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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Judl DEPARTMENT

G.O. No.	<i>1811-12</i>	Press
B.P. No.		Mis.
Dated	<i>23-7-1894</i>	196

Not to be folded or roughly handled

To

*His Excellency the Right Honorable
Victor Alexander Bruce Earl of Elgin
and Kincardine P. C. L. I. D.
Viceroy and Governor-General of India,
CALCUTTA.*

The humble petition of Bashyam Iyengar,
Nagappa Goundan, Rungaswami Goundan,
Chinnakaruppa Goundan and Padmanaba
Iyer

Most Respectfully Showeth :—

1. That your Memorialists were on the 1st of June 1893, convicted by the Sessions Court of Coimbatore Madras Presidency of offences under Section 457, Indian Penal Code and Clause C. of Section 82, Act III of 1857 and sentenced to terms of imprisonment.

2. That the facts alleged by the Prosecution, were briefly, that Senemalai Goundan, the 1st witness for prosecution, left his native village, Karakapoliem, about 3 years previous to your Memorialists' prosecution to seek employment in a neighbouring village, that he found employment under Chinna Goundan, the 2nd witness to whom he was introduced by Mariappa Goundan, the 2nd witness; that he quitted the service of the 2nd witness in April-May 1891—and on his return home, discovered that during his absence, a sale-deed of his interest in certain immovable property purporting to be executed by him, in favour of your Memorialists, Bashyam Iyengar and Rungaswami Goundan and dated 7th April 1892 had been fabricated by your Memorialists and registered on the 8th April 1892, before the Sub-Registrar, of Perundurai.

3. That the witnesses called for the prosecution may be classified as "Official" and "non-Official." Of the former class were the Sub-Registrar of Perundurai, his Peon and the Stamp vendor who were cited as 4th, 5th and 6th witnesses for the prosecution respectively. The evidence of the 1st two of these witnesses was intended to establish the fact that the 1st witness for prosecution did not present for Registration the document impugned as forgery, and that of the 3rd that the stamp was not sold to the 1st witness for the prosecution, but your Memorialists submit for the consideration of your Excellency in Council, that their evidence by no means establishes these facts. The evidence of these witnesses appears in the printed papers herewith forwarded and your Memorialists beg to refer to the following Clauses therein; 4th witness, Runga Row, Sub-Registrar of Perundurai says "Recorded that Rungaswami Goundan (one of your Memorialists) presented before me a document, I cannot identify him. I cannot swear I did not see 1st prose-

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"cution witness as a person appearing before me. I cannot say positively one way or the other." The 5th witness, Munisawmy Naik Peon of the Sub-Registrar—"I see many people come to the Sub-Registrar's Office. I cannot now identify anybody. I see the 1st prosecution witness. I cannot say he never came to the office."

6th witness Venkataramana Iyen stamp vendor—"I do not remember who bought the stamp-paper A. I cannot say if any of the accused bought A from me. I cannot positively say whether 1st prosecution witness is the man who bought the stamp paper or not. It is not my business to identify the purchasers."

4. That with reference to the non-official witnesses called for the prosecution, your Memorialists beg to offer a few observations. The whole theory of the prosecution is based upon the absence of the 1st witness from his native village the suggestion being that advantage was taken of his absence to perpetrate the forgery charged. If, upon the evidence, it can be established that the 1st witness did not leave his native village, then, your Memorialists with confidence submit, that no credit whatever can be attached to any of these prosecution evidence. In order to establish this, your Memorialists beg to refer briefly to the evidence bearing on the point. The 1st witness accounts for his leaving his native village by stating that there was a draught, and that as no part of the family land was cultivated, he was driven to seeking a livelihood away from home. The 3rd witness for the prosecution contradicts him on this point; for, to quote from his deposition he says, "I have land 'dry and wet Both were cultivated that year'—(the year the 1st prosecution witness says he left his village) '1st prosecution witness has a garden. It was cultivated that year.' Again turning to the evidence of the defence, witnesses, the matter is placed beyond all doubt. The 1st witness for defence, the Karnam and Village Munsiff of the 1st prosecution witness's Village says *inter alia* as follows:—I 'know 'The 1st prosecution witness's lands. They were cultivated that year. There was sufficient rain that year. No remuneration was granted. The fields were then cultivated.' The 2nd witness says 'I remember Kara year before last. These lands (meaning '1st prosecution witness's) were then cultivated, and also in previous year I have to ascertain if land is cultivated. I make returns. I returned the land as 'cultivated. 1st witness for the prosecution was in the village in Kara year.' The '3rd witness for the Defence says 'I know 1st prosecution witness and his lands 'He lives in my hamlet next house to mine. He was not absent for any length of 'time during the last 3 or 4 years. My land is two fields south of his. His was 'cultivated the year before the last and always.' The 4th witness for the Defence says:—'I am Munsiff of Attavanai Pedariur. 1st prosecution witness's village is '2 or 3 fields from mine. The land adjoins. I know 1st prosecution witness for 'long and his fields. My land touches his on two sides, west and south. His lands 'were cultivated year before last and always. He always lived in the village. He 'was not absent."

