

Pension (1898) Department.

ORDINARY MS.

G.O., No. 769

DATED 8 Oct 98

[Despatch Abstract.]

Withdrawal of Pension

BACK PAPERS.

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

FURTHER PAPERS.

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

Pension Revenue (1898.) Department.

CURRENT No. 765

Read AG, Sult. 263 29-9-98 From The AG Collector
On letter from Col. S. Canara to AG South Canara.

Order No. 764 of 8 Oct 98.

The pension with Ref on C No. 914 of 1898.
is withdrawn from the
date of conviction, the
16th of July 1897.

Dated 16th August 1898.

Received 10. 9. 98

Registered 10. 9. 98

Enclosures Two.

Spare copies

M. L. 1706 10/98

To the Secy Genl

To the Collector S. Canara

SUBJECT.

Pensioned Taluk Peon
Submitting for the orders of
Government under Art. 383 of
the Civil Service Regs. the case
of ——— convicted of the
offence of mischief by fire
under Section 436 of the I.P.C.
& sentenced to 12 months
rigorous imprisonment.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

D. 1,000-84-97.

Pension
REVENUE DEPARTMENT.

C. No. 765

From The Govt. of S. Canara, d/16-8-98, No. 914

" The A.G. Dated 9th Sept

1898. No. 3AD
263

FOR ORDERS.

Please see the Collr.'s letter d/16th Aug: '98, No: 914. ^{the 16th} July '97, pensioned ^{Paluck} peon, Koti, was convicted ^{on the 16-10-97} of having set fire to a shop at Shivalli and caused its destruction, and sentenced under section 436, I. P. C. to 6 months' rigorous imprisonment by the Sessions Judge, South Canara. The High Court considered the punishment quite inadequate and accordingly enhanced it to 12 months' rigorous imprisonment. His pension remains undrawn from 1st May 1897, and the Collr. has submitted the case for the orders of Govt. under Article 383 of the C. S. R. The Collector says that the pensioner's statement that he is innocent and that his conviction was due to the machinations of his powerful enemies is worthless. He, however, recommends that

Pension Rs 3.
per m.

C209/98.

as the man is old, poor and in illhealth and

FOR ORDERS.

was apparently drunk when he committed the offence, and expiated the offence with 12 months imprisonment, the case may be viewed with leniency. The man is only 54 years of age now.

As he was convicted of a serious crime, his pension should, it is submitted, be ~~stopped~~ ^{or reduced} from the date of conviction.

In the case of a serious crime such as this I think there should be no hesitation as to the forfeiture of the pension. His age & poverty should be considered by the pensioner himself & should bar him from crime.

MA 3.10.98

It is a difficult case. No doubt the court may take away the pension altogether: but the man is old & poor. It may perhaps be reduced to Rs 2 & paid from the date of his release from prison?

See
Please see draft.

The date of conviction is the 16th July 1897.
The pension has not been drawn from the 10th May 98.

Enclosure Not in a letter to the Secretary, D. J. P. Res. Dept. July 1897.
V. 9/11 dated 16th August 1898.
CORO. 1999/97
Jude

JUDGMENT.

In the Court of Sessions, South Canara.

Friday, the 16th day of July 1897.

Sessions Case No. 15 of 1897.

PRESENT: H. G. Joseph Esq.

Queen-Empress Vs. KOTY (defended).

(Committed by Mr. A. Devappa Punja, 2nd Class Magistrate of Udipi).

Charge: Mischief by fire—Section 436 I. P. C.

Assessors: Messrs. 1. Sundareshwara Aiyar (Tamil Brahmin).
2. Joshua Abraham (Protestant Christian).

Opinion of the Assessors: Guilty.

Finding of the Judge: Concurred with Assessors.

Sentence: To suffer 6 months' rigorous imprisonment.

Judgment: Accused KOTY—a retired Taluk peon—is charged with having on the night of 18th February at Shivalli set fire to the shop of one Annaya Prabhu, prosecution 1st witness, and caused its destruction and thereby committed an offence punishable under Section 436 I. P. C.

