CONFIDENTIAL.

Revenue (1893) Department.

G.O., No. 2404

Confidential No. 599-

DATED 30 June 1893

[Despatch Abstract.]

Stating that the Govt is not prepared to adopt the suggestion that an assurance of immunity from prosecution should be given to the witnesses in the case of Dr Srinivasachari, Dr Sastri of Tanjore.

BACK PAPERS.

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

FURTHER PAPERS.

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

"Confidential"

REVENUE BOARD OFFICE MADRAS.

Proceedings of the Board of Revenue

(Land Revenue),

Dated 15th June 1893,

No. 3535 Mis:

READ ..... Endorsement of the Collector of Madura, on letter from W. Francis Esqr. ag: Head Assistant Collector, Madura, to the Collector of Madura, dated 12th June 1893, Confidential No. 79.

Resolution:-

Submitted for favor of early orders of Government. The case is not one in which, under Section 337 of the Criminal Procedure Code, the Magistrate can tender a pardon to an accomplice, for the offence referred to in the Section 165, Indian Penal Code — under which Srinivasachari will be tried is only one triable by a Magistrate of the First or Second class and not exclusively triable by the Court of Sessions or High Court. So long as the witness is

witnesses are apprehensive of being punished for their own share in Srinivasa Chari's alleged Corruption, there will be a diffidence on their part to speak the truth, and the local Magistracy wish to be able to assure them that no proceedings will be instituted against them for their share, a Comparatively minimportant share, in the transaction.

2. The Board support the Collector's recommendation.

/True extract/

Reccan
Ag: Secretary.

To
The Secretary to Government,
Revenue Department, with
letter in original to be returned.

Sd
Sdb.

+ + think my hon: colleague has taken too high and lofty a view of the position - I entirely dissent from him that offering the amount in question "tampering with the course of justice" - I think that to come within the mischief of "Bonum et publicum corruptum" it is necessary that the bribe should be taken by the guilty officer - Being corruption on the part of a highly paid responsible officer is an evil of so grave a type that no mere, but an absolutely illegal, object can be left entirely to secure the conviction & punishment of such offenders & as the offering of the bribe is a lesser evil, than the taking, which of the two offences tempted less will be most resented, & with a view to the interests of public morality that when the conviction of the bribe-taker depends mainly on the evidence of the bribe-giver, the latter should not be liable to prosecution - Such assurance of immunity from prosecution will however in this case not affect the evidence. There is no more reason to apply this rule in the present case to enforce the evidence of the bribe-giver - as there is no evidence except his own admissions & that of the bribe-taker - There are plenty of instances of cases which have failed through fear alone & become dead letters & even repeal to enforce - Instances of this kind are the provisions of the Act II of 1866, "the cattle Disease Act" which are the provisions of this Act are rigorously enforced - Another & more striking, if unpleasant, instance is that of the Collegiate Education Act - Shame in the first, & the Act, has been a dead letter - Or it is treated as a dead letter - Or it is, owing to the circumstances of this case, it should be modified; but while it is the Law Govt. ought not by executive promises to countenance its being set aside. Thirdly, the effect of such guarantee is to discredit the witness & to lessen the value of their evidence in respect of criminating facts which they depose. This case is in itself a strong one, & the ordinary sanctions may be relied on to induce the witness to speak the truth. I have written at some length on this question in connection with Kunhi Kannan's case in 1888 and recently with reference to a proposed guarantee in the case of Ramakka Mudaliar the Salem Sub Mag.te which is now pending. I should prefer that the case against Srinivasa Chari should fail rather than that Govt. should tamper with the course of justice in the way proposed

HRS
21 June

Sales.

I then stated that the assurance which given there in my mind the procedure followed by Govt. in Kunhi Kannan case, the paper in which had been brought up & long subsequent to the application with an attack from him to Govt. - The procedure then followed was to give a verbal assurance to the witness whose evidence was wanted that the Govt. would not prosecute them. A formal assurance of immunity from prosecution was to be given - That procedure was adopted on the advice of Mr Hutchins (now Sir Philip. K.) as Govt. pleader & subsequently Madras High Court. I confess I

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Confidential No 34

1893.

Board of Revenue

(Land Revenue),

MADRAS.

Current Number 4497

To

The Secretary to Govern-
-ment, Revenue Depart-
-ment

Proceedings, dated 15th June 1893
No. 3555, ~~Routine~~ Mis. Enclosures.

Subject.

