

95

*Proceedings of the Madras Government, Revenue Department,
24th January 1873.*

No. 190. Read the following letter from the Acting Collector of Madura, to the Chief Secretary to Government, Fort St. George, dated Perekolam, 19th December 1872, No. 2,454 :—

In continuation of my letter No. 2,244, dated 23rd ultimo, I have the honour to enclose copies of the decisions of the Assistant Magistrate and Sessions Judge, disposing of the charge of defamation brought against N. Subbien.

2. The prosecution was founded on one of several petitions written to different authorities, not, I believe, with the object of bringing any definite charges against Ram Row, but of annoying him and, if possible, injuring him in some way. As these complaints were not considered to be settled by departmental inquiries and orders, Ram Row made this criminal charge, and the result is that nothing has been proved except the malignity of his enemies.

No. 191. ORDER THEREON, 24th January 1873, No. 95.

Miscellaneous.

THE Governor in Council learns with much satisfaction that the result of the prosecution has so fully confirmed

the high opinion of the Deputy-Collector Ram Row's integrity entertained by Government.

2. The Collector will report what notice he has taken of the conduct of the English Record-keeper who clearly aided the concoction of the false and malicious libel which is the basis of the charge.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

To the Acting Collector of Madura.
.. the Board of Revenue.

Ed. F. R. Bantleman.

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To the Acting Collector of Madura.
.. the Board of Revenue.

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No. 2456

Madras Collectors Office
on circuit
(Camp) Perakolai
19th December, 1877

From

W. McDermott Esquire
Esq. Collector of
Madras

To

H. Hudson Esquire
Chief Secretary to
Government
Fort St George

Sirs

In continuation of my letter
No. 2244 dated 23rd Ultimo, I have the honor
to enclose copies of the Decisions of the
Assistant Magistrate and Sessions Judge
disposing of the charge of defamation
brought against N. Subbier.

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different authorities, not I believe
with the object of bringing any definite
charges against Ram Row but of
annoying him and if possible injuring
him in some way. As these complaints
were not considered to be settled by De-
partmental Enquiries and orders Ram
Row made this Criminal Charge
and

and the result is that nothing has
been proved except the malignity of
his enemies.

I have the honour to

be

Your most Obedt Servt

Mr Lake

Esq collector

1872 Rev. No. 1. 2
from No. 21.
The Collector of
Madras

To the Chief Secretary
Government
Fort St. George

Dated 19th December 1872
Received 6th Jan 1873
No. 2154
Enclosure 2

Enclosing Copies of the
Decisions of the Asst
Magistrate & Sessions
Judge disposing of the
charge of defamation
brought against the
St. Louisian -

No. 190-191

S. C. No 95-26 Jan 73

C. S. Jan 73 R 23 Jan 73

In the Session Court of Madras.
Saturday the thirtieth day of December One
thousand eight hundred & seventy two.

Present.

P. J. Dutchins Esq. Acting Session Judge.
Criminal C. A. No 63 of 1872

N. Subbayan, Appellant. (Left)

Appeal against the sentence of the
Assistant Magistrate of Madras in Case No 72 of the
Calendar for 1872.

Order. — This Appeal coming on for hearing.
Upon perusing the petition of Appeal, the records
and the Calendar and sentence of the Assistant
Magistrate, and upon hearing the arguments of
Mr. French counsel for the Appellant. It is ordered
that the sentence of the Assistant Magistrate
be, and the same hereby, is confirmed and this
Appeal dismissed —

1 Signed P. J. Dutchins
Acting Session Judge
(True Copy)

W. M. Inche
Magistrate

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In the Session Court of Madurai
Saturday, the thirtieth day of November One
thousand eight hundred & Seventy two.

Present:

J. P. Hutchins Esq. Acting Session Judge.

Criminal No. 43 of 1872

A. Subbayan.

Appellant (Left)

Appeal against the sentence of the
Assistant Magistrate of Madurai in Case No. 72 of
the Malindar for 1872.

