

Public (1897) Department.

ORDINARY MS.

G.O., No. 1171

DATED 4. 9. 97.

[Despatch Abstract.]

Communicating, with remarks, to the Government Solicitor letter from The Collector of Ganjam asking for instructions regarding the further prosecution of the case against Lakshminarayana Patnaick.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
C no 3475 of 97.							
= 180 1261 of 129-97							

Public
Judicial (1897) Department.
Government Madras.
CURRENT No.

CHIEF SECRETARY
 17 AUG 1897
 GOVERNMENT OF MADRAS

*From The Collector of
 Ganjam*

Order

*Dis No. 10
 Conf 97.*

Dated 12th August 1897

Received 17th

Registered 17th

Enclosures 1.

Spare copies.

Recd 19/8/97

SUBJECT.

*Submitting report on the
 Criminal Case filed against Lak-
 -shuninaragana Patnaito.*

BACK PAPERS.

G.O.	No.	Department.	Date.
fr	662	Pub	6-5-97
	R 431		3-4-97
	1035		24-9-96
	1024A		21-2-96
	1378	Just	24-8-96
	856		13-8-96

FURTHER PAPERS.

G.O.	No.	Department.	Date.
	889	Pub	10-9-88

Dis. No. 10/Conf/97

Confidential

Urgent

From Mr. D. Taylor Esquire M.A.,
Ag. Collector of
Ganjam.

To The Chief Secretary to
Government,

Madras.

Dated Camp Kasibugga 9th August 1897.

Sir,
I have the honor to report that, owing to the death of Mr. A. B. Willimott, Senior Assistant Magistrate, the case against Lakshminarayana Patnaik has been left undisturbed of, and it is probable that the accused will apply for a rehearing of the case from its commencement.

2. The Public Prosecutor, Beshampur, now submits a confidential letter reviewing the case as it stands and requests for further orders should a fresh hearing be applied for.

3. Some of the documentary evidence relied on for the prosecution appears to be inadmissible.

inadmissible in evidence against the accused and there are other points of doubt, which are treated in detail by the Public Prosecutor.

4. Personally I see no reason to stop further action, nor do I approve of an application for further adjournment on the part of the prosecution.

5. There is however a further objection which suggests itself to me. The case is posted to the 1st ⁱⁿ instant. It was specifically transferred for trial to the Senior Assistant Magistrate of this District. At present there is no Senior Assistant Magistrate. Mr Ashe is in charge of the office, but until he or some other officer has been Gazetted to act as Senior Assistant Magistrate by Government, I am of opinion that he has no jurisdiction in the matter.

6. I have therefore pending order directed that no application for adjournment should be made by the prosecution

prosecution and that the case should be proceeded with if by the date fixed there is a duly constituted Senior Assistant Magistrate: otherwise that exception should be taken on the ground of want of jurisdiction and adjournment applied for until some officer is duly Gazetted to the post of Senior Assistant Magistrate.

I have the honor to be
Sir,
Your most obedient servant

W. H. P.
for ag Collector

W. H. P.

Confidential

No. 157
5.8.97

From

Mr. H. D. Ramiah Panchulu
Gara

Public Prosecutor, Gaujam

To

The Collector and District
Magistrate, Gaujam, Chhatrapur.

Dated 5th August 1897.

The Honorable
Mr. Price -

} Versus

1. Lakshminarayana Pat-
naik.
2. his father Jagannath
Patnaik.

Sir,

I have the honor to state that in this case with the exception of one witness - not an important one - all the witnesses for the prosecution were examined and documents filed subject to objections taken by the defence, and the case was posted to the 17th instant for hearing.

2. Unfortunately, however, Mr. Willimott the acting Senior Assistant Collector who was trying the case died and I am afraid it may have to be tried by his successor de novo, at great expense and trouble.

3. Before the case is taken up again,

I think it would be well to see, now that we have on record all the available evidence, what chances there are of a conviction and I therefore beg to submit my views on the point, and to ask for certain instructions.

