

[L. & M.]
[1,000-15-8-98.]

Local & Munl. (1899) Department.

MISCELLANEOUS.

G.O., No. 29 L.

DATED 9-1-99.

DESPATCHED INDEXED.

[Despatch Abstract.]

Establishment — Informing the President D. B. Malabar that Government is not prepared to interfere with the discretion of the President D. B. South Canara in the matter of the retention of Mr. Dod's & Krishna Menon's services by the Board & the continuance of the contract given to Iyagaraya Mudaliyar.

G.O.	No.	Department.	Date.

G.O.	No.	Department.	Date.

FURTHER PAPER

G.O.	No.	Department.	Date.

G.O.	No.	Department.	Date.

11-1.

Am

V.R.
15/12/98

Mr. Dance says Dodd deposed to the
Existence of a hill or mound 12 to 15 feet high.

Mr. Dancy's common sense
is deficient.

He should be told
order No. 29 dated 9-1-97
that Hook is not
prepared to interfere

with the discretion of but
the Presb. Synod. Canada

in the manner recommended^{de}

ASA 57.99.

I cannot find that this is so (paras. 31
33. 40 of S. J. judgment L). All I find

33. 40 of S. J's judgment L). All I find is that he started a theory that the difference in measurements might be

due to a Semi-Circular space, ~~where however~~
he ~~could~~ not say whether ^{it} ~~excavation~~ had or
had not been ~~made~~ excavated. The

defence founded upon this theory, the
H.C. declared to be false, but Mr. Dance
is incorrect in saying it found Dods'
evidence to be false.

147

3 199

To The Post & S. Malabar (P.S.)
Dated 10/1/99

Prishna Menon from the Service of the South Canara
District for giving false evidence in the
"Donaghue" case.

Local and Municipal Department.

Put up Sessions judgment. If sent in
office, call for it. H.T. 16/12/28

The judgment is put up and flagged in.

1/12/28

FOR ORDERS:

One Alexander Donaghue who was employed as Assistant Local Fund Engineer Tellicherry, Malabar District, was found to have defrauded the District Board to the extent of Rs. 14,000 in connection with the construction of the approach to a certain bridge and was convicted and sentenced by the Sessions Court of Tellicherry to ^{nine} years' rigorous imprisonment. On appeal the High Court affirmed the conviction but reduced ~~the years' rigorous imprisonment and a fine of Rs. 2500.~~ the sentence to Mr. Dods, the District Board Engineer of South Canara and Krishna Menon a local fund overseer in the same district, were examined as witnesses for the defence in this case, as they had formerly been employed in Malabar as Assistant Engineer and overseer respectively.

Mr. Dods is said to have deposed to the existence of a hillock 12 to 15 feet high on one side of the bridge, thereby attempting to induce the Court to believe that part of the money spent on the approach work had been expended in removing the hillock, while as a matter of fact it was subsequently elicited from the evidence of Mr. Maylor, the Local Fund Engineer of Malabar, that in the estimate for the work provision

M
See Pres^{ts} letter
of 29. April, 18,
but query
H.T.

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provision had been made ^{for} filling in a hollow at the place and not for removing a hill. On the other hand, Overseer Krishna Menon who is also said to have fallen foul of Mr. Maylor, is reported to have stated that certain sections which had been taken by Mr. Maylor himself with the greatest care on the spot, were utterly wrong. The High Court having pronounced as absolutely false, the defence raised to the effect that a large quantity of earth &c. had been removed from one of the sides of the bridge, the President of the District Board of Malabar (Mr. Dance) addressed the President of the District Board of South Canara (Mr. Ayling) requesting that proper notice should be taken of the conduct of Mr. Dods and Krishna Menon. Mr. Dance further brought to Mr. Ayling's notice that Mr. Dods had also behaved badly in having given immediate employment to one Thiagaraya Mudaliyar who, as contractor for the Kuttapoya bridge under the Malabar District Board, had given so much cause for complaint that his contract had to be taken away from him and the work done departmentally. As regards this, Mr. Dance considered that it was opposed to the recognised rules of official etiquette as well as to the interest of the public service to give a contractor who had done bad work in one district a lucrative contract in the adjoining district and he therefore requested the President of the South Canara District Board to take steps to cancel his contract

contract. In reply to this, Mr. Ayling stated that he was not prepared to take any departmental notice of the conduct of Mr. Dods and Krishna Menon in connection with the Donaghue case, as in case they had deliberately perjured themselves, the natural course would be to apply to the Court for sanction to prosecute them and that in the event of a conviction being secured, they would be dismissed from the Board's service. As regards the contractor, Mr. Ayling pointed out that no past misconduct or bad work under the Malabar Board was a legal ground for cancelling existing contracts under the Canara Board and that the cancellation of the contract would involve the Board in a suit for damages. Even as regards future contracts, Mr. Ayling stated that he should look rather to the quality of the man's work in Canara during the past two years than to his previous work in Malabar.