This Appeal coming on for hearing:
Upon perusing the petition of Appeal, the records and
the Calendar and sentence of the Assistant Magistrate
and upon hearing the arguments of Mr. French Counsel
for the Appellant, the Court delivered the following
Judgments:— This is a charge of Defamation
prosecuted by the Dy Collector in charge of the Treasury.
The Defamatory matter was contained in a petition
addressed to the Board of Revenue.

The first point taken by the Appellants
Counsel is that the Assistant Magistrate was incom-
petent to try the case since he was at the time
a tenant of the Dy Collector, or at all events that
I am to regard the Assistant Magistrate's con-
clusions not only with caution but with the

greatest

greatest suspicion. The Magistrate however was certainly quite competent to try the case and though he recommended its transfer to another court, I find that the Magistrate of the District declined to order it to be transferred. After reading the record I certainly find no bias against the prisoner and I do not entertain the slightest doubt that the Assistant Magistrate gave the case the most honest, careful, and conscientious consideration.

Now the Vakel says that the authorship of the Petition is not established I have no doubt that the Prisoner wrote it. Independently of the evidence of hand writing, which, in an English petition of this description, is very important, and of the prisoner's own admissions out of court, there are other facts, first that he refused to deny having written the petition and secondly that his defence has been directed to establishing the truth of the defamatory allegations.

This Court at a former hearing directed the examination of 3 additional witnesses whose attendance at the trial could not be procured notwithstanding repeated adjournments. One of these, the Geminidar, happened to be in Madras at

the

the time and the Assistant Magistrate at once seized the opportunity of examining him before he returned to Ramnad. Upon this point has been urged against the Assistant Magistrate's fairness, and it is suggested that the result, if not the object, was to enable the Native Surgeon, who came from Ramnad subsequently, to bring his evidence into harmony with that previously given by the Geminidar. The real object evidently was to save the Appellant the trouble and expense of bringing in the Geminidar again and ~~the~~ the Geminidar himself the trouble of coming. This however is merely one of many insinuations made by the Appellants Vakel and I presume under the Appellant's instructions, which certainly do not tend to make out to my satisfaction his plea of good faith but rather aggravate the libels of which he has been found guilty. Good faith involves due care and attention. A man who makes accusations must have made due enquiry and must bona fide believe them to be true. Something more than mere bazaar rumour is necessary. Even if such rumours have not, as at the first hearing of this appeal Mr. Coddington remarked was probable, been first of all intentionally circulated by the Appellant, still the Appellant must show some sort of enquiry whether they were well founded.

She

The libel set out in the 1st head of the charge, though it refers to a dead man, clearly comes under explanation I. Taking the whole petition together it is impossible to doubt that this statement with regard to the father was intended to injure the feelings of the son, although an additional object was to induce the Board to give credit to the insinuations against the son. That the Defendant knew it was false, as it certainly was false, I cannot doubt. The evidence that he was found in the Collector's Record room in confabulation with the Record Keeper and that he had to be turned out by the D^r Collector is very material on this point. The records seem to have been duly proved and that the Appellant knew all about them seems certain from the petition itself, though of course he has not quoted those which make against him.

Next with regard to Ambanary the charge in the petition is very confident and the petitioner says he will produce two letters from the Agent, Chidambaram Pillai, to Ram Row showing that the latter was the beneficial owner, besides the evidence of certain respectable men. Two letters were certainly produced but Chidambaram Chetty or Pillai repudiates them and no further attempt was made to prove them. The

