(1) பக்கங்களின் எண்ணிக்கை 28

(2) புதுக்கித் திருப்பிய நாள்

(3) ஆதாரங் குறிப்பவர் சுருக்கொப்பம்

தமிழ்நாடு ஆவணக் காப்பகம்.

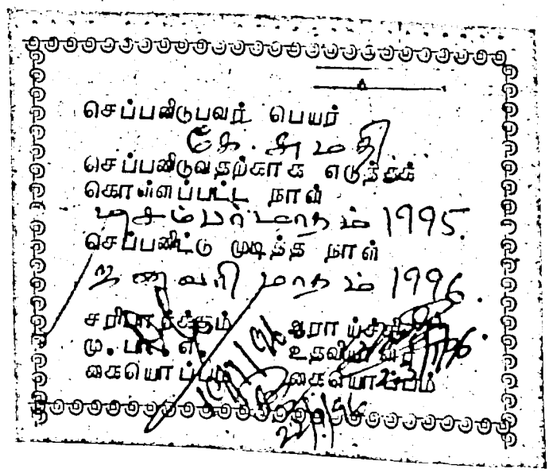
தமிழ்நாடு அரசு

நீதி துறை

அரசாணை எண். 88		அச்சகம்
மு. கோப்புத் தாள் எண்.		பலவகை
நாள் : 18-1-1881		199

மடிக்கவோ கண்டபடி கையாளவோ கூடாது.

புவண. கா. 1—18,006—6-9-90.



88
1

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

18th January 1881, No. 88.

Police.

Read the following papers:—

No. 68. *From L. McIVER, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated 16th December* 1880, *No.* 2592.

I am directed to forward, herewith, for the information of His Grace the Governor in Council, copy of the Judgment in Criminal Appeal No. 23 of 1880 on the file of the Court of Session of the Tinnevelly Division with reference to the Judge's remarks on the Police Inspector.

ENCLOSURE No. 1.

In the Session Court of Tinnevelly.

Tuesday the Thirtieth day of November, one thousand eight hundred and eighty.

PRESENT:

JAMES FREDERICK SNAITH, Esq., Officiating Session Judge.

Criminal Appeal No. 23 *of* 1880.

Vyravanadavi, Pattasalian, Weaver, Age 65, Appellant (First Prisoner).

Appeal against the conviction and sentence by the Acting Head Assistant Magistrate of Tinnevelly in Calendar Case No. 20 of 1880.

This appeal coming on for hearing:—Upon perusing the petition of appeal and the record of the evidence and proceedings, and upon duly considering the same after hearing the arguments of the appellant who appeared in person, I do adjudge and order that the conviction and sentence passed on the said appellant be reversed and annulled.

The prisoner, a weaver, was convicted, under Section 500, of defaming Subramania Pillay, Police Inspector of Ambásamudram, in a petition—

Date of Presentation.	Date of Filing.	Date of Hearing.	Date of Order.
9th November 1880 ..	9th November 1880..	29th November 1880.	30th November 1880.

to the Inspector-General of Police in Madras, and fined 51 rupees, or in default three weeks' simple imprisonment.

The sentence has been carried out by the prisoner in the jail.

He now appeals in person, no Vakil being instructed. The point raised by the appellant is whether the case falls within the Exceptions 2 and 10, Section 499, Indian Penal Code.

The conviction is by the Acting Head Assistant Magistrate Mr. Hebbert.

2. The prisoner charged the Inspector of Police with aiding Maravars and sharing in the spoil, and without arresting Sivasangu Tevan when he might have done. I do not think that this information addressed to the Inspector-General of Police comes under the category of a caution. Thus Exception 10 is not applicable. But Exceptions 2, 8, and 9 seem to me to meet the circumstances of this case.

And therefore the real question we have to decide is whether the prisoner acted in good faith. On this point Indian Law Reports, Vol. IV, Calcutta Series, 124, "In a charge for defamation" the question to be decided is, not whether the allegations put forward by the accused in

support of the defamation are in substance true, but whether he was informed and had good reason, after due care and attention, to believe that such allegations were true.

I think also that we must consider this question in its relation solely to the matter which is charged as defamatory, for it seems that the prisoner, who has reasons for wishing the Inspector out of Ambásamudram, is so anxious for his transfer that he attached a sheet from an old Mahazir to the petition complained of.

This fact would not affect the question of good faith as to the charges, and merely proves that prisoner wishes, at any price, to be rid of the Inspector.