2. With the letter read above, Mr. Dance forwards copies of the correspondence which passed between him and the President of the South Canara District Board and requests that Government will be good enough to call upon the latter to dismiss Mr. Dods and Krishna Menon as he does not propose to prosecute them since they are not his subordinates and since the work of the Local Fund Engineering Department in Malabar had already been paralysed for several months owing to the District Board Engineer having had to devote his time to the prosecution of Donaghue. He

also

also requests that for the reasons mentioned in para.1 above, the President of the South Canara District Board may be directed to see that contractor Tiagaraya Mudaliyar is given no further work after the term of the present contract expires.

3. At the time of Krishna Menon's appointment as Local Fund Overseer in South Canara, Mr. Ayling was asked by Government (D.O.) to report his views as to whether the man had given false evidence in Donaghue's case and he stated in reply that Mr. Pinhey for whom he was then acting had told him that he had spoken to Mr. Thompson who tried the case in the Sessions Court and other people at Tellicherry and had been assured that there was no perjury in Dod's (and Krishna Menon's) evidence. Mr. Ayling also said that on going through copies of the depositions of Mr. Dods and Krishna Menon which had been sent to him by Mr. Dance, he found that although on the face of them they seemed quite irreconcilable with the evidence of Mr. Maylor, he could not find anything else to show that they were perjured, and that the judge also was apparently of the same opinion. On the strength of this D.O. from Mr. Ayling, the Government sanctioned the appointment of Krishna Menon as Local Fund Overseer - Vide G.O. No. 1235 L dated 15th July 1898. Although the conduct of Mr. Dods and Krishna Menon in connection with their evidence in the Donaghue case is open

Local & Munl. (1898) Department.

CURRENT No. 3112



From The President
District Board
Malabar

Order

C No. 2222 998
L 2

Dated 12th November 1898

Received

Registered

Enclosures Three.

Spare copies.

SUBJECT.

Requesting Government to
call upon the President
District Board South
Canara to dismiss two
of his subordinates for
giving false evidence in
the Donaghue Case.

21/11/98
H. S. S. S.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Malabar D. D. Office

Calicut 29th April 98.

Reference ~~1093~~ 778.

To

The President

Dist. Board. South Canara.

Sir,

I have the honor to bring to your notice the Conduct of Mr. Dods, your District Engineer, and Krishna Rao, a Local Fund overseer in the Service of the South Canara District Board.

2. One Alexander Donaghue was employed under the Malabar District Board as Assistant Engineer at Tellicherry. Among other works he was entrusted with the supervision of the Hootoopaya bridge approach. The total value of this according to the estimate was only about Rs 400. Donaghue reported in June last that the approach work had been completed and paid for. Yet in August, September, and October he paid away over Rs 10,000 to a Cooly without sanction for this very work. He proposed to pay the Cooly Rs 4000 more on the same account. But before he could do so his fraud had come to light and he was lodged in jail. The Cooly and he of course went free. They are now both expiating their crimes in prison.

3. Donaghue refused to make any statement to the Court or to offer any explanation. But at a late stage of the Case Mr. Dods was examined as a defence witness. He deposed to the existence of a hillock 12 to 15 feet high on one side of the bridge. The Court

Query.

was apparently expected to infer from this that part of the money paid to the Cooly had been expended in removing the hillocks. The Judge disbelieved Mr Dodo and recalled the Malabar District Engineer, Mr Maylor, who deposed that no such hillocks had ever existed. His avoidance is supported by the fact that in the estimate provision is made for filling in a hollow at this place, not for removing a hill.

4. It is of course open to me Dads to say that he had not been to the place for some years, and therefore was only able to recollect the imaginary hill instead of the actual valley. But how could the defence have known that his memory would play him this trick? If they had ^{not} known it they would not have examined him as a witness for the defence. It is therefore almost impossible to doubt that me Dads deliberately perjured himself. You will see from me magloos evidence that he and me Dads could not get on officially, and that the latter left Malabar under a cloud.