The Appellant has not explained how these letters came into his possession. All the witnesses called by the Appellant swear that Ram Row has nothing to do with the matter, except one or two who speak of a rumour, which in one case at least seems to have been subsequent to the petition. Besides this the man now put forward as the Manager or Agent of the Village is not Chidambaram Pillai or Chetty, but William Chetty. The Appellant complains that the onus of proof has been wrongly thrown on him, but in a case of this nature it was impossible for Ram Row to do more than swear that the allegation was absolutely false and call on his traducers to state particulars. The Cowle and nominal ownership it was admitted, were not with Ram Row at all. The Appellant has I suppose called all those who could in any way tend to show that he had reasonable or probable cause for believing the accusation to be true, and in my opinion Ram Row has clearly shown that the witnesses called do not establish any reasonable foundation at all. Many of the witnesses are obviously ill-disposed to him, and if there had been any foundation something better than mere vague rumour could surely have been

been spoken to.

The same remarks apply substantially to the 3^d & 4th heads of the charge also. The gist of the 4th head was the statement that Rao Row had entered into pecuniary dealings with the Merchants at Madura and thereby, among other things, there seems to be the shadow of a foundation as a loan which he made many years ago to a man, not a Merchant and living at Ramnad. I do not deem it necessary to go more minutely into the arguments adduced for it is quite clear that my predecessor had disposed of the appeal as far as the record then went and the additional witnesses now examined do not help the Appellant in the least.

The petition seems to me purely malicious and the whole facts show that it was not made at all in good faith or dictated by any desire for the public good. In all probability, the petitioner was paid to write it by some one behind the scenes, and he has very likely been also paid to throw as much dirt as possible about the course of the trial.

I dismiss the appeal.

(True copy)
Signed P. P. Hutchins
by Session Judge

Wm. Jones
S. G. B. B. B.

Nov: 21/73 159

Enclosure No 2
Dear Letter
from
The District Collector
Madura
To the Chief Secretary
Government
Fort St. George
Dated 17th Decr 1872
- 62456

Decision passed by
the Session Judge
of Madura in Criminal
Case No. 190-191
of 1872

No. 190-191

Judgment

Decision passed by the Assistant Magistrate of
Madura in Calendar Case No 72 of 1872 on his file.

Complainant

Defendant

S. Ram Row

vers.

N. Subbian

Charge

That he on or about the 1st day of
May 1872, at Madura, defamed one S. Ram Row,
the Treasury Collector at Madura, by writing
a petition to the Board of Revenue.

1st That the said S. Ram Row's father,
Seshagiri Row, was removed to another District for
dishonesty in his Official career.

2nd That from his Official influence S. Ram
Row has during the last year indirectly acquired the
Village of Ambanary.

3rd That S. Ram Row is in possession of cer-
tain lands, Lops and Gardens acquired by himself
and held in the names of third parties viz his brothers
8th and 9th.

4th That S. Ram Row has entered into
forbidden pecuniary dealings with the Merchants
at Madura and that the said N. Subbian has
thereby committed an Offence punishable under
Section 500 of the Indian Penal Code and
without my cognizance.

Judgment

Ag. Bragg

Tadgiorit

The Defendant is charged by Complainant with
defamation on 6 counts. The Complainant denies the
truth of all the imputations & proves by witnesses to hand-
writing & to admissions made by the Defendant that the
petition containing the offensive imputations was written
and published by Defendant. Charge was then framed
against Defendant with the 6 counts noted in the 3rd
column to all of which he pleaded not guilty on the ground (1)
that the charges made by him were true (2) that he made
them in good faith and cited witnesses. His first list
contained 31 witnesses & he was subsequently permitted
to add a supplementary list containing 6 more. The
first allegation on which the charge of defamation
is based related to Complainant's father, late Head
Sheristadar of the District, and affirmed that he had
been removed from the District to Trichinopoly for
his dishonest practices. The Complainant's father
was actually transferred to Trichinopoly & Defendant
alleges that his charge was made in good faith even
if not true, since it is the general belief of the Town
that he was removed for dishonesty. Witnesses 1. 4. 9. 10. 13. 16. 21.
State