By Act XVIII of 1862, Section 27, good faith may be presumed, unless the contrary appear.

3. Now I hold that the contrary does not anywhere appear in this case, *quoad* the alleged defamatory matter.

There is not any allegation in the petition that I have not myself heard many times; it is nothing astonishing therefore that the defendant heard the charges and believed them.

The strongest allegation which would strike a stranger is that of the Inspector's relations with Sivasangu Tevan. The Inspector cannot complain of this, if the common rumour be true that Sivasangu Tevan was for years the Inspector's bandy-driver; nor as to the delay in arresting Sivasangu, which is a matter of public notoriety.

4. For these reasons I quash the conviction, though practically there will be no result as the defendant has served out his imprisonment.

5. I regret to see that the Inspector is allowed to remain in Ambásamudram. He was originally turned out of the taluk for concocting Sessions Case 56 of 1876, which the defendant has filed in this appeal. I myself tried that case, and as a result the then Superintendent of Police went down and made a local inquiry and himself prosecuted the Inspector before the District Magistrate, but the witnesses had been tampered with and the case failed, though the truth was well known.

Since then this Inspector has been put in jail on a charge brought against him by his own department, and has been committed to the Sessions, where he again escaped. A man of such evil repute should not be in a hurry to institute prosecutions for defamation, lest he be answered by the 1st Exception, though the 2nd, in my opinion, sufficiently meets this particular case.

In 56 of 1876 no one man could appear to greater disadvantage, and therein he admitted that a predecessor of mine had condemned his conduct in a most unqualified manner. It is clear that two Judges have formed the worst opinion of him; that his own department have twice prosecuted him; and that two Head Assistant Magistrates have viewed his conduct with disfavor (one of them in connection with this very Sevasangu Tevan), and yet he is still retained in Ambásamudram on the plea that he is a good detective.

6. I think this prosecution ought never to have been instituted, and that the charges in the petition, being matters of common talk, should have been seriously investigated by the Police Department, and particularly that charge of the Inspector's holding property in the taluk where he has, by an error of judgment been put back and wherein he is now serving.

With this object I shall send the petition to the Superintendent of Police and point out to him that this Court views with displeasure the retention of this Inspector in Ambásamudram, an area which gives him scope for great mischief.

4th December 1880.

No. 2414.

Referred to the Inspector-General of Police, whose attention will be drawn to paragraphs 5 *et seq.* of the Judgment of the Sessions Judge of Tinnevelly. The Inspector-General will report on the advisability or otherwise of keeping the Inspector referred to at Ambásamudram any longer.

(Signed) R. DAVIDSON,
Chief Secretary.

18th December 1880.

No. 69. *From Colonel C. S. HEARN, C.I.E., Inspector-General of Police, to the Chief Secretary to Government, dated Madras, 21st December* 1880, *No.* 8606.

With reference to endorsement, No. 2414, dated 18th December, on a letter from the Registrar of the High Court of Judicature (herewith returned with enclosure), I have the honor to state that the matter has already come under my notice.

2. The grounds given by the Sessions Judge for condemning the character of Inspector Subramania Pillay are—first, hearsay and public notoriety; second, that he has been twice prosecuted by his own department. The Inspector was acquitted on each occasion, and I believe it is a primary judicial maxim that accused persons are presumed to be innocent until found guilty. As a matter of extra-judicial opinion I am not prepared to affirm that the Inspector has always been immaculate, but the crucial ordeal of two criminal trials has failed to establish proof of dishonesty against him.

3. Inspector Subramania Pillay is a man of remarkable detective ability and he possesses an intimate knowledge of the Maravers, the caste which furnishes all the most dangerous criminals of the district. This caste is very strong in Ambásamudram. The Inspector's conduct certainly fell under suspicion in that taluk some years back and he was removed, with the result that grave crime greatly increased. When all efforts had failed to effect the arrest of the notorious dacoit and murderer Sivasangu Tevan (alluded to by the Sessions Judge, Inspector Subramania Pillay was sent back to Ambásamudram. He arrested Sivasangu Tevan within three weeks (so that the Sessions Judge is wrong in attributing *delay* in the matter to this Inspector), and since then grave crime has been so effectually dealt with that Ambásamudram was never before so quiet. Although the petitioner in the case before the Sessions Court desired the Inspector's removal, the Superintendent states that the inhabitants generally most earnestly wish him to remain. Further, the Superintendent believes that the Inspector's removal will cause a serious revival of crime.

