

L. & M.
2,000-1-2-98.

Local & Munl. (1898) Department.

MISCELLANEOUS.

G.O., No. 845 M

DATED 2-5-98

INDEXED

RESPECTED

[Despatch Abstract.]

Accounts.

Sanctioning the payment of fees to the Government Pleader who conducted the defence on behalf of the Tahsildar in the suit brought against him by the ex-chairman of the Karur Municipality.

BACK PAPERS.

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

FURTHER PAPERS.

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

Local & Munl. (1898) Department.

CURRENT No. 1258.M.

From The Collector of
Coimbatore

*Recd
misc*

Order No 845 M. Mis of 2/5/98.

Sanctioned.

No. 4088.

*V.R
27/4/98*

*WT
27/4/98*

Dated 4-4-98

Received

Registered

Enclosures (2)

Spare copies.

SUBJECT.

~~Referring on the subject brought~~
~~by the chairman of the Lower~~
~~municipality against the Tah-~~
~~ildar and requesting sanction~~
~~for the payment of fees to the~~
~~first Pleader who conducted the~~
~~defence on behalf of the~~
~~Tahildar in the suit brought~~
~~by the chairman of Kamshett~~

J.
The Collector of Coimbatore.
Dated 23/5/98

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

FROM

THE COLLECTOR OF THE

Coimbatore DISTRICT,

To

THE SECRETARY TO GOVERNMENT,

Local & Municipal DEPARTMENT,

Madras.



Dated

Despatched

Received

4th
6 April 1898.

Doc No. *4088* of 97.
Rev

ENCLOSURES. 2

SUBJECT.

Intimating the result of the suit
filed by the Ex-Chairman of Marur
municipality against a Tahsildar
and requesting the Board's sanction
for the payment of fees to the
Government Pleader.

In the district court, Bombay
Tuesday, the 1st day of March 1898

Present

G. T. Mackenzie Esquire, District Judge

Original suit no 44 of 1897.

H. Sreenivasa Dyengar ——— Plaintiff

S. Krishna Dyer ——— Defendant

This suit coming on for first hearing on 28th day of February 1898 and having stood over for consideration till this day, the court delivered the following:—

Judgment: — Plaintiff is a pleader in Harur. The plaint sets forth that he was — chairman of the Harur Municipality from 1891 to 1894, that money in the municipal accounts was misappropriated, that defendant, who was Tahsildar of Harur, was well aware that Plaintiff was not privy to these embezzlements, that defendant maliciously and without reasonable cause reported to the Collector of Bombay in May or June 1895, to obtain sanction from Government to

to prosecute Plaintiff and that upon sanction obtained by such wilful misrepresentation, Defendant made an oral complaint before the joint Magistrate, who issued a warrant for the arrest of Plaintiff. Plaintiff claims Rs 3000 as damages.

2. Defendant, who now is Tahsildar of Sharapuram files a written statement in which he pleads that Plaintiff has no cause of action that Defendant wrote reports about the misappropriation under orders in the course of his duty, without malice and with reasonable cause and Defendant puts Plaintiff to the proof of any damage he may have suffered.

3. When the suit came on for settlement of issues, it was orally pleaded that the suit is time-barred.

4. In the discussion that took place regarding the issues to be framed, it appeared to me that it is my duty to stop the suit at this stage. I shall give a brief narrative of the facts which led up to this suit and are admitted by the parties.

5. Plaintiff, a pleader was chairman of the Municipality

Municipality of Harur. The Manager was one Venkataranana Dyer. In August and September 1894, the Assistant Inspector of Local Fund accounts discovered that sums of money were missing. The Manager was brought to trial and was convicted at the Sessions. His conviction was confirmed by the High Court. On his trial one line of defence was the suggestion that the Chaviman had taken the money, but this was not in any way proved by the Manager. Defendant who was then Tahsildar of Harur, wrote report concerning the misappropriated money and Government gave a sanction for the prosecution of the Chaviman. He was brought to trial for the misappropriation of certain items other than those upon which the Manager had been convicted and after a lengthy investigation was discharged by the Head Assistant Magistrate who held that there was great carelessness on his part, but no proved dishonesty. Meanwhile the Municipality of Harur filed a civil suit against this Plaintiff their late Chaviman, to recover moneys lost by his negligence. The Municipality got a decree which was confirmed on Appeal by the District Court.

that we have no previous history of this matter,
the Plaintiff now sues defendant for damages.
The cause of action is that defendant, knowing
that Plaintiff was innocent, wrote reports to the
Collector and made a complaint before the
Joint Magistrate as if Plaintiff were guilty
of misappropriation.

7. It is clear that whatever issues may be framed
the burden will lie heavily upon Plaintiff to
prove malice. The defendant was acting
throughout in the course of his official duty.
It is suggested that he volunteered the reports to the
Collector and that he had not been ordered to write
them. Even if that be so, the Tahsildar of Harur
was well within his duties in writing the reports.