State that they have heard that Complainant's father was
so removed & that they believe that to be the general
opinion in the Town. From perusal of ^{the} Muzar records
it appears that the Sheristadar was tried by Mr.
Blackburn, the then Collector, on a charge of
bribery, brought by Mr. Fischer and one Annasam
Ayyar: this conviction was reversed on Appeal to the
Board on the most convincing grounds. Vide Board's
Proceedings of 20 March 1863. On the 8 June the
Board communicated their decision to Government and
on the 29 July the Government confirmed the order and
sanctioned the disbursement of the pay due to Seshagiri
Row during his suspension. On the 11 October 1863
the Board of Revenue announced that Government
had posted Seshagiri Row to Trichinopoly, as
Sheristadar. Strange to say, the other correspond-
ence giving the reasons for the transfer is missing:
considering that this correspondence would show that
the Sheristadar was removed because he and
Mr. Blackburn could not get on together after
this affair, it looks very suspicious and the Records
ought to be called on to explain this. I say that
although the actual correspondence showing the
reasons

reasons for transfer is missing, the Sheristadar was transferred not for dishonesty, but for disagreement with the Collector and this is shown (1) by the entire acquittal of the Sheristadar approved by Government in Government Order of 10th June 1846, (2) that he was not in any way degraded but sent to a post of equal dignity, (3) that Mr. Blackburne was suspended for allowing Mr. Fischer to interfere in the District concerns, amongst which was the prosecution of Deshagiri Row, (4) that on Deshagiri Row's retiring on pension Government complimented him on his unvarying integrity, and not only pensioned him but continued 2/3 of the pension to his sons who enjoy it to this day. So much for the truth of the allegations now as to the good faith with which it was put forward. Nothing is said to be done in good faith which is done without due care and attention. Now the only evidence we have to show good faith is the assertion of some 5 or 6 persons who allege that there is a bazar rumour in support of the allegation. Supposing this to be true, (intrinsically weak as it may be) the question is whether such bazar rumour would justify a man in making the assertion in a deliberately written petition to the complainant's superiors i.e. the Board of Revenue. due care is such a care as is proportioned to the gravity of the matter. A bazar rumour might justify a man in refusing to purchase

goods,

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goods, but would a man of common sense on mere bazar rumours of a probable rise in prices set to work to purchase all the cotton in a District. He would of course seek first for more reliable information, though the rumour might be the first instigation to such enquiry. It fortifies then when a man is about to present a petition to the Board of Revenue with a view utterly to disgrace another, it would be necessary for him to act with all possible circumspection and on nothing less than the most reliable and certain authority. Hence I conclude that even if there be any such rumour, which indeed from the manner and position of the witnesses I very much doubt, it is utterly insufficient to justify the serious imputation thrown upon the complainant's father. But further defendant alleges that having no proper access to the public records he could not be certain of his facts. Supposing this to be any defence (which I hold it is not, since if he were not morally certain he had no business to make the allegation) I must look to the truth of it. On examination of the records I find that the records relating to this affair have all been diligently read and underscored with marks in pencil which are clearly fresh, and that

that these marks are under such sentences as told
against Sheshagiri Row. Hence arises the presumption
that some member of the family has recently had
access to the records. There is no actual evidence
as to who that person is, but we have no evidence
that the Defendant was sitting with the English
Record Keeper (his first witness) & was turned out as an
intruder (which he undoubtedly was) by complainant &
further on inspecting the 7th para of the Defendant's petition.
(A) it is clear that it could only be written by one who
had unlimited access to or knowledge of the records,
since each paper therein noted contains date and number
most accurately. Hence I conclude that Defendant
had access to or knowledge of the records and that this
is another ground for rejecting his plea of good faith.
I would also observe that the English Record Keeper
is clearly hostile to complainant and that his statement
that he believes the general opinion and his own
to be that the Venkatadar was removed for mal-
practices is clearly false, since he admits on cross
examination to have perused the records and also
to have had conversation on the subject with his father
who

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who was Venkatadar to the commission on whose report
Sheshagiri Row was acquitted and restored. Before
quitting the subject of good faith I observe that
the objections above mentioned apply equally to all
the allegations, since on no single point has Defendant
anything more to go upon than what he calls general
opinion.