4. The Sessions Judge appears to have been mistaken in supposing that the Inspector possesses land in Ambásamudram Taluk. The Inspector did once employ Sivasangu Tevan as a bandyman, for the purpose of worming out information from him, but it was for a period of one month only.

5. I conceive that the Sessions Court has travelled somewhat beyond its province in exercising direct control over executive action by means of a communication to the Superintendent of Police. The opinion of the Court should, I submit, have been communicated to the District Magistrate for consideration. Under this view I have already instructed the Superintendent of Police to consult with the District Magistrate on the subject, at the same time expressing my own opinion that in face of the strong view held by the Sessions Court there is no course open but to remove the Inspector from Ambásamudram whatever the consequences may be.

No. 70. ORDER THEREON, 18th January 1881, No. 88.

The Government approve the Inspector-General's instruction to the Superintendent to dispose of the matter after consulting the District Magistrate.

2. The Session Judge was undoubtedly wrong in suggesting to the Superintendent direct the removal of the Inspector to another taluk. He should have conveyed the suggestion to the District Magistrate, who, if agreeing with it, would have pressed it on the Superintendent. The latter could decline compliance with the suggestion only if he had the support of the Inspector-General, when a reference to Government would be requisite.

(True Extract.)

R. DAVIDSON,
Chief Secretary.

To all District Judges.
„ all District Magistrates.
„ the Inspector-General of Police.

Exd. T. O'Connor.

Govt. of [1881] Madras.

JUDICIAL.

To

ALL DISTRICT JUDGES,

&c., &c., &c.

Dated January, 18*th*.

Issued

Recd. Encl.

G.O., 18*th January* 1881, *No.* 68.

JANUARY.
Nos. 68—70.

Police.—Orders passed respecting the disposal of the case of Police Inspector Subramania, whose removal from Ambásamudram in the Tinnevelly District was suggested by the Session Judge.

No 2592 3/85

From

Lewis Mc Iver Esquire.

Acting Registrar of the High Court of Judicature at Madras.

To

The Honorable R. Davidson. C. S. I.,

Chief Secretary to

Government.

Honorable Sir,

I am directed to forward herewith for the information of His Excellency the Governor in Council Copy of the Judgment in Criminal Appeal No. 23 of 1880 on the file of the Court of Sessions of the Tinnevelly Division with reference to the Judge's remarks on the Police Inspector.

I have the honor to be,
Honorable Sir,
Your most obedient servant,
Lewis Mc Iver
Acting Registrar,
Appellate Side

High Court of Judicature,
Madras, 16th December 1880.

Copy
Ed.
N. Lakshmanarao

In the Session Court of Tinnevelly

Tuesday the thirtieth day of November,
One thousand eight hundred and eighty.

Present

James Frederick Smaith Esquire,
Offg. Session Judge.

Criminal Appeal No. 20 of 1880.

Vyravandaie Pattasalai Weaver. Age 65 } Appellant (1st Prisoner)

Appeal against the conviction and sentence by the Acting Head Assistant Magistrate of Tinnevelly in Calendar Case No. 20 of 1880.

This Appeal Coming on for hearing: Upon perusing the Petition of Appeal and the record of the evidence and proceedings, and upon duly Considering the same after hearing the arguments of the Appellant who appeared in person, I do adjudge and order that the Conviction and sentence passed on the said Appellant be reversed and annulled.

The prisoner, a weaver, was convicted under Section 500 of defaming Subramania Pillay, Police Inspector of Ambasamudram in a Petition

Date of			
Presentation	Filing	Hearing	Order
9th November 1880	9th November 1880	29th November 1880	30th November 1880.

Judicial Office (Criminal Side)

From

The Asst: Register, Petn. Appl. Branch of Judicial Secretariat.

To

The Asst: Secretary to Government.

Dated 1st Decr. 1880.

Sir,

I have the honor to forward herewith one Enclosure, Petn. & Appl. 19/4 for the orders of His Excellency the Governor in Council on the Appeal of the Petitioner in Criminal Appeal No. 20 of 1880 on the file of the Court of Session of Tinnevelly Division, against the conviction & sentence passed on him by the Acting Head Assistant Magistrate of Tinnevelly.

I have &c.

Asst: Register.

Judicial (Criminal) Dept.
No. 2414
Dated 18/88 01

TO BE RETURNED WITH REPLY.

Return of the Judge: Asst: & Pleader's copy & the Petn: Appl: to Asst: Register Petn. Appl. Branch of Judicial Secretariat.

Judge: Asst: and Pleader's copy returned herewith.

