

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 2002.

DATED 13th April 1897

[Despatch Abstract.]

Recording with remark, Progs. Judicial
Departt. Commg. with remarks High
Court. Judgment in Cr. Appeal N° 45
of 1896 together with the D.O. from
the S^t Magt. Suleow.

BACK PAPERS.

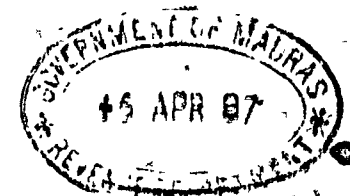
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

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

Revenue Pension (1897) Department.

CURRENT No. 2740



Dep. & Trans. Secy. Me.
No. 2002 of 13 April 97
13/4/97
to check. I have written to the Secy. of the Judicial Dept. to see if the sum of Rs. 1144/57.

Levy

Order misc

From

The Judicial Dept.

Recorded.

No. 446

2. The High Court's judgment will be communicated to the Board of Revenue for information and for communication to all Collectors and other officers concerned.

Dated 29. 3. 97
 Received 6th April
 Registered 5th
 Enclosures 2.
 Spare copies

SUBJECT

Comm. with remarks High Court judgment in Cr. appeal No. 451 of 96 together with the D/o from the D. Mag. Salem

to

The Board of Rev. R.

note

The Board has received a copy of the judgment direct but it is thought that the Govt should formally direct the

file 10.4.97 13/4/97

Depd. 20.4.97

Board to communicate it to the officers concerned. It would have been much better if the Trial Dept had commd it to all District Magistrates, the Sec & being supposed by several of the Magistrates as capable of a different interpretation. The Rev Officer who is with the prosecutions can point it out to the Magistrates. The Head clerk will make the necessary note against the Dy Magistrates name.

BACK PAPERS.			
G.O.	No.	Department.	Date.

FURTHER PAPERS.			
G.O.	No.	Department.	Date.

WMO
9.10.97

9/4/97

Copy of the High Court's Judgment.

In the High Court of Judicature at Madras.
Wednesday, the twentieth day of January.
One thousand eight hundred and ninety-seven

PRESENT

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

Criminal Appeal No. 151 of 1895.

The Public Prosecutor-----Appellant
Kandasami Chetti-----Accused.

Appeal under section 417 of the Code of Criminal Procedure against the Judgment of acquittal passed on the accused in Criminal Appeal No. 83 of 1895 on the file of the General Duty Deputy Magistrate of Salem reversing the finding and sentence of the Stationary Second Class Magistrate of Namakal in calendar case No. 241 of 1895.

This appeal coming on for hearing, upon perusing the Petition of Appeal and the record of the evidence and proceedings before the Lower Courts and upon hearing the Appellant and the arguments of Mr. M. E. Shiranga Chariar Vakil for the accused, the Court delivered the following:-

JUDGMENT:- 1. The Deputy Magistrate has dealt with the evidence and the judgment of the 2nd class Magistrate in a very perfunctory way. There is a great deal of evidence against the accused which he has not noticed.

2. We cannot accede to the argument that the prosecution is bound to prove that the wood in respect of which the charge is laid was actually being brought from a forest. Obviously the sand lwood must have been found in and brought from a forest and section 53 of the Forest Act

throws

upon the possessor the onus of proving that it was not the property of Government.

3. We must set aside the acquittal and direct that the appeal be reheard by the District Magistrate.

4. We must again point out that more care ought to be taken in framing the charge setting out the ~~the~~ words of the rule which is said to have been infringed.

Ordered accordingly.

(Sd) J.T. Gillespie

Ag:Dy: Registrar

Appellate Side

Copy of D.O. from Mr. Mounsey, dated ^{February} 24th 1897:- 7

Re G.O. No. 243 of the 19th instant asking me to report the name of the Deputy Magistrate whose procedure the High Court, animadverted in reference to an acquittal in a case of Sandal wood theft, I would like to take the opportunity of stating that H.R.M. T. Gopalan Nayar B.A. the Deputy Magistrate in question is a most unsatisfactory Magistrate.

I believe it is not the first case of his that the High Court have reversed in the last year. Late, the Sessions Judge asked me only a week ago what he should do as he had about 5 cases in which Gopala Nayar's procedure was either illegal or all wrong. I understood he would report the case to me and I intended if necessary then to report him to Government, mentioning similar cases that had come to my knowledge. He delights in being what ^{he} calls "an anti-police and acquitting Magistrate". Before I went on leave I wrote to Mr. Stokes ^{suggesting} ~~requesting~~ that he was much better fitted for a Treasury than a division. His revenue work was also I should say often very slipshod and careless.

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I know.
1/13/97 4/1/97

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[0.]
[83]

1,000-25-2-17.

Judicial Department.



PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following paper:—

From the District Magistrate of Salem, No. 335/m, dated 3rd March 1897:—

In reply to your memorandum No. 525 dated 2nd instant I have the honour to submit herewith a copy of the High Court's judgment in Criminal Appeal No. 451 of 1893 received with Government Order No. 246 Judicial, dated 10th February 1897.