5. That the foregoing statement of the evidence in your Memorialists' case places beyond all possibility of doubt that the reason assigned by the 1st prosecution witness for his absence from his native village was not true, and if not true, your Memorialists with confidence submit, that the foundation upon which the prosecution theory was based, is completely demolished.

6. That in addition to the above reasons which your Memorialists submit for the consideration of your Excellency in Council, as proving the falsity of the prosecution case, there are grave contradictions in the evidence of several of the witnesses for the prosecution, which also tend to point to the conclusion that the case against your Memorialists has been concocted. The 1st witness says that the 3rd witness told his father that a labourer was wanted at about 8. A. M., and that the same evening, he and the 3rd witness went to Maliampoham where the 2nd witness resides, and arrived there after dark, in fact after lamps were lit. The 3rd witness says that he and the 1st witness stayed at Kannakapuram for the night and got to Maliampalam after sunrise. The 7th witness for the prosecution Angappa Gounden says that he saw the 1st and the 3rd witnesses start for Maliampoliam about cold-rise time in the morning (S. A. M.) The foregoing are important discrepancies which neither the Sessions Court of Coimbatore, nor the High Court of Madras gave due weight to arriving at a decision in the case against your Memorialists.

7. That in addition to the above evidence for the prosecution, your Memorialists beg to draw the attention of your Excellency in Council to the evidence of Karuppa Goundan, the 8th witness for the prosecution, who in distinct and unequivocal terms, proves that the document impugned as a forgery was in truth executed by the 1st witness for the prosecution, which is really your Memorialists' case.

8. That the Assessors who tried your Memorialists were of opinion that the case against your Memorialists was not proved, but the learned Sessions Judge disagreed with such verdict.

9. That upon appeal to Her Majesty's High Court of Judicature at Madras, the finding and sentence of the Session's Court were confirmed in a Judgment, a copy of which is herewith submitted for the consideration of your Excellency in Council.

10. That your Memorialists beg most respectfully to point out that the judgment in question fails to deal with any of the important points urged in favor of your Memorialists, and in vague and general terms, condemns your Memorialists, on the unsatisfactory evidence of the complainant alone, supported in their Lordships' view by the story put forward by your Memorialists. Your Memorialists need scarcely point out for the consideration of your Excellency in Council that their Lordships of the High Court scrupulously avoid pronouncing an opinion on the prosecution case, and convict apparently because of some imaginary weakness in the case for the defence.

11. That with reference to the following observations of their Lordships, viz., "It is a very suspicious circumstance that no evidence is produced to show, that Rupees 63 or Rupees 37 was really advanced to the complainant, or generally as to the circumstances under which the sale, in itself an improbable transaction, came to be made." Your Memorialists beg to point that their Lordships have lost sight of the following important circumstances.

(a). The sale-deed is for rupees 100 as will appear from a reference to the printed copy of the document marked as Exhibit A, and herewith forwarded for the perusal of your Excellency in Council. The document was before

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their Lordships in appeal, and there was no reason whatever for their Lordships referring to the consideration for the sale in the obscure terms appearing in their Judgment.

- (b). The evidence given by the prosecution witnesses that the land was worth rupees 1,000 had reference to the value of the entire land. Their Lordships have failed to consider that what the 1st prosecution witness purported to convey by the sale-deed impugned was his individual interest; and that there were others also interested in the property. Furthermore, there was the important consideration, that the purchaser was really purchasing a Law suit, with all its attendant risks.