4. The evidence we have is as follows:-

(1) The evidence afforded by the horoscope said to be that of Bhagirathi the second younger brother of the 1st accused which if it be found to be genuine and admissible in evidence would show that the Bhagirathi himself having been born on 12-6-75, the horoscope filed by the 1st accused which showed he was born on 14-6-75 is utterly false.

(2) The opinion evidence of 1st accused's school mates who ~~they~~ say that they think that he must be more than 23 years.

(3) His applications for the various examinations in which he gave different dates of birth.

(4) The Service Register of Radha Krishna Patnaik

Patnaik's elder brother of the 1st accused which showed that he was born on 15-1-68, and the application for the Middle School examination, of these two brothers which showed their ages as 14 and 12 in 1886.

5. Briefly stated this is all the evidence for the prosecution.

6. Objection was taken to the admissibility in evidence of items 1, 2 and 4.

7. The objection to (1) is that granting that the date of ~~the~~ birth of Bhagirathi is relevant in fixing the age of the 1st accused, the particular document - the horoscope of Bhagirathi - which showed the birth date of Bhagirathi is not admissible in evidence, as it does not come under any of the clauses of Section 32 or any ~~of the clauses of Sec~~ other sections of the Evidence Act which make certain statements or documents made by 3rd parties admissible.

8. After carefully studying the various sections of the Evidence Act bearing on the subject

I am sorry I cannot find any section or authority for making this document admissible against the 1st accused though it may perhaps be admissible against the 2nd accused as an admission. I consulted several of my legal friends in whom I have confidence and they also are unable to show how this is admissible against the 1st accused.

9. The evidence bearing on this horoscope of Bhagirathi is briefly as follows:-

The astrologer who prepared the horoscope says that 15 years ago (ie, some 11 years after Bhagirathi's birth) the 2nd accused gave him on a piece of paper the dates of the births of Bhagirathi and of his several other brothers and asked him to prepare their horoscopes and he prepared them accordingly and gave them to the 2nd accused. The astrologer himself was not present at the birth of Bhagirathi or of any of his brothers, and he had no personal knowledge of the birth

dates

5
dates of any of the brothers and his only knowledge is the - above said memo - given by the 2nd accused, which after ^{the 2nd accused and others say that on his asking the 2nd accused for Bhagirathi's horoscope he} preparing the horoscope he directed Bhagirathi to give it and Bhagirathi brought the disputed horoscope from a hand box and gave it to the Deputy Collector.

The astrologer who prepared the horoscope is alive and gives evidence of his having prepared it but he had no personal knowledge of the truth of the date. The father who gave the date is alive, but being one of the two accused who are jointly tried he cannot give evidence on oath, and if examined he would say that this was a false horoscope, that Bhagirathi was not born in 1875 but much later on. Granting that the 2nd accused told the astrologer that Bhagirathi was born in 1875, when the father is alive and when he says it is not the correct date, I do not see how the statement in the horoscope can be

evidence

evidence against the 1st accused Lakshmi-
narayana Patnaik. The horoscope under the
circumstances does not seem to fall under
clauses 5 or 6 (9 Calcutta Series p 613) or any
other clause of Section 32 or under any other
section of the Evidence Act.

9.a. The objection as to (2) is that it is
mere opinion of persons who are not experts
and therefore inadmissible. Granting
that it is admissible as the opinion of
persons who may be said to have a
special means of knowledge it would
be hardly worth anything.

10. The objection as to (3) is that the
Service Register prepared by a 3rd party
is no evidence against either of the accused
especially when the person to whom it
belongs having been examined as a witness,
says that he cannot say that the birth
date in it is the correct date and that
it was only entered by guess. The objec-
tion as to the Middle School examination

Applications

7
Applications is that if the age of the 1st
accused as given therein be taken as true,
his age will be 21 or 22 years in 1896, that
the ages were put by mere guess and that
the application made by the elder brother
is no evidence against the accused under
any section of the Evidence Act, especially
in the face of the applicant's evidence that he
did not know his correct age but that he put
it by guess; that there was an intervening
brother who died ^{and} that the difference between
his age and that of the 1st accused must be
much more than 2 years.