2. On the evening of that day there was a "play" going on at Perampalli (2 miles off). Prosecution 1st witness having closed his shop, which is close to his dwelling house, was going off to this play when he met accused (who was apparently drunk), they had an altercation which ended in accused, who was pushed off by prosecution 1st witness, falling down. He got up vowing vengeance and prosecution 1st witness went off to the play.

3. Prosecution 2nd witness, Nagamma, the wife of the elder brother of 1st prosecution witness, and 3rd prosecution witness Kamala, his own wife, were the only persons left in the house. They were sitting in the Chavadi knitting flower garlands. They say that after nightfall (the time as fixed by other witnesses both prosecution and defence is about 10.0 P. M.) they heard accused coming with muttered curses against the 1st prosecution witness, on which they left the verandah and went behind a tree from which they watched him: and then saw him throw upon the roof a lighted

Accused's sister Durgi they say "dondi" (i. e. a collection of rags). On this they gave alarm was also with him.

and 4th prosecution witness Manjunath Hegade a neighbour came up. He says he heard the two women crying out that "KOTY had set fire" and came up and found the shop burning: on this he raised a further alarm and others came also. They found it was useless trying to save the shop which was only a small roof and directed their attention to saving the house by pulling off the thatch and pouring water on it. This was at length effected.

4. That same night prosecution 2nd witness went to the Police Station and gave a complaint which was embodied in Exhibit A and stated the above facts as to the fire being caused by accused.

The woman speaks Konkani and the statement recorded is in Canarese. In the said statement she was made to say that the accused set fire with a torch (sute) instead of a lighted rag (dondi). The defence is based almost entirely on this supposed discrepancy.

5. The offence as mentioned above is supposed to have taken place on 18th February and the information was given to the Police the same night. The Diary shews that the trial before the Magistrate commenced only on 10th May. The delay of 3 months is accounted for by the fact that 5th prosecution witness *Miranda* the Head Constable (who took charge of the Police Station at Shivalli shortly after 18th February) in his report dated 12-3-97 sent to the Stationary Sub-Magistrate through the Inspector referred the charge as a false one: the Inspector in forwarding it says that there does not seem to be any reason for distrusting the evidence for the prosecution and asks for orders of the Court.

The order of the Magistrate is "The Police will try further in detecting the case." Nothing further was done till the Head Assistant Magistrate sends orders to the Police in April. *Miranda* then sends in to the Head Assistant Magistrate direct (not through the Inspector) a report, dated 25-3-1897 again referring the case as false; repeating his former report and adding about the discrepancy between the "dondi" and "sute." On this the Head Assistant Magistrate ordered the case to be tried and this commitment is the result. The principal reason given by the Police to the Head Assistant Magistrate for distrusting the case is that "the neighbours do not come forward to support it," and that 4th prosecution witness does not say that he saw accused setting fire.

6. Accused's defence is that there was an altercation between himself and *Annayya Prabhu* and he was knocked down, and that he then went home and knew nothing about the fire till the following morning. His story is attempted to be supported by defence 2nd witness who says he was sleeping at the house of accused that night: but his story is different, he says he was awake by seeing the blaze and hearing the cries (the house of accused is close to that of prosecution 1st witness) and that accused was then up and moving about. The other defence evidence is that of defence 1st witness *Naga*—a young Taluk peon—who says that he was with accused when the altercation took place and led him home and adds that he then saw light through the chinks of the planks which form the front of the shop after it was closed for the night. This is intended to prove the probability that the fire was accidental and caused by the carelessness of prosecution 1st witness in leaving a lamp burning when he closed the shop.