Submitting for the early orders of Government proposal of the Head Assistant Collector of Madura to tender pardon to witnesses in the case of Mr. Srinivasachari, Deputy Tahsildar of Pammbern.

For orders

In order to secure evidence against Srinivasachari, the Submagd. of Tiruvadanai whose prosecution was sanctioned in G.O. 19 may 1893 No. 1875, the Head Asst. Coll. proposes to give the principal witnesses an assurance that they will not be prosecuted, provided they disclose all the circumstances with which they are acquainted. These witnesses are (1) the Postmaster of Tiruvadanai (2) the Vakeel of the Rajah's manager. It is probably no chance of prosecuting any of these individuals except on their mutual admissions so as for the Rajah's manager, he would be protected, as remarked in the marginal note, by his master's orders. It is therefore that Govt. may sanction the assurance proposed to be conveyed to the witnesses.

21 June

The assurance may be given

21/6/93

I cannot agree. In the first place the Govt. cannot guarantee immunity from prosecution; they can only say that they will not themselves initiate one. Secondly it is wrong in principle that Govt should thus trifle with the Law. It may not be, & I don't think

W.D.S
19.6.93

2/

some one to bring it to contempt of Court

I cannot say that I like the idea of the Govt. giving any such undertaking to the witnesses as is here asked for. Whenever such a course has been adopted in the past it has not proved a success. Sometimes in fact it has been a great mistake, and I think it would on this occasion be better to let the prosecution be conducted, without any promise being made to the witnesses on the part of Govt. I quite agree that the law should be altered in this respect; and that in these cases no prosecution should be permitted to be brought against witnesses without the sanction of Govt: but in default of such a law I think the Govt. would be well advised if they do nothing which might be construed into tampering with the witnesses.

W
27 June

Court & thereby render the law more persistent & condemned that long? & then look to it that Govt. Law Officers are, officially & Govt. Counsel are, officially advised that the policy, which had its basis in that act, has wrongly & shameless been "tampered with justice"? Did they draw the attention of the Judges of Govt. in its favour & the reasons upon which the Govt. acted? Consulted upon the subject of the "tampering with justice" but unquestionably to refuse to act upon the guilty receipt of law, & colleague has agreed to grant action in the matter of the cattle-maiming might be taken provided it was taken voluntarily on the part of the culprit under the "tampering Act - has this "tampering with justice"? has it not been recognised by the Courts that the accused is "entitled to the compassion of the country" & so far from declaring that "while it is in the law it should be modified" & that "it ought not by executive action to counteract it" "being set aside"; was it not a declaration of exactly opposite principles? Does not this doctrine of Govt. that it controls & the community be in favour of compounding felonies & that Govt. should give to them witnesses

24/6/93

Does my hon colleague see no difference between the Govt. abstaining from availing itself of discretionary powers of prosecution, and interfering to defeat the operation of a criminal law & to corrupt witnesses?

W
29 June.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read C.N. 4497/93.

G.O. mis.

With reference to the Head assistant ~~collector~~'s proposal which is supported by the Collector and the Board of Revenue it is observed that in the first place the Govt. cannot guarantee immunity from prosecution; it can only ~~say~~ ~~that it will~~ not ~~itself~~ initiate ~~itself~~ one. Secondly it is wrong in principle that the Government should, in its executive capacity, issue orders to counteract the law on the subject being set aside ~~and thus strike~~ ~~to it~~ it. Thirdly the effect of the guarantee

Seen
D&S
29/6/93

Canon Homagunda, 2 Joint Munsifs

lcWS
19.693

E

C.O. 4497/93

Re: assurance of immunity from prosecution to witnesses in M. Sciuscasa charis case

proposed would be to discredit the witnesses and lessen the value of their evidence in respect of criminating facts to which they depose. For these reasons the Government is unable to sanction any such assurance of immunity from prosecution as is proposed to be conveyed to the witnesses.

Ch
28 June.

I think we should simply say that H.M. declines from the Board Bermudez.

To the Comm of L.R.
With 1 Encl.

L.R.
28 June 93

The Hon. Mr Gaston C.J.
The Hon. Sir H.E. Jones
KCMG.

I think it would be better simply to say that Govt is not prepared to adopt the suggestion.

Ch
29 June.

C.O. Mio No. 2404 dy 30-6-93
H.M. Govt is not prepared to adopt the suggestion that an assurance of immunity from prosecution should be given.

Ch
30 June

To the Comm of L.R.
With Enclosure

D/Sec
30/6/93

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STATEMENT WITH DITTO

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