18 Decr 80.

Sessions Judge
Tinnevelly Div.
Criml Sessions

to the Inspector General of Police in Madras, and fined 50 Rs or in default 3 weeks simple imprisonment.

The sentence has been carried out by the Prisoner in the gaol.

He now appeals in person, no Vakil being instructed. The point raised by the Appellant is whether the case falls within the exceptions 2 and 10 Section 499 Indian Penal Code.

The conviction is by the Acting Head Assistant Magistrate Mr. Hebbert.

2. The prisoner charged the Inspector of Police with aiding Maravans and chasing in the spoil, and without arresting Sivasangu Devan when he might have done. I do not think that this information was addressed to the Inspector General of Police comes under the Category of a caution. So this Exception 10 is not applicable. But Exceptions 2, 8 and 9 seem to me to meet the circumstances of this Case.

And therefore the real question we have to decide is whether the prisoner acted in good faith. As this point Indian Law Reports Vol II Calcutta Series 126 "In a charge for defamation the question to be decided is, not whether the allegations put forward by the accused in support of the defamation are in substance true, but whether he was informed and had good reason after due care and attention to believe that such allegations were true.

I think also that we must consider this question in its relation solely to the matter which is charged as defamatory for it seems that the Prisoner who has reasons for misliking the Inspector out of whose compound is so anxious for his house that he attached a sheet from an old Rahazis to the petition complained of.

This fact would not affect the question of good faith as to the charges and merely proves that Prisoner wishes at any price to be rid of the Inspector.

By Act XVIII of 1862, Section 2 good faith may be presumed unless the contrary appear.

3. Now I hold that the contrary does not any where appear in this case, quoad the alleged defamatory matter.

There is not any allegation in the petition that I have not myself heard many times. It is nothing astonishing therefore that the Defendant heard the charges and believed them.

The strongest allegation which on would think a stranger is that of the Inspectors relations with Sivasangu Tevan. The Inspector cannot complain of this, if the common rumour be true that Sivasangu Tevan was for years the Inspector's friendly driver. Nor as to the delay in arresting Sivasangu which is a matter of public notoriety.

4. For these reasons I quash the conviction, though practically there will be no result as the Defendant has served out his imprisonment.

5. I regret to see that the Inspector is allowed to remain in Ambasamudram where he was originally turned out of the lobby for concocting Sessions Case 56 of 1876 in which the Defendant has filed in this Appeal. I myself tried that case and as a result the then Superintendent of Police went down and made a local enquiry and himself prosecuted the Inspector before the District Magistrate

9/88 4

Magistrate, but the witnesses had been tampered with and the Case failed, though the truth was well known.

Since then this Inspector has been put in gaol on a charge brought against him by his own Department and has been committed to the Sessions where he again escaped. A man of such evil repute should not be in a hurry to institute prosecutions for defamation, lest he be answered by the 1st Exception, though the 2nd in my opinion sufficiently meets this particular Case.

In 56 of 1876 no one man could appear to greater disadvantage, and therein be admitted that a predecessor of mine had condemned his conduct in a most unqualified manner. If is clear that 2 Judges have formed the worst opinion of him, that his own Department have twice prosecuted him, and that two Head Assistant Magistrates have viewed his conduct with disfavour one of them in connection with this very Sivasangu Tevan and yet he is still retained in Ambasamudram on the plea that he is a good detective

6. I think this prosecution ought never to have been instituted, and that the charges in the petition being matters of Common talk should have been seriously investigated by the Police Department; and particularly that charge of the Inspectors holding property in trading unless he has by an error of judgment been put back and otherwise he is more serving.

With this object I shall send the petition to the Superintendent of Police and point out to him that this Court views with displeasure the petitioner of this Inspector in Ambassa and trust, an area which gives little scope for great mischief.

4th December 1880. (Signed) J. Fred: Smith.
Offg. Sessions Judge.

(True Copy)
(Signed) J. Fred. Smith
Offg. Sessions Judge.

(True Copy)
D. Morgan
Deputy Registrar,
Appellate Side.

Compared
A.K.
Sd. J. Lall Chuckerbutty

8/88

9 60

Chief Office of the Inspector General of Police,

No. 8606 *Madras, 21st December* 1880. 9/88

From

The Inspector General of Police,

To

The Chief Secretary
to Government
Fort St. George

Sir,

Enclosures. With reference to Endorsement No 2414 dated 18th December on a letter from the Registrar of the High Court of Judicature (herewith returned with enclosure) I have the honor to state that the matter has already come under my notice.