12. That your Memorialists feel keenly the injustice done them. And they assure your Excellency in Council that they are innocent men, and that they have unfortunately and unexpectedly been condemned at the instance of an unscrupulous prosecution not a particle of the prosecution case is true.

13. That your Memorialists are advised that the only course that they can pursue is to appeal to your Excellency in Council. No review of the findings of their Lordships of the High Court will lie, as such a procedure is precluded by the authoritative decisions of the High Court of Calcutta and Bombay.

14. That, on appeal to his Excellency the Right Honorable the Governor in Council, Madras, the original sentence passed upon your Excellency's memorialists was eventually confirmed.

15. That your Memorialists are conscious of the fact, that your Excellency in council do not interfere with the findings of judicial tribunals, except for some substantial reasons, but your Memorialists venture to submit, that there is a case in which there has been a palpable mis-carriage of justice which can only be redressed by the power vested in your Excellency in Council.

16. That your Memorialists submit herewith all papers, relating to your Memorialists' case and have underlined in red the various references contained in this Memorial.

17. Your Excellency's memorialists most respectfully and humbly pray that they may be rendered justice and mercy.

Petition from *Bahjain Rajan*
and others, prisoners, in prison
Case N. 30 of 1893 on the file of
the Sessions Court, Coimbatore

DATED 5 July 1894.

TRANSFERRED to the Chief Secretary to
Government for disposal.

(By Order.)

Receivd
for Private Secretary.

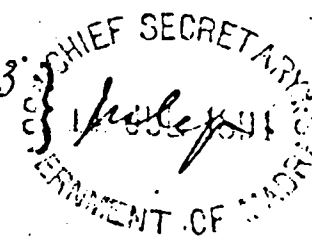
GOVERNMENT HOUSE,
Colacacumb.
13 July 1894.

(1894) DEPARTMENT.

FROM *Ch. Mac Carke Esq. J.C.*
THE PRIVATE SECRETARY TO THE
RIGHT HONORABLE THE GOVERNOR,

TO
THE CHIEF SECRETARY
TO GOVERNMENT,
Judicial DEPARTMENT.

Dated 13th July 1894
Received 13th July 1894



ENCLOSURE 13

Subject.

TRANSFERS a petition from *Bashiam*

Riyayas and others, to H.E.
The Honorary appealing against
the sentences passed upon
them by the District and
Sessions Judge of Coimbatore

Co. 128, 22.1.94

*Authorised to
be forwarded to
the Govt. of India
2/7*

*As to whether the petition
should be forwarded to the Govt. of India*

Cd. order 23 July 94 N=1811
*The petition will be forwarded
to the Govt. of India*

Letter N=1812, 2/7/94
Letter Sec. to the Govt. of India

*I am directed to forward
to consideration of the
memorial addressed to H.E. the
Govt. by Bhaskar and
Nagappa Goundan, Rangaswami
Goundan, Chinna Karuppa Goundan
& Padmanabha Aiyar.*

*These persons were convicted in
Coimbatore Sessions Case No.
of 1893, & sentenced, in the case
of Chinna Karuppa Goundan, to
one year's imprisonment for
making a false statement before
a Registering Officer, & in the
case of the rest, to three years
imprisonment, for forgery of a
valuable security.*

*On appeal, the High Court
confirmed the convictions &
sentences, & the prisoners
then petitioned the local Govt.
for remission of sentence under
Sec. 401 C.P. Act. It is now
not, however, seen whether to
interfere & the prisoners have
now, therefore, addressed the
Govt. of India.*

*G. of I. This is the
to be forwarded to the
Govt. of India.*

READ AGAIN ORDER OF GOVERNMENT, DATED
189, No. , MISCELLANEOUS.

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL (not page).

N.B.—
A — Copy in full
B — Copy to be copied
C — Copy abstract only
D — Copy binding only

BACK PAPER, No. 128 - 22-1-94 OF 1894

FORWARD PAPER, No. 4174 OF 1894

ORDINARY, MS.

Justice DEPARTMENT.
G.O., DATED 23-7-94.
No. 1511-12

INDEXED

When given for copying. 25/

[Despatch Abstract.]

Forwarding with remarks to the
Govt of India. Enclosed ad-
dressed to His Excellency the
Governor General by Bhadr
Bijayaram, Nagappa Pann-
dam & 3 others appealing
against the sentence passed
upon them by the District
and Sessions Judge of
Coimbatore.