This witness was examined first as a Court witness and as the Magistrate says showed an inclination to favor the accused (as might naturally be expected from a feeling of *esprit de corps*). Before this Court he appears as a defence witness and the disposition to favor accused is more apparent. I do not think the story of the light is one deserving of any credence: it made its appearance first at the trial in May and the Police having twice referred the case as false are not likely to have neglected this important piece of evidence if it had been available. The defence also made a point of the fact that the Taluk Duffadar who was, as admitted by the women, present during the fire was not called by the Prosecution as a witness. The reply to this is that the same influences were likely to affect him as have affected defence 1st witness, and the fact that he too does not appear for the accused tells rather against defence. The other defence witnesses are men who depose that they went to help to put out the fire and that after it was over one of them—defence 3rd witness, a Billavar by caste—asked the

women how the fire was caused and they said they did not know. I do not think this defence evidence is of any value against the immediate information given by the prosecution 2nd witness to the Police that the fire was caused by *Koty* who was seen by herself and prosecution third witness setting fire to the roof. With regard to the "sute" and "dondi" discrepancy—the translation from one language into another may well account for that: the woman says that she always spoke of a "dondi."

7. The Assessors finding no reason to doubt the evidence of the prosecution witnesses gave it as their opinion that accused did set fire to the house and was drunk at the time.

With this I concur. I, finding accused guilty of the offence punishable under Section 436 I. P. C., sentence him to six months' rigorous imprisonment.

Mangalore, }
16th July 1897. }

(Signed) H. G. Joseph,
Sessions Judge.

Exd. P. Narsing Bhandarkar.

(True copy).

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To

The District Magistrate
of South Canara
(with 28 photocopies)

Appendix.

A.

THE FOLLOWING WITNESSES WERE EXAMINED FOR —

(i) PROSECUTION.

1. Andayya Prabhu.
2. Nagamma.
3. Kamala.
4. Manjunath Hegade.
5. Miranda (Head Constable).

(ii) DEFENCE.

1. Naga.
2. Abbu Baker.
3. Sadia.
4. Thoma Pujari.
5. Muttayya Shetti.

B.

THE FOLLOWING EXHIBITS WERE FILED —

(i) FOR PROSECUTION.

- A. 18— 2—1897. Complaint of Nagamma to Police Station.
- B. 12— 3—1897. Report of Miranda (Head Constable) submitted to the Magistrate.
- B₁. Ditto. Endorsement thereon by the Police Inspector.
- C. 25— 4—1897. Crime Report to the Head Assistant Magistrate.
- D. 20— 5—1897. Statement of accused before the committing Magistrate.

(ii) FOR DEFENCE.

- I. 15— 5—1897. Deposition of Nagamma before the committing Magistrate.
- II. 18— 5—1897. Plan.
- III. 20— 5—1897. Deposition of Naga before the committing Magistrate.

Dis No: 553/97
Cec

Forwarded to the J. of P. for the
conduct of the const. and
seems in duplicate.

31/7/97 W. H. W. H.
Subach

Sessions Case No. 15 of 1897.

Copy communicated to the
Stry: Sub Mast of Hoipi
for information.

reampalme } (op)
2-8-97

In the Mast

QUEEN-EMPRESS Vs. Koty (defended).

Decd
8u
3/8/97

Judgment (copy).

1,440

Decd
13/8

253/97
Cec

2-8-97

123/97
Cec

Sub Mast of Hoipi
for information
3-8-97
four papers

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3-8-97
four papers

SOUTH CANARA DISTRICT.

Back paper No. *1875* of 189

No. *553/97*
cedm

DATED *2-8-* 189*7*

Forward No. *868/47* of 189

Current Nos in this file *1929/97*
chh

To whom issued *Supt. of Police*
Canara
& Secy. Sub. Dist. Div.

Date of despatch *3-8-97*

No. of pages in this file. *Four pages*

RECORD ABSTRACT.

Communicating copy
of judgment in Session
Case No. 15 of 1897
in the file of the Sessions
Court South Canara

Current No. *145 of 1897*
Clerk
Date *1-11-1897*



IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the twentieth day of October,
One thousand eight hundred and ninety seven.

Present:-

The Honourable Sir Arthur J. H. Collins, Kt, Chief Justice.
and
The Honourable Mr. Justice Shephard.

