1st December, No. 1317, I have the honour, in reply, to request you will lay the matter before Government in order that an opinion may be obtained from the Advocate-General or otherwise an authoritative ruling.

2. I fully admit that I may have advocated the view I took somewhat too strongly, but whilst admitting the force of your arguments, I cannot satisfy myself that they dispose satisfactorily of the questions raised by me, especially about the Court Fees stamps on copies.

*Proceedings of the Madras Government, Judicial Department,
18th March 1874.*

3. To be brief the whole question seems to me to be this. Is Schedule I., Clause 9, of the Court Fees Act (VII. of 1870) repealed *quo ad hoc* by the words in Section 464 of the subsequent Act, the Code of Criminal Procedure (Act X. of 1872), i.e., the words "a copy or translation shall be given?"

4. I understand the force of your argument to rest on this word *shall*, coupled with the words "as soon as possible."

5. Now I have not at the moment any books of reference by me on the interpretation of statutes; but I have always been taught that a previous statute is only repealed by a letter either expressly or by "necessary implication," and that this necessary implication means that the words of the latter statute are strictly inconsistent with the words of the former, so that they cannot be read together without involving a logical contradiction in the strict sense of those words in logic.

6. Now this does not at all appear to be the case in the present instance. The Law (Criminal Procedure Code) says to me "you shall give a copy." I reply, "Well, but a former law says the copy must be on paper of a specified kind." "Give me the paper and I will give you the copy." "I have no funds to buy the paper;" "you must provide it, if you (the accused) want the copy."

7. Laws cannot be repealed by mere conjecture. If it were meant that Section 464, Criminal Procedure Code, should repeal the plain provisions of Court Fees Act, why did the Governor-General think it necessary to do the same work over again imperfectly and incompletely by means of a special notification.

8. I have, as in duty bound, communicated your decision to the Magistrates subordinate to me, but I do not myself see how I can disobey the law as I interpret it, until my interpretation is authoritatively overruled and the practical difficulties in my office of carrying out your instructions are not less I think but greater than I have represented to you before. As an instance I only lately wrote a judgment covering (in the fair copy) six or seven pages of very closely written large demy. A translation of it would probably take one clerk's whole time for two days.

9. Then in the case to which I refer, eight copies of the translation would have had to be made for eight defendants; sometimes there are ten or a dozen. I have four clerks, and two Taluqs, and two Zemindaries. Similarly with the Sub Magistrates, if I am to carry out the orders in question, I beg you will inform Government that I find it impossible to carry on also my revenue work, as my clerks are otherwise occupied.

10. I, therefore, request that the matter may be sent up to Government with a request that they will take the opinion of the Advocate-General.

No. 139. ORDER THEREON, 18th March 1874, No. 476.

It is observed that Section 11 of the Bill* to amend the Code of Criminal Procedure provides that "in the second

* Published in the Fort St. George Gazette Supplement, 13th January 1874. paragraph of Section 464 after the words 'language,' the words 'free of cost'

shall be inserted." It is, therefore, clear that the intention of the Legislature in enacting Section 464 was that the copy of the judgment to be given to the accused in his own language under that Section should be granted *gratis* unconditionally, and that no stamp duty should be levied in respect of such copy, as is done in the case of copies furnished upon application made for that purpose under Section 276.

2. The Governor in Council does not, therefore, consider it necessary to refer the question for the Advocate-General's opinion.

3. The general subject of the expediency of acting upon the provisions of the second clause of Section 464 regarding copies is under the consideration of Government, and His Excellency in Council proposes to recommend to the

3

Proceedings of the Madras Government, Judicial Department,
18th March 1874.

Government of India in the Legislative Department that the opportunity afforded by the Bill above referred to may be taken to amend the clause in question, either by repealing the latter part of it, or by inserting at the end thereof the words "in accordance with the provisions of the second clause of Section 276."

4. Ordered that copy of these Proceedings be forwarded to the Government of India.

(True Extract.)

D. F. CARMICHAEL,
Acting Chief Secretary.

To the Magistrate of the Kistna District.
.. all other Magistrates of Districts.

No 1350
Kielua District Magistrate Court
Camp at Jaggaigafatt 17 December 1873.

Sir,
 G. D. Seman Esquire,
 District Magistrate of Kistna.
 Sir

Sept.

I have the honor to forward
the accompanying correspondence.