5. I take this opportunity to bring to your notice another matter in which we Dads have been -
-handed badly. one Thiagaraya Moodaliar -
was a Contractor under the Malabar District Board for the same Hootoopaya bridge work.
He gave so much Cause for Complaint that his Contract was taken from him, and it was determined to do the work

departmentally. on his res. Dads at once gave him employment in South Canara where, I understand, he is now an Assistant Contractor. In my opinion it is opposed to the recognised rules of official etiquette, as well as to the interests of the public Service, to give a Contractor who has done bad work in one District a lucrative Contract in the adjoining District. If you agree with me I request that steps may be taken to Cancel his Contract.

6. I now Come to oversee Xerishua meemon.
This man had also fallen foul of our mayor.
He was also examined as a defence witness
in the Donaghue Case. He was shown certain
Sections which had been taken by our mayor
himself with the greatest Care on the spot.

Heushia manon without going to the spot, - pronounced them to be utterly wrong. Surely such effrontery should not be allowed to pass unpunished.

7. It is apparently sufficient for any one who wants employment in Hawaii to have been badly thought of by her mayor. Thus Niagaraja moodaliar was first taken into the Hawaiian District Board's employ, then Dewshua meimon, and finally an application was made to me the other day by zow for the services of overseas Hawaii, whose conduct in connection with the Kootopoga fraud is now under inquiry. I refused to send him until the matter

was apparently expected to infer from this that part of the money paid to the Cooly had been expended in removing the hillocks. The Judge disbelieved Mr Dods and recalled the Malabar District Engineer, Mr Maylor, who deposed that no such hillocks had ever existed. His evidence is supported by the fact that in the estimate provision is made for filling in a hollow at this place, not for removing a hill.

4. It is of course open to Mr Dods to say that he had not been to the place for some years, and therefore was only able to recollect the imaginary hill instead of the actual valley. But how could the defence have known that his memory would play him this trick? If they had ^{not} known it they would not have examined him as a witness for the defence. It is therefore almost impossible to doubt that Mr Dods deliberately perjured himself. You will see from Mr Maylor's evidence that he and Mr Dods could not get on officially, and that the latter left Malabar under a cloud.

5. I take this opportunity to bring to your notice another matter in which Mr Dods has behaved badly. One Thiagaraja Moodaliam was a Contractor under the Malabar District Board for the same Kootoopoya bridge work.

He gave so much cause for complaint that his contract was taken from him, and it was determined to do the work

departmentally. On this Mr Dods at once gave him employment in South Canara where, I understand, he is now an Assistant Contractor. In my opinion it is opposed to the recognised rules of official etiquette, as well as to the interests of the public service, to give a Contractor who has done bad work in one District a lucrative contract in the adjoining District. If you agree with me I request that steps may be taken to cancel his contract.

6. I now come to Mr Dods's son-in-law. This man had also fallen foul of Mr Maylor. He was also examined as a defence witness in the Donaghue Case. He was shown certain sections which had been taken by Mr Maylor himself with the greatest care on the spot.

Mr Dods's son-in-law, without going to the spot, pronounced them to be utterly wrong. Surely such effrontery should not be allowed to pass unpunished.

7. It is apparently sufficient for any one who wants employment in Canara to have been badly thought of by Mr Maylor. Thus Thiagaraja Moodaliam was first taken into the Canara District Board's employ, then Mr Dods's son-in-law, and finally an application was made to me the other day by you for the services of one Mr Kanani, whose conduct in connection with the Kootoopoya fraud is now under inquiry. I refused to send him until the matter

had been settled.

8. I enclose certified copies of the depositions given in the Tellicherry Sessions Court by Messrs Dods, Keshua menon, and Maylas. I have marked in the two former with blue pencil the portions to which I have referred in this letter. I have not a copy of the estimate to which I alluded at the end of para 3. But you can if you wish, get a copy from the High Court. Where Donaghue's appeal is now pending.

Yours &c.

W. D. Dods.
President.

True Copy.

W. D. Dods.
President.

South Canara Dh Board Office
Mangalore. 25th May 1898.

Diono 296 398.
D.B.

From.

W. B. Aylmer Esq.

President Dh Board.

South Canara.

To.

The President.

Dist. Board Malabar.

Sir,

In reply to your letter of the 10th 398 dated 29th April 98. I have the honor to state that on the facts before me I am not prepared to take any departmental notice of the conduct of Mr J. C. Dods and Keshua menon in connection with the Donaghue Case. If you are of opinion that both of them have deliberately perjured themselves, I venture to suggest that the natural course is to apply to the Court for sanction to prosecute them; in the event of this being granted, I shall be prepared to place them under suspension and conviction will of course entail their dismissal.