11. The Service Register and the Middle-
School Applications, therefore, are practically
useless for the prosecution.

12. Then the only unobjectionable evidence
is that afforded by the 1st accused's 3
applications for his Matriculation exami-
nation. His applications of 1889, 1890 and
1891 show his birth of date as 2-1-74
10-12-75 and 3-10-74 respectively,
which

which his alleged horoscope shows that his birth date as 14-6-75.

13. Thus these applications will falsify his horoscope and show that he was giving false or imaginary dates, but none of them prove the real date of his birth, which is the thing which the prosecution wants to prove, or that the 1st accused is over 23 years on the 1st day of the year in which he applied to appear for the completion Competitive Examination.

14. Even if (1) Bhagirathi's suspected horoscope be admissible in evidence, it would only prove that the 1st accused must be older than Bhagirathi by at least 2 years - I say at least because there is no evidence as to the interval between the dates of the birth of the accused and his younger brother late Dasarathi, and between the dates of the birth of the latter and that of Bhagirathi, and considered

that

that there should be at least an interval of a year between each birth. If so even according to Bhagirathi's horoscope, the 1st accused could not have completed 23 years on the 1st day of the year in which the examination was to be held and this must be 1st January 1896, the application being in April 1896, and the ensuing examination being in August 1896. For taking the 1st accused to be two years older than Bhagirathi who according to the disputed horoscope was born on 14-6-75, the 1st accused must have been born about 14-6-73 and would have been only about 22 years 6 months on 1-1-96.

15. If then the attempt at cheating or giving false information within the meaning of Sec. 182 I.P.C. ^{considered?} considered in saying that the 1st accused did not complete 23 years on 1-1-96, whereas he did complete them the case must fail. On the other hand if it is considered in giving a ~~wrong~~ wrong date of birth, whatever be his age

age, then an offence can probably be made out.

16. The solution of this depends upon the wording of the certificate which the Chief Secretary is required to give. If he is simply to certify that the 1st accused would be below 23 years on the 1st day of the year of the examination, then there is no cheating or giving false information within the meaning of Section 182 I.P.C. as the 1st accused was not shown to have been more than 23 years old on 1-1-94.

17. Under these circumstances I beg to be instructed, if need be, after referring to the legal advisers of Government at Madras as to

(1) Whether the disputed horoscope of Bhagiradhi is admissible in evidence against the 1st accused or the 2nd accused or both, and if ^{so} under what section of the Evidence Act or other authority. As the point will have

11
have to be argued at some length, I beg to be favoured with somewhat detailed reasons if the opinion be in favour of the admissibility.

(2) What the exact wording of the certificate is which the Chief Secretary is expected to give and which he is giving in similar cases.

(3) Whether the accused could be convicted under either of the Charges if all that the prosecution can prove is simply that the 1st accused was older than what the horoscope the 1st accused ~~failed~~ would show, but not that he was over 23 years on the 1st day of the year in which the candidate desired to be examined.

(4) If the answers to these questions be unfavourable to the prosecution, what course I should follow regarding the further trial or retrial of the case.

18. I have thought it necessary to obtain these instructions as the complaint

was framed and the case ~~for~~ filed
at Madras by the Madras lawyers
and as the case is of some importance.

19. I beg to suggest that the hearing
of the case which is now posted to
the 17th instant, may be adjourned
pending the receipt of a reply from
Madras.

I have &c
Sd/- D. V. Ramaya
Public Prosecutor.
Ganjam.