The 2^d point is whether complainant enjoys a
certain village named Ambanari, in the Ramnad
Gaminidary, or Cowle ^{Tennur} in the name of Ramnadu Chetty.
Here the evidence is again general rumour. 1st witness
says so; 2^d witness says he heard it from two persons
(not called); also 16th witness Ramnadu Chetty,
for whose appearance the case was adjourned several
times & 3 sets of summonses issued did not appear.
His Cowle however was produced & is clearly, with his name
nor is there any evidence to the contrary except what is
called general opinion as sworn to by several
witnesses. 16th witness also proves that Ramnadu
Chetty is the real Cowledar. I have already noticed
the 1st witness. As to the 16th witness the remarks
which I have to make on him apply to the whole
of

of his evidence, which in my opinion is utterly worthless.
This will be explained in the 3rd point. I observe also
that the Sasildar who made all the inquiries when the
Village was given in 1806 is not called as a witness,
though he would necessarily be the best informed.
The 3rd point is whether complainant enjoys certain
lands or Totes unlawfully, in the names of his family.
Now complainant swears that his family is divided
and there is nothing to show the contrary. Hence
possession of lands & Totes by his brothers would not
affect him. Hence the evidence as to his actual
enjoyment must be positive & convincing to be of
any weight. The only point worth noticing is the
allegation as to the possession of a certain
Garden in the Town. This 13th witness is referred
to. This witness says the garden is in possession
of Ram Row's house (family & c.). Now as
Ram Row is the head of the family, his name would
be naturally attached to property, especially if he
bought it as alleged by 21st witness, even though
in the life time of his father Nishazari Row
in 1810. But further Ram Row asserts that
he & his brothers divided several years ago and that
he

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he has now neither seat nor lot in the garden and there
is nothing but the popular name to rebut this. This
popular name, or Rumour is sworn to by 13th, 16th and 21st.
Now first none of them knew anything further
about it, namely, as to extent, full value, actual
enjoyment &c. and though 21st ^{witness} says it was bought
for Rs 500 and is worth 500 paces as he is
unable even to state the approximate extent of
the garden and this though he was a Vocal Hindu
Overseer for many years. As to the value of this
man's evidence it is greatly diminished or rather nulli-
fied not only by his vagueness but by the fact that he
has twice been dismissed for fraud as an Overseer, the
last occasion being in September 1871. Then as to the
16th witness who gives the most distinct evidence of any-
before. Know ^{even} who he was. I was struck by his
hostile demeanour & his eagerness to answer the questions
put, even before they were fairly uttered. As an instance
take his answer to the 8th & 14th questions: "I know a
Garden near the Head Assistant Collector's Office: it
belongs to complainant." This was before its position
was even described. It was clear that he came
eager to give evidence and the eagerness is well explai-
ned when it is shown that he is the son of Anna-
same Syon, the person by whom the Charges described
by 10th as utterly untenable were brought against
complainant.

complainant's father, in consequence of which there is
an hereditary feud between the families which has
been not a little intensified by the fact that shortly
before the petition was presented to the Bd of Revenue
the Municipal Commission of which Ram Row is
a Member, ordered his witness's stall to be removed as an
encroachment on the public Street. If any weight
is to be given to enmity, and demeanour, the witness's
evidence is worthless as my remarks made at the
time will show.

