

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	939	Press ~~Mis.~~
¹⁹²⁻⁹³ Dated	8-4-	1868.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
8th April 1868.*

“ if on that examination the Magistrate considers it necessary to frame a charge,
“ the accused is to have the right, by Section 252, in aid of his defence, of recalling
“ and further cross examining the witnesses for the prosecution.”

7. Government have taken no further notice of the original appeal of Basheca Charloo subsequent to the receipt of the foregoing opinion laid down by the highest legal authority, and I am therefore sanguine that a consideration of this important ruling may now influence Government, since it cannot be denied that so grave a defect in the Head Assistant's proceedings must have operated very prejudicially and unjustly against Basheca Charloo; and when viewed in connection with the cancelment of his conviction by the Sessions Court on grounds wholly irrespective of such defect, I think Government will agree that a strong case is made out in support of Basheca Charloo's prayer for re-employment in the public service, if not for his actual restoration, and I am sanguine that Government will agree with me in this opinion.

8. There is another fact or feature in the case which has an important bearing on the present appeal, and that is, that the original proceedings held before my Deputy Collector, and which were unauthorized, if not illegal, develop many discrepancies in the evidence then and subsequently recorded at the formal trial, but although those proceedings were before the presiding officer at the trial, they were not actually in evidence against Basheca Charloo, and therefore the witnesses were not cross examined on their previous statements, and neither was Basheca Charloo permitted the advantage of thus testing the truth of their testimony when formally recorded against him.

9. I have already borne my testimony to Basheca Charloo as an able and, (until this unfortunate occasion) as I had every reason to believe from my experience of him, upright public servant, and having known the elder branches of his family, who are all now dead, I confess I shall be very glad if Government were able to give their favorable consideration to his present application, and to sanction the re-employment of Basheca Charloo in the public service by annulling the Order under date the 20th March 1867, No. 668, Revenue Department, prohibiting such re-employment.

No. 193.

ORDER THEREON, 8th April 1868, No. 939.

Miscellaneous.

1. The Government have again reviewed the facts of this case, and see no reason to modify the decision at which they formerly arrived.

2. The Collector was out of order in transmitting in the manner he has done a memorial from a person who is no longer in the public service.

(True Extract.)

(Signed) W. HUDLESTON,

Secretary to Government.

To the Collector of South Arcot.
„ the Board of Revenue.

Exd. S. T. Augustin.

*Examination upheld, instead of to examine
him when put on his defence - The*

No. 192. Read the following letter from the Collector of South Arcot, to the Chief Secretary to Government, Fort St. George, dated Cuddalore, 25th January 1868, No. 9:—

1. It is with some hesitation that I submit the accompanying memorial to His Excellency the Governor in Council of Madras. I do so at the urgent solicitation of the writer, C. Basheca Charloo, whom Government a short time ago were pleased to declare ineligible for further employ.

2. I have had the memorial and other papers by me for some time, as I was reluctant to move further in the matter; but as I believe I am the proper medium through whom Basheca Charloo should properly address the Government in his case, I may be pardoned for my support of his prayer, to which I am prompted from a consideration of his hitherto character, and also from my knowledge of the great respectability of his family, who were reputed good and faithful servants of the State.

3. I seek no revival of the case itself, beyond such consideration of the facts now put forth in connection with it by Basheca Charloo as might induce the Government to review its order prohibiting his re-employment. It is of course not for me to sit in judgment on the proceedings of an officer who, though my Assistant, exercised co-ordinate Magisterial authority with myself, still those proceedings have so far met with condemnation, or have been repudiated by the appellate authority, to whose supervision they were subjected in appeal, that the conviction of Basheca Charloo based on them by my Head Assistant was annulled, and the sentence set aside.

4. This, *prima facie*, is an important point in favor of Basheca Charloo, and although an acquittal on legal grounds is no declaration of a man's innocence, yet when coupled with other features of defect in the original trial, I think it will be allowed that Basheca Charloo is hardly deserving of so very grave and ruinous a penalty as that to which he has been condemned under present orders.

5. Government will remember that Basheca Charloo was denied his undoubted right of cross examination when first arraigned, and the deprivation of this right was unquestionably a very serious detriment to his case; and had it been exercised, instead of denied, it is impossible to say how far the result might have been very different from what it was. At all events, this serious defect in the procedure of the Head Assistant who tried the case might, I presume, be argued as sufficient to quash the entire proceedings on which the conviction of the accused was founded.

6. I may remark on this point that while the Sessions Judge who heard the appeal overruled the objection to the Head Assistant's procedure grounded on the denial by that officer of original cross examination of the witnesses for the prosecution, the Judges of the High Court, to whom the Government subsequently referred the question, (*vide* paragraph 4 of their orders, dated 20th March 1867, Revenue Department,) have given their opinion in their Proceedings under date 17th May 1867, that "the Acting Head Assistant Magistrate of South Arcot acted wrongly in not permitting the first prisoner's Counsel in the case brought to the Judges' notice, to cross examine the witnesses for the prosecution before the case for the prosecution was closed; and secondly, that the effect of Section 249 is to import into the preliminary examination the rules enjoined in Chapter XII, for the examination of witnesses. They are, therefore, to be examined in the presence of the accused, who is to be permitted to cross examine them. Then,

No. 343.

From

The Collector of South Arcot.

Dated 25th January—

1868.

FOR ORDERS.