2. The judgment or order shall be explained to the accused person, or person affected by it; and a copy shall be given him in his own language as soon as possible. Art. 266 of the Criminal Procedure Code, is given to the accused.

3 My view of the matter is, that the document named in Section 464 being a copy of the judgment in the person's own language (in fact generally a translation) is not a document anywhere named in the Court fees Act (VII of 1870) under the
wording

Colt. of 1874

JUDICIAL.

THE UNIVERSITY OF CHICAGO

THE

Excellence in Education

21

60. 10. 1950

INDEX

200-10-110

Chlorophyllase (EC 1.3.1.1) was extracted from the leaves of the plant in a manner similar to that used for the extraction of chlorophyllase from spinach. The only difference between the two procedures was that the leaves of the plant were ground with a mortar and pestle rather than in a blender. The homogenate was centrifuged at 10,000g for 10 min and the supernatant was dialyzed into 0.1 M Tris-HCl, pH 7.4, containing 0.1 M NaCl. The dialysate was then concentrated by ultrafiltration and the concentrate was dialyzed into 0.1 M Tris-HCl, pH 7.4, containing 0.1 M NaCl. The dialysate was then concentrated by ultrafiltration and the concentrate was dialyzed into 0.1 M Tris-HCl, pH 7.4, containing 0.1 M NaCl. The dialysate was then concentrated by ultrafiltration and the concentrate was dialyzed into 0.1 M Tris-HCl, pH 7.4, containing 0.1 M NaCl.



wording is imperative that it shall be given.

4. Mr. Gibson that it is included in Section 9 Schedule 1 of Act VIII of 1870 and that the wording is to be imperative only after the fees are paid.

5. I have pointed out to Mr. Gibson that, as the matter would seem to be under reference by Government, it would be well that he should for the present be guided by my opinion that such copy is not liable to a fee, but his conscience will not, as his letter shows, allow of this.

File by C. 15 July 1873 No 1127.

6. I request the Government will, if they see fit, refer the matter to the Advocate General.

I have the honor to be,
Sir,

Your Most Obedient Servant

J. D. C. M. A.
District Magistrate.

Composed

No 89

Dist District Head Asst Magistrate Office
Bewara 28th November 1873.

From J. E. Gibson Esquire
Acting Head Assistant Magistrate 169.

To, G. D. Leman Esquire,
District Magistrate Kistna.

Sir,
With reference to your recent order published in District Gazette No 20 of October 2nd 1873 Page 305 Circular Order 25 1873, I have the honor to report that considerable doubt and difference of practice seems to exist amongst the Subordinate Magistrates both in this Division and in the joint Magistrates, of which I am at present also in charge and I request you will issue further instructions to secure uniformity and accordance with Law.

2. I have directed several Magistrates in both Division that all copies of judgments and sentences given to accused persons or others should invariably be on stamped paper only and that the cost of copying should be paid by Applicant in all cases except only when the accused is sentenced to imprisonment or is actually in confinement under order of the Court.

3. The reasons that support this interpretation are as follows.

First, as to the Court fees for copies Prima facie under the Court Fees Act, all copies taken by any person out of any Court (Criminal or otherwise) are

For the Month 1/4
1873 (1873) 1873

From

The District Magistrate
Kistna

Chief Clerk

to Government

Judicial (District)

to the District Magistrate

to the District Magistrate

to the District Magistrate

to the District Magistrate

to the District Magistrate

to the District Magistrate

to the District Magistrate

to the District Magistrate

to the District Magistrate

are liable to the payment of that fee, or in other words
can only be given on stamped paper.

4. Exemption is not confined in any case by the
Criminal Procedure Code, and it has been conferred
by the Governor General in Council under the
powers given by Section 35 Court Fees Act in case
of copies of judgments or orders passed by a
Criminal Court furnished under Section 276 C.P.C.
or what seems to me the same under Section 166 C.P.C.
to accused persons only when they are in jail
unless the Court for some special reason sees
fit to grant such copy free of expense.

5. From this, it seems clear beyond dispute
on the general principle *expressa unius exclusio*
aliam that all copies although given to accused persons
must be given only on stamped paper, except when
such persons are sentenced to imprisonment unless
the Court exempts for some very special reason.