+++

O R D E R :— No. 446 dated 29th March 1897.

Communicated to the Revenue Department with the request that the remarks of the High Court may be noted against the Deputy Magistrate's name.

(True/Extract)

Francis

For Chief Secretary.

To

The Revenue Department (with Copy of High Court's judgment and ^{Mr} Munsiff's O.O.)

AR

NP 35

480-2-2-07.

Revenue Board Office,
(Land Revenue),
MADRAS.

5th Dec 1897.

My dear Major Banks
Your telephone
message about 2.56. of
today - I send herewith
a copy of the HCE
ruling as well as a
copy of P.S. 114. de. 15th ult.



Yours sincerely
[Signature]
[Faint handwritten notes and signatures below the stamp]

1897.

Board of Revenue

(Land Revenue),

MADRAS.



Printed April th.

Proceedings, Forest, No. 114, 15th March 1897.

MARCH.

Passing remarks regarding the interpretation of section 56 of the Forest Act and stating that none of the forest offence cases forwarded by Mr. Peet are of such a character as to afford a satisfactory basis for a reference to the High Court.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—the following letter from A. W. PEET, Esq., Conservator of Forests, Northern Circle, to the Secretary to the Commissioners of Land Revenue, dated Waltair, 19th February 1897, C. No. 1665:—

[Subject.—Forest cases in the Kurnool Courts, and the correct interpretation of section 56 of the Forest Act.]

I have the honour to state that I have tried to find out whether similar difficulties had occurred in other districts, but apparently there is not so much tendency to adopt a hard-and-fast interpretation dead against section 56 of the Forest Act as appears to be the case in some Courts in Kurnool at present. The section referred to runs thus: "When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of Government, such produce shall be presumed to be the property of the Government until the contrary is proved."

2. In the four cases forwarded the tone of the judgments seems to be taken from Mr. Ghose, Acting Head Assistant Collector, who remarks (case No. 1): "The possession of timber is not an offence under the Act or the rules, and the combination of section 21 with section 56 does not render mere possession an offence. In charging a person under the Forest Act the department must undertake to prove that the product was either cut or removed from a Government forest."

The Second-class Magistrate, Nandyal, repeats this (case No. 2): "Mere possession of timber is not penal under section 21 of the Forest Act." In this connection I would refer to the endorsement which I take to be by Mr. Ghose. "This case should have been thrown out without examining defence witnesses—possession is no offence."

In the case (4) the Second-class Magistrate, Markapur, starts with the assumption that the onus of proof rested on the Forest Department (see paragraph 7) and the only question which he decides is whether there was a breach of the unrepealed transit rules under section 35 of the Forest Act.

In the case (3) the Second-class Magistrate of Nandyal may have had grounds for his belief in the story of the first accused, but they do not appear on the record; there is simply a statement that the evidence of the witnesses for the second accused was full of discrepancies, but the evidence is not given. The case is dismissed on the ground that "there is no particle of evidence that these things were actually brought from any forest." This is rather a broad statement, and seems somewhat equivalent to saying of a sample of wool that there was not a particle of evidence that it came from any sheep. This Magistrate seems to have improved on his text.

3. This question is of extreme importance. I am aware that it has been brought up before, but at present can find only Board's Proceedings, Forest No. 503, dated 30th November 1891, in which the Board states: "The Sub-Magistrate rightly held that in the absence of some evidence to show that it was likely that the wood had been cut in Government forest, as for example the arrest of the defendants actually in the forest, or *flagrante delicto*, the burden of proving that it was so lay on the prosecution. The Board sees no reason to take exception to this to hold that section 56 throws the onus on to the defence in every case simply because it comes colourably under the Act is to strain the section. It is true that the section covers all 'forest produce'; but forest produce is produce brought from a forest, and the onus of proving this fact lies on the prosecution; once this fact is proved, the section comes into play and

transfers the onus of proving that the produce so brought is not the property of Government on to the defence. What exactly is 'forest' and to what extent such forest should be proved to be Government forest before the presumption of section 56 can reasonably be held to take effect, is a matter of common sense."

4. While cordially agreeing with this conclusion, I would respectfully demur to the examples given above, *flagrante delicto*, &c. This is precisely the rub. I had the honour of serving on the committee when Dr. Brandis brought out the Forest Act, and my impression is strong that he fully and deliberately intended in proposing this section to throw the burden of proof in any question as to the possession of timber on to the private defendants. Dr. Brandis remarked "you may think that Government is a very powerful person, I assure you that Government is a very weak person, and needs support;" and is not this the fact? Take the case of Kurnool. The population is some 818,000 and out of that population probably 817,000 will evade the Forest rules if possible.