The Cause of action is set forth in paragraphs
seven and eight of the plaint; Upon paragraph
seven, I asked Mr Desikachariar who appeared
for Plaintiff, to point out what passages in
defendant's reports were untrue and malicious.
He replied that he had not seen the reports and that
he wished this Court to summon the Collector to
produce them. These reports are privileged
communications and the Collector is not bound
to produce them. In the circumstances, I should
not

not call upon the Collector to produce them.
The burden is upon Plaintiff and all he can say
is that these reports may, if produced, disclose
malice.

9. Upon paragraph eight of the plaint, we
seem to be upon firmer ground, because Plaintiff
puts in the Head Assistant Magistrate's judgment
and the deposition given by the defendant.

Plaintiff points out that defendant made the
complaint before the Joint Magistrate and —
afterwards in cross-examination a witness
admitted that he could not for certain say who
had misappropriated these items. From this, it
is contended that his complaint before the Joint
Magistrate must have been untrue.

10. It appears to me that this contention cannot
seriously be put forward. There was grave
suspicion, very grave suspicion that Plaintiff
had embezzled money. This suspicion amply
justified an enquiry before the Magistrate, but
at the same time, what another answer could
defendant give in cross-examination than
that, that he did not know for certain who
had

ad taken the money? The judge who convicts,
to jury who give a verdict, do not know for
certain. They go upon a balance of probabilities.

I am of opinion that Plaintiff has no case
whatsoever, that this suit is vexatious and that,
irrespective of any section in the Code of Civil
Procedure, this Court has the power which is
inherent in all the Courts to reject a suit which
is merely an abuse of the process of the Court.

This suit is dismissed with costs.

Pronounced in open Court, this 1st day of March
1898

(Signed) G. J. Mackenzie
District Judge

(True Copy)

P. S. Srinivasulu
for of Collector

101
5.4.

In the District Court of Coimbatore
Present

G. J. Mackenzie, Esquire, District Judge
Decree in original suit no. 44 of 1897.

H. Sreenivasa Dyengar, son of Rangaiengar,
aged 46, Brahmin, Pleader, living in Cusab
Harur, Coimbatore District } Plaintiff

S. Krishna Dyer, son of Subba Dyer, aged 47,
Brahmin, Tahsildar of Dharaapuram,
living in Cusab Dharaapuram, Coimbatore
District } Defendant

Particulars of the Claim

Plaintiff is a pleader in Harur. The plaint sets
forth that he was Chairman of Harur Municipal
from 1891 to 1894, that money in the Municipal ac-
count was misappropriated, that defendant, who was
Tahsildar of Harur was well aware that plaintiff
was not privy to these embezzlements, that he
maliciously and without reasonable cause
reported to the Collector of Coimbatore in May or June
to obtain sanction from Government to prosecute
plaintiff.

plaintiff and that upon sanction obtained by such
 ful misrepresentation, defendant made an
 complaint before the joint magistrate who
 ed a warrant for the arrest of the plaintiff.
 intiff claims Rs 3000 as damages.

Date of the plaint 29-11-97.

Valuation of suit Rs 3000.

Where:- This suit coming on for first hearing
 one in the presence of Mr N. V. Desikachariar,
 for the Plaintiff and of Mr K. Narayana
 for Mr. J. S. Balakrishnaier, Vakil for
 defendant, this Court doth order and decree
 this suit be and the same hereby is dismissed.

This Court doth further order and decree that —
 intiff do pay to the defendant Rupees 150-8-4
 his cost in this suit.

Memorandum of Costs

	Plaintiff's costs.			Defendant's costs.		
	Rs	as	ps	Rs	as	ps
Stamp on plaint	175	0	0	0	0	0
for Vakalatnama	0	8	0	0	8	0
on petition	0	8	0	0	0	0
cess fee	1	0	0	0	0	0
if fee x not certified	0	0	0	150	0	0
Total	177	0	0	150	8	0

Given under my hand and the seal of the Court, this
 1st day of March 1898.

(Signed) G. J. Mackenzie
 District Judge.

(True Copy)

T. Hecunamb

for ag Collector

10/1
 5/4

10/1
 5/4

C No. 4088
Rev 497

Coimbatore District Collector's Office,

LOCAL MUNICIPAL DEPT
dated 4th April 1898.
1258m

FROM

J. A. Cumming Esquire

Acting Collector of the
Coimbatore District,

TO

THE SECRETARY TO GOVERNMENT,
Local & Municipal Department,
Madras.

SIR,

With reference to G.O no 378 m. mis, dated
14th February 1898, I have the honor to report that the
suit brought by the Ex-Chairman of the Harur
Municipality against the Tahsildar, M. R. S. Krishnan,
has been dismissed with costs and to forward herewith
copies of the District Court's decree and judgment
in the suit.

2. I have the honor further to report that I have taken
steps to collect the costs decreed to the Tahsildar and to
request the sanction of Government for the payment
of the regulation fee of Rs 150 to the Government
Pleader who conducted the defence on behalf of the
Tahsildar.

I have the honor to be
Your most obedient servant
J. A. Cumming
for Acting Collector

10A
J. A.

given for copying _____
 copied _____
 examined _____
 signed _____ 8/5

189

READ AGAIN G.O., No. _____
 189 , _____ DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DISPATCH
 IN ORIGINAL.

N.B.—

- A = Copy in full.
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