6. Similar reasoning applies with reference
to the cost of copying about which Section 166 C.P.C.
says nothing but it is here to be noted that Section
276 of the Code of Criminal Procedure does itself expressly
state that "such copy" (i.e. of judgment) shall be
made at the expense of the person applying for it
unless he is in jail or there is some other reason
sufficient in the opinion of the Court for exemption.

This principle is followed by the Governor General's
Notification regarding Court Fees.

7. It is very important that this if it is the
correct view of the Law should be strictly carried
out both in the interests of the Revenue (under Court Fees Act)

and in the interests of the over-worked office establish-
ments of the Sub Magistrates and as some of them
are under the impression that they are in all
cases bound to give all accused persons however
dealt with copies both of judgment and sentence
free of all charges, I request, if you concur with
me, and the matter seems to me clear beyond a
doubt - that you will issue early instructions on
the point for the whole District as your Order
No 25 of 1873 merely says that copy in his own
language is to be given (always) to the accused
person.

I have the honor to be,
Sir,

Your Most Obedient Servant
W. Squire - J. E. Gibson
Acting Deputy Magistrate

1 True Copy 1

J. S. Uman
District Magistrate

Comp. 8/12/73

No 1317.

Acting District Magistrate of
Camp at Bramfulam 1st November 1873

From

By Mr. Simon Esq.
District Magistrate of Actua

To, J. E. Gibson Esq.
Acting Headmaster Magistrate S. S.

Sir,

In reply to your letter dated 25th
November 1873, I have the honor to state
that the matter does not seem to be so plain as
you suppose. Had it been, the High Court would
not, while answering the one question put by
Mr. Thomas (quoted in Madras Government
Proceedings Judicial Department 10/11/73),
in the affirmative, have left him to exercise
his own judgment in the matter of appeals.
2. Further, the Government have endorsed
Mr. Thomas's opinion in the matter by referring
the matter with a view of putting the difficulty
before the Government of India.

3. The Sections 276 & 277 are not as you
suppose identical. Section 276 refers to appeals
and is to be read with the rest of the chapter
in which it comes. The copy referred to therein
is specifically for the purpose of appeals & for that
purpose it is to be presumed the appeal is
permitted by the Government Order No 496 of June 1873.

Enclosure No. 1.

Recd letter from the

District Magistrate of

Actua dated 17th November

1873.

Copy of letter from

the Acting District

Magistrate of Actua District

to the District Magistrate

of Bramfulam 1st Nov 1873

This noteworthy also that the copy is only to be given on application.

Section 166 is a general section and the instruction in it is, as the High Court of Madras say, plain that a copy in his own language shall be given &c. &c. no further application or payment of fees are to be waited for.

5. Finally, it is to be noted that the copy mentioned in Section 166 is absolutely a different copy to that in Section 276; the latter is to be a copy of the judgment & sentence as passed by the Court; the former a copy in the man's own language or in a translation in very

6. I request you will amend your instructions to the Magistrates under your orders and direct that the copy under Section 166 is to be given, free of charge, of all kinds, until further orders, where possible.

I have the honor to be,

Sir,
Your Most Obedient Servant
Signed / G. O. Siman,
District Magistrate

1 True copy /

G. O. Siman

District Magistrate

Completed

Sp 91

Madras District Magistrate, District Magistrate
Bengaluru to District Magistrate, Bengaluru

From... H. E. Spence Esq.,
District Magistrate, Bengaluru
To... G. O. Siman Esq.,
District Magistrate, Bengaluru

Sir,
With reference to your letter dated 10th December 1877 I have the honor in reply to inform you will lay the matter before Government in order that an opinion may be obtained from the District General or otherwise on authoritative ruling.

2. I fully admit that I may have underrated the stress I put some what too strongly but which I am sure will be satisfied by me especially about the cost of the questions raised by me.

3. To be brief the whole question seems to me to be this. In Schedule I Clause 9 of the Court Fees Act (VII of 1870) repeatedly quoted there by the words in Section 166 of the subsequent Act the code of Criminal Procedure (Act X of 1872) &c. the words "a copy or translation shall be given."

4. Understanding the force of your argument to rest on this word shall coupled with the words as soon as possible.

5. I have not at the moment any looks of reference by me on the interpretation of statutes, but

I have always been taught that a previous statute is only repealed by a later, either expressly or by necessary implication and that this necessary implication means that the words of the latter statute are strictly inconsistent with the words of the former so that they cannot be read together without involving a logical contradiction in the strict sense of those words in logic.