2. As regards the Contractor Thiagaraja Moodalier I must point out that no past misconduct or bad work under your Board is any legal ground for cancelling existing contracts made on this Board; and the cancellation of his contracts suggested by you would involve this Board in a suit for damages. Even as regards future contracts, I should look rather to the

3/11/98

quality of his work in Canara during the last 2 years than to his previous work in Malabar.

3. In Conclusion I much protest against the remark in para 7 of your letter under reply to the effect that "it is apparently sufficient for any one who wants employment in Canara to have been badly thought of by Mr. Maylor". This statement appears to me to be a most unjustifiable aspersion on my predecessors in office.

4. The enclosures to your letter are returned herewith.

Yours &c.
to B. Aylmer.
President.

True Copy

Yours respectfully
J. or President

as.

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3/11/98

[L. & M.]

Loco

In the High Court of Judicature at Madras.

Monday, the first day of September.
one thousand eight hundred and ninety eight.

Present.

The Honorable Mr. Justice Subramania Iyer, C. J. &c.

And

The Honorable Mr. Justice Boddams.

Criminal Appeals Nos. 185 & 186 of 1898.

Criminal Revision Cases Nos. 133 and 257 of 1898.

J. Alexander Donaghy — Appellant in Criminal
appeal no 185 of 1898 — and

Respondent in Criminal Revision

Case no 257 of 1898 (1st Prisoner)

Kuliammadathil } Appellant in Criminal appeal
Ramanji — } no 186 of 1898. and Respondent

in Criminal Revision Case no 133 of

1898 — (2nd Prisoner).

The Public Prosecutor — Petitioner in the above
Revision Cases.

Appeals against the sentences of the Court of
Session of the North Malabar Division in Case
no 6 of the Calendar for 1898 and petitions to enhance
the sentences passed on the above accused.

These appeals and the revision Cases coming on
for hearing yesterday and this day; upon per-
-suing the petitions of appeal and revision, the re-
-cord of the evidence and proceedings before

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the Court of Session, and the further evidence
called for in Criminal appeal no 185 of 1898
as per order of this Court, dated 29th July 1898,
and upon hearing Mr J. G. Smith for Mr
E. Hutton, Counsel for the Appellants and the
public prosecutor in support of the conviction
and the revision petitions, the Court delivered
the following:

Judgments

Boddam, J. We are of opinion that the Con-
-viction of both the prisoners in this case
is right.

We are satisfied from the evidence of
Mr Paul that the defence raised to the effect
that the prosecution had not taken into ~~effect~~
consideration a large quantity of earth,
&c, which had been removed from the ^{new} south
side of the bridge between the old road and
the new is absolutely false. Mr Paul has
proved that the allegation of the prosecution
that there was a hollow there and not a
large quantity of earth to be removed is
true. This of itself is sufficient to show
that the first defendant has grossly
exaggerated the work done by the 2nd
defendant and has thereby been in-
-strumental in defrauding the Local Fund
Board of large sums of money which were
paid to the second defendant on the false
returns made by the 1st Defendant. In
these circumstances we see no reason

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[1898-1899]

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to think that the rest of the evidence of the
Engineer and others called to corroborate him
not true.

Whether in fact the 1st Defendant made the
measurements which he has vouched as being
made by him or not is immaterial, for he says
he made them; and ^{even} if he did not make them
he vouched them and in either case he must have
known that the measurements were wrong, and
is equally guilty of the offences charged.

As regards the second defendant he was paid
for work which he must have known perfectly
well that he had never done and we have no doubt
that this was the result of the arrangement be-
-tween the 1st and the 2nd defendants and that
each shared to some extent in the proceeds.

We think the Session Judge was wrong in de-
-clining to receive in evidence the letter V- a
letter from the 1st Defendant to his wife which
had been found by the Police when searching
her house under a search warrant. Section
122 of the Evidence Act does not apply to
such a case. A document even though it
contains a communication from a
husband to a wife or vice versa in the hand
of third persons is admissible in evidence
for ⁱⁿ producing it there is no compulsion
on or permission to the wife or husband
to disclose any communication. The Section
protects the individuals and not the communication.

if it can be proved without putting into the box for that purpose the husband or the wife to whom the Communication was made. For these reasons we think that the award is rightly received in evidence. We think the sentence is inappropriate and excessive and should be modified. The 1st accused is sentenced to 2 years' rigorous imprisonment and a fine of Rs 2,500, in default 9 months further rigorous imprisonment.

The Second is accused is sentenced to 2 years' rigorous imprisonment and a fine of Rs 5000, in default 9 months' further rigorous imprisonment. If the fine is not collected, two thirds of it should be paid to the Local Sanitary Board.