The record of this matter in which the Petitioner Basheca Charloo's conduct as Salt Superintendent was impugned, received my most careful attention. He escaped punishment as an abettor of the offence committed within his sight by his official subordinate; owing to a difference of opinion between the Sessions Judge and the Magistrate who tried the

case by whom Petitioner had been found guilty. There was however, in the record of the trial, quite enough to justify the Petitioner's dismissal departmentally, and sufficient also to support a recommendation by the Board of Revenue, that the Petitioner should not again be employed in public service. The Judges were unanimous in their approval of the Board's recommendation and order were passed accordingly.

In what is now submitted by Petitioner in his Memorial, I find nothing new except the steps laid by him on the opinion of the High Court, that there was an irregularity of procedure in the refusal by the convicting Magistrate to allow Petitioner to cross-examine the witnesses for the prosecution immediately after their examination in chief, instead of examining them when put on his defence. The

practice in this respect has I believe, varied
a good deal in our Courts; though, after the
construction recently given by the High Court,
it will in all probability be uniform.

It is not denied that Pet. might, had he so
chosen, have examined the witnesses on his
behalf. It would, however, be quite out of
place & unjust, to attempt now to determine
the extent to which Pet. may have been injured
by the course of examination taken by the
Magistrate, as the sentence of that functionary
passed on Pet., has been annulled.

The proceedings to Pet.'s disadvantage are
those of the Board and the J.P. and looking
to what was adduced on the trial, I
doubt; see that the Magistrate's error of
procedure would ~~have~~ in any degree ^{have} affected

any comprehension of the facts then brought to
light. Both the J.P. & the Board have agreed
in opinion that although there was no
direct proof of complicity before the fact,
on the part of Pet., yet that his conduct &
the measures he took indicated a deliberate
attempt to screen from punishment his
immediate subordinate; the Col. Throff,
who had been detected in the act of defrauding
J.P. For this he has been punished
departmentally and in his memorial there
is nothing that I can see which requires
that the case be reopened or that the J.P.
order be modified.

The submission of the memorial by the
Court, to Meade, is, I consider, a clear mistake.
Being no longer in the public service,
Pet.'s memorial should have come direct
to the J.P., for Mr. Meade has no longer

any thing to do with him. Adverting,
however, to Mr. Meade's mention of the general
reputability of Pet.'s family & to Pet.'s own
favorable antecedents, I feel bound to say that
I regard these circumstances as additional reasons
why Pet. should be severely dealt with. —
Our last department is the department
of all others in which cases of such kind,
intrigue, fraud & speculation are known
to prevail. When then, a superior servant
of the department in whom, from previous
good conduct, trust has been reposed, is found
screening from detection & punishment a
man who, like the Throff, was taken with
the fruits of his fraud in his purse, I
certainly think the case should be treated
as one in which J.P. ^{may properly} exercise their
jurisdiction of declaring that ^{they} will not
in future accept that superior servant's
services. —

This has been done in Pet.'s case, and altho'
the collection of J. arest. has again been at-
tacked, some pains to induce J.P. to remove the
prohibition and then afford to the J.P.
an opportunity of placing Pet. in public
employment, I think the prohibition should
be upheld.

18 March 68

W.D.

I enclose the new
letter of the case by
Phillips. N.

27.
with his letter No 9 of the 25th January Mr. Reader forwarded
for favourable consideration a memorial from
Bashica Charles, late Salt Supt. of Mercanum
in which the latter requests that the Gov.
will cancel their order of the 20th March 1867
No. 668. Rev. Dep^t. prohibiting the re-employment
of Bashica Charles in the Public Service.

2. Mr. Reader bases his recommendation (1) on the
previous good conduct of the late Supt. & the
general respectability of his family & antecedents.
(2) on the ground that the H.A. Magistrate's
decision as regards the Supt. was reversed on
appeal.

(3) on the ground that the H.A. Magistrate refused
to allow the memorialist to cross-examine the
witnesses for the prosecution till after the
case for the prosec^r. was closed - a proceeding
designated by the High Court as "wrong."

(4) on the numerous discrepancies in the depositions given by the witnesses for the prosecution before the Deputy Magistrate (which proceedings were cancelled by the Magistrate as unauthorized if not illegal) and the depositions given before the H.A. Magistrate.

3. all these objections which are again urged at great length in the memorial, were raised by the late Sup^t when the matter was before his final disposal: & the alleged discrepancies were carefully compared (as I am informed by Mr. Cross) before the order of his Lordship passed.

4. Besika Charles contends that the whole prosecution was got up by the Police through Gurney & Co., & that the conviction rested solely on the direct evidence of the Police - this is not true, for

the documentary evidence was certainly thrust before the Court and by Government as equally damning as the direct evidence.

5. It is true that the H.A. Magistrate was in error in not allowing the accused to cross examine before the prosecution was closed, but does it follow that the accused should therefore "of course" (as he says) decline altogether to cross-examine, and was he entitled to say that cross-examination if permitted at this proper time would have at once shown the evidence to be false?

6. I do not see that there is anything in the said in favor of the late Sup^t which has not already been urged.

I am however for opening 7B.
the case. L.H.

Memorandum on
 appeal from
 Bashica Charles
 late Salt Superintendent
 Mercurium.

24 March 68 R23 R26 R44

W-939 1/2

The Govt. has again
 reviewed the facts of this
 case & seen no reason
 to modify the decision
 at B. The former by
 arrived.

W.D.

by [signature]

The Govt. was
 out of order in trans:
 : sitting in the manner
 he has done a summary
 from a person who is
 no longer in the
 public service -

4 Copies Letter of L. H. Speck, Dept. 8
 with 5 enclosed - 3
 14 - [signature]

[signature]
 8. Apr 68

Pro 10.328.329 8203.62

Handwritten text, likely bleed-through from the reverse side of the page. The text is faint and difficult to decipher but appears to include words like "Cecilia" and "Cecilia".