(True Copy)

Chattram
12-8-97 }

28
MB

Signature
for ap. Collector

I hereby certify that (here enter name)
who is a candidate for
the Indian Civil Service has submitted
the proofs of his birth and has satisfactorily
shown that he was actually born on or
about the date stated by him, viz: the (here enter date)
of birth) — at (here enter place of birth) in the
(here enter name of the district) District of the Madras
Presidency a place within her Majesty's
Dominions and that he is (here enter national-
ity i.e. whether he is a Brahmin or a Christian
or a Muhammadan).

Public Dept.
Lr. 3073 of 1897

The following telegram will be
despatched to the Collector of
Ganjam, Bhatrapur.

6727 your letter ten
of twelfth regarding Lakshmi-
narayana Patnaik's case received
only seventeenth. ^{wire what steps} ~~More action~~
^{taken at hearing on that day.} ~~taken about further trial.~~

AK. From CS's orders.

20/7/97

900-

INDIAN TELEGRAPHS (Monthly Number.)

Code

To
(Office)

From
(Office)

Words.	Days.	Hours.	Minutes.	Official Instructions.
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To
(Person)

From
(Person)

CHIEF SECRETARY
23. AUG. 1897
GOVERNMENT OF MADRAS

32 Word Form.

From TX South TX

At Rev. Mis. no. To Rev. Mis. no.

W. M. M. M.
Telegraph Master

DOTACAMLINE 22-8-97

Public (1897) Department.

CURRENT No.

Telegram

From

*The Dist. Magh
Gangam*

No.

Dated 2nd Sep^r }
Received 3. " } 77
Registered 3. "

Enclosures

Spare copies

SUBJECT.

~~D.O.
Order~~
*My dear Sir,
Please see my
D.O. of the 24th ultimo
regarding Willimott's
successor at Gangam.
Have you taken H's
orders in the matter.
The important criminal
case referred to has been
adjourned to the 17th instant.
and the collector has wired
for orders on his pre-
vious communication
regarding the further trial
of the case.*

*Reporting adjournment of
Lakshminarayana Pat Naik
case to the 17th inst. requesting
instructions on his letter N.º 10
Confidential dated 10th August.*

G.O.	No.	Department.	Date.

G.O.	No.	Department.	Date.

The first of these is the fact that the
 system is not self-sufficient. It is
 dependent on the outside world for
 many of its raw materials and
 components. This makes it vulnerable
 to fluctuations in the global market.
 The second is the fact that the system
 is not very flexible. It is designed
 for a specific set of conditions and
 is not able to adapt to changes in
 the environment. This makes it
 difficult to use in a wide range of
 applications. The third is the fact
 that the system is not very reliable.
 It is prone to breakdowns and
 malfunctions, which can be costly and
 time-consuming to fix.

40



TELEGRAPHS

Monthly
Number

To
Office,

From
(Quincy)

Words.

Day.

Hour.

Minute

10/10/2019 10:10 AM

Instruction

To

From

(Person

Recd. from

25

Sent to

7. 2

48

Pres

Mts. by

•

Hence,

Math

Telegraph Master

47-**No 494 T-27 4 96-100000**

00TACAMUNE 3 9 97

— 3. —

NOTE FOR THE CHIEF SECRETARY.

Please see this case.
The 17th day (Chas. Allen)
fixed for this hearing having
passed it seems useless
to bring it to the present.
Should Mr. G. D. be
asked to write what has
been done?

As regards filling of this
appointment: Mr. Ashe,
not having passed the
love standard, is apparently
not eligible - (I am under
the impression that this is
so by any rule of India, or
that it is a rule of
this sort that can be
suspended). Perhaps P.S.

Should be told
Mr. G. D. by telephone that
18/8/27 this case has
been closed.

Handwritten notes at the bottom of the page, including "The case is closed" and "The case is closed" repeated several times.

~~NOTE FOR THE~~

Replied to the Private
Secretary 20-8-97.

In reply to your letter
saying that Wilbur's



August 1887

My dear Sir,

I write to remind you that Willimott's death has left the Senior Assistant Ship of Langam vacant. The reason why I ^{do this} ~~write~~ ^{bring} you on ~~the subject~~ is that there is a criminal case of importance on the file awaiting the appointment of a successor to

no/s - attached

to Willmott.