Subramania Iyer: J. I concur and would only add a few words as to the question of the admissibility of the letters addressed by the appellant to his wife. Now as to the letters which passed into the hands of the Police in Pondicherry, all that appears in the evidence with reference to the circumstances in which the Police took them is that they were found in the premises occupied by the wife and were taken in execution of a Search Warrant issued by a magistrate. Section 122 of the Evidence Act, relied on on behalf of the appellant in support of the contention that such letters were not admissible

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does not support it. The words of the Section - material to our present purpose are "compelled to disclose" and "permitted to disclose". These clearly imply that the party concerned is made or allowed to say or do something by way of disclosing a Communication made during marriage. But in the instance before us the appellants wife had not to act and, if that were a matter of any significance, did not, in fact, act in any such way. If at the time the Police took charge of the letters the wife was present, she was but a spectator of what was going on. ~~Further~~ That cannot possibly be held to come within the purview of the Section quoted. Further Sections 94 and 96 of the Code of Criminal Procedure, which should be read together, are also against the Appellants Counsel's contention, inasmuch as the former Section excepts only documents falling under Sections 123 and 124 of the Evidence Act, thus implying that documents referred to in Section 122 of that enactment are not exempt from being searched for, seized, and produced in evidence in a case such as this. Reg: V. Pamenter, to which we were referred, is distinguishable even if it were law which is however doubted in Taylor on Evidence (9th edition, P. 569. note). The American Cases, cited in P. 590 of the same work, to which our attention was called, are also scarcely

in point. According to Greenleaf on evidence these Cases are unfavourable to the Contention urged on behalf of the appellant, since the ruling there appears to be that a third person, who has overheard a conversation between husband and wife while it was going on, may testify to it (15th edition, Vol. I, P. 347. note. See also Reg. v. Simons, 6 C. and P, P. 540). Be this as it may, it is perfectly clear from the passage in Greenleaf which refers to the said American Cases, that in the United States it has been held that a communication between husband and wife, if it is in writing, is not privileged if the writing gets into the hands of third parties. As to the letters taken by the Police from the Post Office, these having been seized before they reached the addressee, the wife, it is a question whether they can be treated as communications 'made' to the wife within the meaning of Section 122 relied on. But assuming that they could be so treated they must also, for reasons already given with reference to the letters taken in Pondicherry, be held to be admissible.

ordered accordingly.

Edw. C. Ramanaiair.

By J. J. Gillespie
By Registrar

To The Sessions Judge, North Malabar. Appellate Side
in duplicate with record.

True Copy.

True Copy.

cc. 2 or 3 members.

By J. J. Gillespie.

By Registrar. Appellate Side.

3/11/96

[L. & M.]
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No. 2222-778.

FROM

Malabar District Board's Office
CALICUT 12th November 1898

J. W. Davis Esq.

PRESIDENT, DISTRICT BOARD,

Malabar

To

LOCAL & MUNICIPAL DEPT.
CURRENT NO. 3/11/96

Sir,

I have the honor to enclose Copies of my letter by memo 1003 dated 29th April 98. to the President District Board South Canara, and of his reply Dis n. 290 778, dated 25th May 98.

2 I also append for easy reference an extract from the judgment of the High Court in the appeal presented against their Conviction by Donaghue and his accomplices. A true Copy of the entire judgment is enclosed:-

"We are satisfied that the defence raised to the effect that the prosecution had not taken into consideration a large quantity of earth &c. which had been removed from the left side of the new bridge between the old road and the new is absolutely false. Mr. Paul has proved that the allegation of the prosecution that there was a hollow there and not a large quantity of earth to be removed is true."

3. The High Court having found that the evidence given by Messrs Dado and Keshava menon is absolutely false I request that Government

will be good enough to call upon the President of the South Canara District Board to dismiss these persons. I do not propose to prosecute them. They are not my subordinates, and the work of the Local Land Engineering Department in Malabar has already been paralysed for several months owing to the District Engineer having had to devote his time to the prosecution of Donaghue and his accomplices.

4. I would also respectfully ask the Government whether it considers that a Contractor whose services have been dispensed with by one local body for bad work should immediately be given employment by another. If the Government agree with me that such a course is "opposed to the recognised rules of official discipline, as well as to the interests of the public service", I request that the President of the South Canara District Board may be directed to see that Mlaganaya Moodalians Contract is cancelled as soon as its term expires.

Yours faithfully,

Sir,

Your most obedt. Servant.

[Signature]
President.

25.

V. P. M. S. (25) J. J. Gillespie.
By Registrar. Affiliated Ltd.

[L. & M.]
2,000-12-2-25.

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DATED

READ

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DUTY.

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

N.B.—

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.