There are detached forests in various parts of the district but there is a large mass of forest connected with the Nallamalais of over 800 square miles in extent, with villages along the whole of its margin full of timber stealers, with inhabitants inside the forest who connive at the thefts by fashioning the wood in the forest so as to make it easy of transport, and for the whole of this * district the Forest staff consists of—

* The district contains an area of 7,310 square miles; and the unoccupied waste, which is all more or less under the supervision of the Forest Department, amounts to 5,272 square miles.

One District Forest officer.
One Extra Assistant Conservator.
Two Rangers.
Two Deputy Rangers.
Two Deputy Rangers (temporary).

Five Foresters.
Thirty Forest Guards.
Fifty-four Tannadars.
Ninety-nine Line peons, whose duty is merely to keep the demarcation lines clear.

5. It was in the vicinity of this large forest that the cases in question took place, and it seems that the ends of justice are more likely to be defeated if the dicta of the Magistrates about Nandyal hold good requiring absolute proof that the wood was taken from a Government forest, than if it is recognized that Government is a "very weak person" in this matter of detection and needs support.

The question is one of the utmost importance, and I would ask the Board whether it thinks that it would be wise to ask for a ruling of the High Court as to the legal interpretation of section 56 of the Forest Act.

ENCLOSURE No. 1.

Endorsement by C. M. MULLALY, Esq., Collector and District Magistrate, Kurnool, dated 22nd November 1896, Dis. No. 88-Eng.

The judgment in these † four cases will be forwarded to the Conservator.

† Forest offence cases—

Appeal No. 78 of Head Assistant Magistrate and Lower Court judgment.
C. C. No. 320 of 1896 on Nandyal Stationary Sub-Magistrate's file.
C. C. No. 317 of 1896 on Nandyal Stationary Sub-Magistrate's file.
C. C. No. 84 of 1896 on Taluk Magistrate's file, Markapur.

2. The question involved is one affecting the whole department, viz., the correct interpretation to be put on section 56 of the Forest Act.

If the Conservator considers that an authoritative ruling of the High Court should be obtained, the best course to adopt is for the Head of the department, viz., the Forest Member, to instruct the Government Pleader to move the High Court.

I do not feel disposed to take action in my dual capacity of Collector and District Magistrate.

ENCLOSURES Nos. 2 to 6.—Judgments in the forest offence cases.

RESOLUTION—Forest No. 114, dated 15th March 1897.

As regards the interpretation of section 56 of the Forest Act and the reliance to be placed upon it, the Board has nothing to add to the remarks made in Board's Proceedings, No. 503, dated 30th November 1891, and in paragraph 2 of Board's Proceedings, No. 167, dated 28th March 1895. The examples given in the former of these Proceedings and taken objection to by Mr. Peet do, no doubt, assume the existence of better proof than is generally available, but they were not intended to be exhaustive.

2. The Board considers that Mr. Ghose's remarks go too far, but none of the cases forwarded are of such a character as to afford a satisfactory basis for a reference to the High Court.

(True Copy and Extract.)

(Signed) R. C. C. CARR,
Secretary.

(True Copy.)

Forest Assistant.

To the Conservator of Forests, Northern Circle,
with enclosure, returned.

Copy to other Conservators of Forests.
" Collectors, except Madras.

In the High Court of Judicature at Madras
Wednesday, the twentieth day January,
One thousand eight hundred and ninety seven.

Present
The Honorable Sir Arthur J. H. Collins, Kt. Chief Justice
and
The Honorable Mr. Justice Shephard
Criminal Appeal No. 451 of 1896

The Public Prosecutor — Appellant.
Kandasamy Chetty — Accused.

Appeal under Section 447 of the Code
of Criminal Procedure against the judgment
of acquittal passed on the accused in
Criminal appeal No. 83 of 1895 on the file
of the General and Deputy Magistrate of
Salem reversing the finding and sentence
of the Stationary 2nd Class Magistrate of
Namakkal in Calendar Case No. 241 of 1895.

This appeal coming on for hearing,
upon perusing the Petition of Appeal and
the record of the evidence and proceedings
before the Lower Courts, and upon hearing the
appellant, and the arguments of Mr. M. E.
Sriranga chariar, Vakil for the accused,
the Court delivered the following
Judgment: The Deputy Magistrate has dealt
with

with the evidence and the judgment of the
2nd Class Magistrate in a very perfunctory
way. There is a great deal of evidence
against the accused which he has not noticed.

We cannot accede to the argument that
the prosecution is bound to prove that the
wood in respect of which the charge
is laid was actually being brought from
a forest. Obviously, the sandal wood
must have been found in and brought from
a forest and Section 56 of the Forest
Act throws upon the possessor the onus
of proving that it was not the property
of Government.

We must set aside the acquittal
and direct that the appeal be reheard
by the District Magistrate.

We must again point out that
more care ought to be taken in framing
the charge - setting out the words of

the

the rule which is said to have been
infringed.

Ordered accordingly.

Sd/- J. T. Gillespie,
Ag. Dy. Registrar.
Appellate Side

(True Copy)

Receives
Secretary.