Yours sincerely.

JH

W. A. L. Esq. ICS J. 20/8/97

12/8/97

[13.]
73
1,000 31-7-97

NOTE FOR THE

Repl. to D.O. to the Principal
Secretary 20-8-97.

In reply to your letter
saying that Willmott's
death has left the Senior
Assistantship of Janyam
vacant; Jaylor asked that
Ashe might be put in
charge of the division. This
has been done, has it not?
and in his capacity of
being in charge, Ashe
could dispose of all Criminal
work; could he not?

~~Ashe~~ note on the above
He cannot dispose
of the particular case as this
was referred to the Senior Asstt

Judicial (1897) Department.

CURRENT No.

From

Telegram

~~The location~~

Sanjam

No

Dated

22

Received

23

Registered

20

Enclosures

Spare copies

SUBJECT.

It is wished with refer-
to telegram no. 672. the
information re Lakshmi
marayanapattinai's case.

It is submitted that the
"appointment" is the
contract: saying he really
follows long after.

For Orders

The Collector of Larynam
writes that the case is posted
for hearing on the 2nd proximo
With reference to the charge
of the Special Assistantship
of Larynam attention is
solicited to the extract from
the Private Secy's O.O. flagged
and the C's note thereon.

The following D.O. from Jim
is submitted for approval.

My dear Lin,

With reference to your
para 1 of your D.O. of the
21st instant I wish to say
that Ashe cannot unless
he is formally ^{affirmed that} ~~sworn~~ ^{affirmed}
dispose of a certain

important criminal case
which had already been partly
heard by the late Mr. Willmott.

The collector of Ganjam now
wires that the case in question
is posted for hearing on the
2nd proximo. It is at that time
that the collector has
objections with regard to
jurisdiction ~~and~~ ^{which}
~~might be taken by the defendant~~

The case has been
specifically referred for
trial to the Senior Magistrate
Magistrate and if he
hears it that he is merely
the Assistant Magistrate in
charge of the division ~~and~~
to his jurisdiction will probably
be raised by the defendant.

AK
23/8/97

23/8/97

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

[G.]
[25]
500-17-5-07.

H. E. THE GOVERNOR.

THE HON'BLE ^{Sir H. V. K.} BLISS, C.I.E.

THE HON'BLE MR. GROSE, C.I.E.

Public DEPARTMENT.

C. No. 3073

SUBJECT

Prosecution of Akthminaryans
Patnaik

FOR ORDERS.

The Ag. Collector of
Ganjam submits with the remarks
a report from the Public
Prosecutor, Ganjam, on
L. Patnaik's case. This
prosecution under §§ 182 and
415 I.P.C. was sanctioned
in f.o. ^{1024 A. 1st} 21.9.96

The case was transferred
to the file of the Senior Asst.
Magistrate, Ganjam, by the High
Court. vide f.o. ^{662 Subd.} 6.5.97

Please the Public Prosecu-
tor's report. He states that all
the witnesses for the prosecution
with one unimportant exception
have been examined,
and the documents filed
and that the case was posted
for hearing on the 17th inst.
The Magistrate, Mr. Willmott

To H. A. Sin Roy, J.C.S. dated 24/8/97

W. A. T. L.

having died ~~in the~~ mean while
the Prosecutor fears that
the case will have to be
tried by his successor de
novo at great expense &
trouble. He doubts whether
the documentary evidence
relied on by the prosecution
would be admissible ~~in~~
~~evidence~~ and asks that
the matter may be referred
to the law officers of Govt at Madras,
and that the hearing of the
case may be adjourned
pending a reply from them.

It will be observed that
the matter has been to the
Adv. Genl. twice already.