Now this does not at all appear to be the case in the present instance. The Law (Criminal Procedure Code) says to me "you shall give a copy freely" well but a former Law says the copy must be on paper of a specified kind. "Give me the paper" says the accused. "I have no hands to buy the paper" you must provide it, if you want the copy.

Law cannot be repealed by mere conjecture. If it were meant that sections 166 Criminal Procedure Code should repeal the former provisions of Court Fees Act. Why did the Government General think it necessary to do the same work over again imperfectly and incompletely by means of a special notification?

I have as my duty boundly communicated your decision to the Magistrate subordinate to me, but I do not myself see how I can disobey the Law as I interpret it, until my interpretation is authorized by some ruling, and the practical difficulties in my office of carrying out your instructions are not less.

I think but greater than I have represented to you before. As an instance only, I have made a judgment covering (in the fair copy) six or seven pages of very closely written large Omy. A translation of it would probably take one clerk's whole time for two days.

Then in the case to which I refer eight copies of the translation would have had to be made for eight defendants. Some times there are two or a dozen. I have four clerks and two Taluqs and two Zamindaries. Similarly with the Sub Magistrates, If I am to carry out the orders in question, I beg you will inform Government that I am in Revenue work as my clerks are otherwise occupied.

I therefore request that the matter may be sent up to Government with a request that they will take the opinion of the Advocate General.

I have the honor to be,
Sir,
Your most Obedient Servant.
Signed F. E. Gibson
Acting Head of Magistrate.
True Copy /
J. E. Gibson
District Magistrate.

18
Incluse No 3.

In a letter from the District
Judge of the District of
Columbia 1873 No 1350.

Copy of a letter from the
District Judge of the District of
Columbia 1873 No 1350.
The enclosed is a letter from
the District Judge of the District of
Columbia 1873 No 1350.

Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
Magistrate of Tirunelveli,
17th December 1873, No. 1350.

Order thereon, 18 March 74, No. 478

+ published in the Fort St. George
Gazette Supplement, 13th June
1874-

It is observed that
section 11 of the Bill to amend
the Code of Criminal Procedure

S. 11, cl. 2. "The Magistrate
or other officer to whom the
accused is committed shall
cause him to be examined in his own
language as far as possible."

provide that in the second
paragraph of section 464 after
the words 'language' the
words 'free of cost' shall be
inserted." It is therefore clear

that the intention of the
Legislature in enacting s. 464
was that the copy of the
judgment to be given to the
accused in his own language
under that section should be
granted.

M.B.
25/2

Enclosure No. 2.

Shew letter from the
District Magistrate of Tirunelveli
dated 17th December 1873
No. 1350-

Copy of letter from the
District Magistrate of
Tirunelveli
forwarded to the
Sd/- Secy to Govt 1873

granted gratis unconditionally,
and that no stamp duty
should be levied, in respect
of such copy, as is done in the
case of a bill in the
application made for that
purpose under section 27b.

2. The Governor in Council
does not therefore consider it
necessary to refer the question
to the Advocate General's
opinion.

3. The general subject
of the expediency of acting upon
the provisions of the 2nd clause
of section 141, is under the
consideration of Government,
and His Excellency in Council
proposes to recommend to the
Government of India, in the
Legislative Department, that

the opportunity afforded by
the Bill above referred to,
may be taken, to amend the
clause in question, either by
repealing the said clause,
it, or by inserting at the end
thereof the words "in accordance

with the provisions of the
2nd clause of section 27b."
4. Meanwhile, the
clause should be retained
to remain in force until the passing of the
Bill.

5. Ordered that copy
of these Proceedings be
forwarded to the Government
of India, simultaneously
with the Proceedings of the
Legislative Department.

The Magistrate of Peshawar
All other Masters of Peshawar
Letter to be forwarded
17/1/1873

Cont. of 1874-Annals.

Judicial

To
The People of Indiana
and

Covered?

Drift-land

5/17/94

Dated Mar. 18 }
Recd. }

1874, No.
476.

T103.138.139.5

Crinal. 932 Lord Oliver Express
that the intention of the copy.
Nature in meeting Sec. 464
was that the copy of the laws
went to be given to the
assault which on language
under that Sec. Still he would
be left unceremoniously to
without no Stamp duty still be
be denied in behalf of such
copy and is done in the state of
English jurisdiction under Sec. 375.