2. The grounds given by the Sessions Judge for condemning the character of Inspector Soobramoniah Pillay are 1st hearsay and publick notoriety. 2nd that he has been three times prosecuted by his own Department. The Inspector was acquitted on each occasion and I believe it is a primary judicial maxim that accused persons are presumed to be innocent until found guilty. As a matter of extra-judicial opinion I am not prepared to

Enclosure I

Re a letter from the Registrar Egmore to the Inspector General of Police dated 18th December 1880 No 2572.

Adjd 4/192/80

to affirm that the Inspector has always been immaculate, but the crucial ordeal of 2 criminal trials has failed to establish proof of dishonesty against him.

3. Inspector Soobramonia Pillay is a man of remarkable detective ability and he possesses an intimate knowledge of the Maravers, the caste which furnishes all the most dangerous criminals of the district. This caste is very strong in Ambasamudrum. The Inspector's conduct certainly fell under suspicion in that taluq some years back and he was removed, with the result that grave crime greatly increased. Whereas efforts had failed to effect the arrest of the notorious dacoit and murderer Sivasangu Thavar (alluded to by the Sessions Judge) on Inspector Soobramonia Pillay was sent back to Ambasamudrum. He arrested Sivasangu Thavar within 3 weeks (so that the Sessions Judge is wrong in attributing delay in the matter to the Inspector) and since then grave crime has been so effectually dealt with that Ambasamudrum was never before so quiet. Although the petitioner in the case before the Sessions Court desired

the

the Inspector's removal the Superintendent states that the inhabitants generally most earnestly wish him to remain. Further the Superintendent believes that the Inspector's removal will cause a serious revival of crime.

4. The Sessions Judge appears to have been mistaken in supposing that the Inspector possesses land in Ambasamudrum taluq. The Inspector did once employ Sivasangu Thavar as a laundryman, for the purpose of worming out information from him, but it was for a period of one month only.

5. I conceive that the Sessions Court has travelled somewhat beyond its province in exercising direct control over executive action by means of a communication to the Superintendent of Police. The opinion of the Court should be submitted, have been communicated to the District Magistrate for consideration. Under this view I have already instructed the Superintendent of Police to consult with the District Magistrate on the subject. at the same time expressing my

my own opinion that in face of the strong view held by the Sessions Court there is no course open but to remove the Co Inspector from Ambasamudrum whatever the consequences may be.

I have the honor to be
Your most Obt. Servt,

C Lemesurier
Inspector General of Police.

CB

Police

Judicial Department.

No. 4152 & 4288

12/86

From Registrar High Court

Dated 16 Decr 80: no 2572

& Insp Gen. Police d/ 21 Decr 80 no 8606

FOR ORDERS.

18th Jany 1881 no 88

Sayt

The Govt approve the I.G.'s instruction to be issued, to dispose of the matter after consulting the Dc Image -

2. The Sessions Judge was undoubtedly wrong in suggesting to the Govt, direct, the removal of the Insp. to another taluk. He should have conveyed the suggestion to the Dc Image, who, if agreeing with it, would have proposed it to the Govt

Sept

to The Collector & Dist Magte

desiring compliance with the suggestion only if he and the Govt of the I.G. when a reference to Govt will be requisite - Dft.

The Registrar High Court forwards copy of judgment of the Sessions Judge of Tinnevelly in which remarks are passed on the retention of Sobanamuya Pillay as Police Inspector of Ambasamudram.

The I.G. is of opinion that his retention is in the interests of the public good

G.O. 2 Dec 80 no 2511
5/1 Dft to I.G.
to dft to Govt
" T.G. Dec 2571

Dft. 1880 DEPT.

From

The Inspector Genl.

To (Police) of Police,

The Chief Secy to Govt

Fort St. Geo,

No. 4238 dated 10/12/80

Dated 21st Dec 1880.

Rec'd 22nd

No. 8606.

Offering his remarks upon the Report of the Judge of the Tinnevelly criminal Sessions dated 16th Dec 1880 recommending the dismissal from the Police Service of Sobanamuya Pillay of Ambasamudram.

14
88

FOR ORDERS.

14
88

FOR ORDERS.

Govt. of Fort St George.

Just

G.O. 18th Jany 1881, No. 88

Nos. 68–70.

Police. Orders passed respecting the disposal of the case of Police Dafr Subramania whose removal from Anbarasandram in the Tinnevelly Dt was suggested by the Sessions Judge