The Ag. Collector
does not support this
proposition as he sees
no reason to stop further
action. He points out
however that the case
was specifically trans-
ferred for trial to the
Dist. Asst Magistrate, Sanjam
whereas there is now
no such officer, and

and that therefore
until Mr Asher or some
other officer, is formally
gazetted to the post,
no jurisdiction in
the matter lies.
Mr Taylor has therefore
directed that no
adjournment should
be made by the
prosecution and
that the case should
be proceeded with
if by the date fixed
there is a duly con-
stituted Senior Asst
Magistrate. [This is the
19th and Mr Asher
who is in charge
has not been formally
gazetted] Otherwise
he thinks that Exception
should be taken on
the ground of want
of jurisdiction and
adjournment applied
for until an officer
has been duly gazetted.
Orders are solicited

⁴⁵ Please check

not yet gazetted

Blm
19/8/77

W. A. N.

C. No. 3306.

H. E. THE GOVERNOR.

SUBJECT.

THE HON'BLE MR. BLISS, C.I.E.

THE HON'BLE MR. GROSE, C.I.E.

Lakshminarayana
Patnaik's case.

FOR ORDERS.

^{the case has been ad-}
^{jourmed, with full trial by the Magistrate.}
Mr. Ashe was appointed
to act as Senior Assistant
to the Magistrate of Lanjam
and the fact was intimated
by wire to the collector
on the 27th ultimo. From
the present telegram it is
not clear what orders are
wanted by the collector. In
his letter flagged the collector
said that he had directed
the Public Prosecutor not to
app^y for any adjournment
if by the date fixed for the
hearing a duly constituted
Magistrate was appointed.
The appointment has been
now made and so the
question of jurisdiction is
settled. The Collector

probably wants to know whether any action should be taken on the questions raised by the Public Prosecutor. But he himself ~~did~~ not recommend submit any recommendations on the Public Prosecutor's letter. ~~Subd that the following telegram may be despatched to the Collector.~~

* i.e. on the Pub Prosecutor's suggestion ^{that the case} should be referred to the Madras Law Officer vide

Orders are elicited as to the points raised by the Pub. Prosecutor. He apparently considers himself unable, without advice from the Gov. Law Officer, to conduct his case satisfactorily.

The points on which he requires information are given at

flag Q. No 2 can be supplied. Should nos 1 & 3 be referred to the Govt. Secy for early opinion, & the Colr be informed that this has been done?

Yes -
3/9/97
He cannot send him an opinion as the PG seems to be rather hazy backed
to
3/9/97.

~~Your telegram of the 2nd instant. As he already appointed act Senior Assistant. Therefore no doubt jurisdiction what more orders do you require on your previous letter.~~

Public Dept:

G.Nos. 5075, 5153 & 5505

ORDERED W. 11718 4th Sept 1917

The first of the currenta read above together with its enclosures and a copy of the certificate usually granted in such cases will be forwarded to the Govt. Solicitor for favour of early opinion as to the first, third and fourth questions raised in para 17 of the Public Prosecutor's letter. A copy of his opinion should be forwarded direct to the Collector of Ganjam.

2. A copy of the form of certificate usually granted in similar cases will be

OPTION

Copy of this to be made according to the form in G.O. No. 355 Pub., 1/15-8-96

furnished to the Collector.

5. The following telegram will be despatched to the Collector of Ganjam:--

No. 709 Your letter ten Confidential Month August referred to in your telegram second instant forwarded for opinion to Govt. Solicitor who will send you copy of his opinion direct.

To

The Collector of Ganjam
(Q of all currenta) with copy of certificate
Govt. Solicitor (original of latest current and its enclosure to be ret'd. and Q of the other currenta) also copy of certificate.

(Hon CS order)

4/9/97

OPTION

Ask S for the papers to go to the Govt. Solicitor.

Please send this file to S after despatch

Abstract sent down to Madras for file

When given for copying _____
○ When copied _____ } 189
When examined _____
When signed _____

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

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 DESPATCH
IN ORIGINAL.

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