Criminal Appeal No. 471 of 1897.

and

Criminal Revision case No. 314 of 1897.

(Taken up No. 26 of 1897.)

In Criminal Appeal No. 471 of 1897.

Koty.....Appellant.

(Prisoner.)

Appeal against the sentence of the Court of Session of
the South Canara Division in case No. 15 of the calendar -
for 1897.

In Criminal Revision case No. 314 of 1897.

Koty.....Accused in Session
case No. 15/97 on the
file of the Sessions
Court, South Canara.

This Appeal and the Revision case coming on for hearing
after service of notice on the appellant (accused) and the
Public Prosecutor, and Counsel not appearing on behalf of
the appellant (accused): Upon perusing the petition of appeal
and the record of the evidence and proceedings before the
Court of Session and upon hearing the arguments of the Public
Prosecutor in support of the conviction in the appeal and on
behalf of the Crown in the Revision case, the Court deliver-
ed the following

Judgment:-

The evidence seems clear. The com-
plaint was laid against the prisoner from the very first.

The appeal must be dismissed.

The sentence is quite inadequate. The *very* least

sentence for such an offence ought to be twelve months rigorous imprisonment and we alter the sentence accordingly.

The Public Prosecutor points out that in many of the the South Canara cases the conduct of the Police is most unsatisfactory and we have long been of the same opinion.

Ordered accordingly,

Alurji

Ag: Dy: REGISTRAR,

Appellate Side.

To

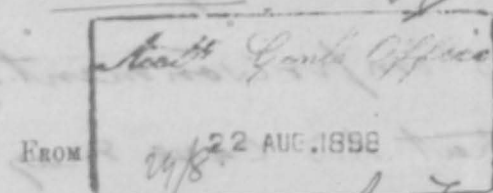
The Sessions Judge South Canara Dt: in duplicate. with record

The Dist: Collector of South Canara Collector

The Inspector-General of Police, MADRAS.

Typed by:- P. D. 23/10/97

By on C No 914 of 1898
over 2757



SOUTH CANARA COLLECTOR'S OFFICE,

Mangalore,
16th August 1898.

FROM 22 AUG. 1898

A. F. Pinhey, Esquire,
Acting Collector of

South Canara,

To

THE CHIEF SECRETARY TO GOVERNMENT,

Revenue Pension Department,

Fort St. George.

(Thro' the Accountant General)

Sir,

I have the honor to submit for the orders of Government under Article 383 of the Civil Service Regulations the case of pensioned Saluk peon Kote drawing a monthly pension of Rupees 3 under Permanent Pay Order No 22681, dated 22nd April 1895.

2. The man was convicted of the offence of mischief by fire under Section 436 of the Indian Penal Code and sentenced to 6 months' rigorous imprisonment by the Sessions Court, South Canara. The High Court affirmed the conviction but enhanced the punishment to 12 months' rigorous imprisonment. Copies of the Sessions and the High Court judgments are enclosed.

3. The pensioner on being called upon to show cause why he should not forfeit his pension merely states that he is innocent and that his conviction was due to the machinations of his powerful enemies. The explanation is worthless in the face of the judgments. The man, however, is old, poor and in ill-health.

He was besides apparently drunk when
he committed the offence and has expiated
the offence with 12 months' imprisonment.
I therefore recommend that his case may
be viewed with leniency.

I have the honor to be,
Sir,
Your most obed^t servant

D. Smith
For Acting Collector.



Fort Saint George
N^o 340
263. Accountant Genl's office
9 September 1898

Submitted to Government for orders
with reference to article 383, Civil Service
Regulations and para 3 of G. O. N^o 798
dated 6 September 92. His pension was
sanctioned in G. O. N^o 373 dated 9 April
1895 and it remains undrawn from
1st May 1897.

for Accountant General.
To J. H. Dawson
The Secretary to Government
Pension Department
9/9

When given for copying _____
When copied _____
When examined _____
When signed _____

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

CURRENT No. _____

ENCLOSURE TO C. No. _____

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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