On the 1st point namely whether Complainant
has had "forbidden" pecuniary dealings with the Merchants
of Madura. There is very little worth noting except
on two points namely, (1) the question of the bricks
used in building complainant's Bungalow at the
Vestpacelow. (2) a loan given by Complainant to an
Vyengar. On the 1st point the evidence of a most
respectable person namely, Vincatachela Chetty,
Trustee of the Mannatchi Benastanum, shows
that though he does not remember the prices of the
bricks nor the quantities yet that they were properly
paid for. It is not surprising that witnesses should
not remember details of a matter which happened at least
4 months previously, & was of ordinary nature. The only
point

point requiring explanation is that as to the amount
not being entered in the accounts & this seems strange
till the witness says they were paid for and there is no
evidence to the contrary. Mr. Scott also shows that,
though a person cannot complain to him that the
servants of the Complainant had forcibly taken a
number of bricks, yet that on reference to Complainant
the man was at once paid, according to his own
admissions to Mr. Scott the same evening. As to the
loan, the Complainant admits a loan given to an
Vyengar many years ago under very peculiar circumstances.
it was for a small amount & was to assist him in time
of distress. Vinay also add that as the allegation was
"pecuniary dealings with Merchants of Madura" and
Jaganada Vyengar was not a Merchant, the proof
even of this point would not establish Defendant's
allegation. The groundlessness of Defendant's State-
ments & the utter want of good faith may be instanced
by his calling for the private accounts for 5 years ¹³ witness's
own production he proposed to look all through to see if
he could find any entry having reference to Complainant
this of course was not permitted.

In conclusion I am entirely of opinion not only
that Defendant has entirely failed to prove single one
of his allegations, but that he has also failed to show even
a

on plausible grounds for good faith, if the words "good
faith" are to have any meaning at all. The character
of Complainant has been attacked in a very wanton
and wicked manner by a person who was deprived
some years ago of his Government post and has since
then been living as best he could. The malice of the
Petitioner is shown by the desire to obtain the removal
of the Complainant from the District even without
enquiry, (vide para 8), while the fact of his not
having erred through ignorance is shown by the
careful examination which he has put in lists of
correspondence relating to Complainant (para 7),
and to persons removed for dishonest practices,
(para 9). The case is only a more specious
form of the ordinary crime of *Madarsa*, namely
the bringing of false charges with a view to injure
or annoy, and but for the fact of Defendant
having not succeeded in obtaining several of his
witnesses he would have been sentenced to a long
term of imprisonment. It is needless to add
that there is nothing against Complainant's
Character on the points put in issue. 1.
^{Court} finds that N. Subba Iyer is guilty of the
Offence specified in the charge and has thereby
Committed

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Committed an Offence punishable under Section
500 of the Indian Penal Code; and the Court
directs that the said N. Subba Iyer do pay a fine
of Rupees (250); in default that he be kept to
simple imprisonment for a term of (1) one month.

(Signed) T. A. Nicholson
Assistant Magistrate

22 August 1872

(True Copy)

W. M. Subba
Collector

Compd by
S. B.

Revenue Department.

No. 95-

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 21st January 1873.

Read the following letter from the
Ag. Collector of Madras.

Enclosing copies of the decisions
of the Mst. Magistrate & Sessions
Judge disposing of the charge
of defamation brought against
one N. Iobbin.

H. E. 19 Decr 1872. N^o 2454

The Governor in
Council learns with
^{much} satisfaction that the
result of the prosecution
has so fully confirmed
the high opinion of the
S^{rs} G. W. Ram Row's integrity
entertained by Gov^t.

The Collector will
report

L. D. S.

Ms 190-191

Recd 21/1/73.
Enclosure No 1
In a letter
from
The Mst. Magistrate
to the Mst. Secretary
of the Government
dated 19th Decr 1872
No 2454
Decision passed by
the Mst. Magistrate
of Madras in
Case No 190
of 1872 on his file.

report what notices he
has taken of the conduct
of the English record-
keeper who clearly
aided the concoction
of the false and mali-
cious libel which is
the basis of the charge.

1 Ag. Collet of Madras. Desd. Jan 173
14 Board of Revenue

