

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 1434

DATED 21st April 97

[Despatch Abstract.]

Coming: to the Bd: of Rev., Procep.
of the Jmt Dept, passing orders on certain
papers relating to a Complaint made
by the Mysore Darbar about the Prosecution
of a Mysore Taluk Master before
a British Sub Magistrate in Malabar
for having quarried stone within
a British reserved forest.

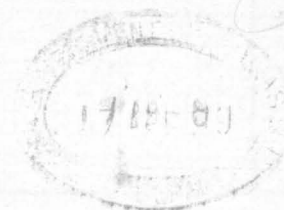
BACK PAPERS.

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

FURTHER PAPERS.

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

Government (1899) of Madras. JUDICIAL.



Current No. 2548

Recd. *17th April*
Regd. *19th do* } 1899.

Enclosures

Spare copies

G.O., No. 550, 5th April 1899.

APRIL.

*On despatch
14/34/92 1st April 1899
Communicated
to the Board of Rev.*

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21/4/89*

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*To
2. The Board of Rev (L.A.)
20.4.99
Wm
20/4/89*

24.4.99

Prosecution of a Mysore Taluk Maistry.

Passing orders on certain papers relating to a complaint made by the Mysore Darbar about the — before a British Sub-Magistrate in Malabar for having quarried stone within a British reserved forest.

*He
19/4*

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers:—

From Lieutenant-Colonel D. ROBERTSON, I.S.C., Resident in Mysore, to the Chief Secretary to the Government of Madras, dated Bangalore, 26th October 1898, No. 5731—179-98.

I have the honour to forward for the orders of the Madras Government copy of a letter, with enclosures in original received from the Mysore Darbar, complaining of the action of the Sub-Magistrate of Vayittiri in Malabar in regard to the conviction of a subordinate of the Mysore Public Works department.

2. It appears to me that the Darbar have good cause to feel aggrieved at the manner in which this case has been dealt with. It is unfortunate that no appeal against the conviction was preferred, but this omission should not in my opinion be held to deprive the Darbar of their right to the redress they now ask for at the hands of the Madras Government.

ENCLOSURE.

From the Secretary to the Government of Mysore, General and Revenue Departments, to the First Assistant to the Resident in Mysore, dated 3rd October 1898, No. 4581—Pol. 152.

I am directed to bring to the notice of the Resident the arbitrary proceedings of the Sub-Magistrate of Vayittiri in the district of Malabar in criminal case No. 78 of 1898 resulting in the unjust and illegal conviction of a subordinate of the Mysore Public Works department and confiscation of certain tools belonging to this Government. These proceedings were held upon the prosecution of the forest ranger of Chedaleth named C. Vencataramier who acted upon insufficient grounds. I am to request the Resident to be so good as to move the Madras Government to render to the Darbar the necessary redress against the injustice done to it by the officials of that Government, and with this object I am to submit the papers as per appended list together with the following brief explanation of the case.

In October 1895 the Darbar sanctioned an estimate for Rs. 28,095 for metalling the Gundalpet Sultan's Battery Road, an important line of communication between Mysore and Malabar and specially benefitting the valuable coffee tract in the Wynaad. Messrs. Mitchell and Mackenzie took up the work on contract. The Mavinhalla river forms the boundary between Mysore and Malabar in this locality. The said contractors quarried part of the metal required for the work in the Mavinhalla river, whether they quarried within the actual Mysore boundary (i.e., the central line of the river) is not relevant to the present case. It is probable that they carried on quarrying beyond the boundary line, and on the British or southern bank of the river (*vide* the pits marked C in accompanying plan, enclosure No. 1 prepared by an overseer of the Mysore Public Works department). These contractors used to stack the metal collected by them, also on the British bank of the river at the place marked D in the said plan, and they used to cart the same into Mysore territory through a cart-track in the adjoining British forest marked E in the said plan. These proceedings of Messrs. Mitchell and Mackenzie, the contractors, were not objected to by any forest or other official of Malabar.

2. Owing to inability to carry out this difficult road work, in a malarious inaccessible locality to which it was difficult to attract the required labour, Messrs. Mitchell and Mackenzie resigned their contract, and thereupon the Mysore Public Works department took into its own hands the execution of the work by *amani*, and placed in charge of it one of its subordinate officials, namely, taluk maistry Subbarayalu Naidu. This taluk maistry proceeded with the work of quarrying, breaking, stacking and carrying the metal required in the same way as the former contractors were doing, but with the exception that he carried on the quarrying in the Mysore or northern bank of the river, that is, from the pits marked B in the said plan instead of from the pits marked C used by the former contractors. The taluk maistry did allow the stacking and breaking of metal to go on on the British bank of the river and the carriage of the same on the cart-track in the British forest; he did this because on the Mysore side of the river there was no open place whereon the metal could be stacked nor any tract on which it could be carried to the road; in thus committing a technical trespass he acted on the precedent of the former contractors; but he has not been prosecuted or convicted for this trespass. Indeed this trespass has been cured by the permission of the Madras Government conveyed in your letter, No. 3034—179-98, dated 21st June 1898.

3. On the 6th April 1898, when the Mysore coolies were breaking the stones collected by them, the British forest ranger in charge of the forest, named C. Vencataramier, happened to inspect the forest and hearing the noise of stone-breaking went to the spot and found coolies carrying, breaking and heaping stones. The ranger caused them to desist and took possession of the Mysore Government tools with which they were working. On hearing of this the taluk maistry Subbarayalu Naidu interviewed the ranger the next day, and was told that it was objectionable to enter the British forest without permission, and that he should not, without a similar permission, cart the metal that was then on British land. Thereupon the taluk maistry reported the matter to his superior on the 10th April (*vide* report in original enclosure No. 2) and solicited a reference to the Collector of Calicut for permission to remove the stacked metal as early as possible before the approaching rainy season. It is worthy of note that at that time the British forest ranger did not charge the Mysore taluk maistry with quarrying on British land.

4. While the question of obtaining this permission was under correspondence between the Darbar and the Residency, the British ranger, after the lapse of 19 days after his inspection, lodged a criminal complaint before the 2nd-class Magistrate of Vayitri against the taluk maistry, for the offence of quarrying stones in a reserved forest under section 21 (f) of the Madras Act V of 1882. The Magistrate issued a summons direct to the taluk maistry (without reference to the Mysore Darbar through the Madras Government) and when the maistry voluntarily appeared in obedience to this summons which apparently was served upon him in Mysore territory, the Magistrate tried and convicted him and fined him Rs. 100 and confiscated the tools belonging to this Government. The fine has been paid for the accused taluk maistry by the Mysore Public Works department.

5. On the legal aspect of the case, I am to invite attention to the records of the case, copy of which is herewith forwarded (enclosure No. 3). The offence of which the taluk maistry has been convicted is that of quarrying stones within the Mavinhalla reserved forest in the British territory on the 6th of April last. The only evidence is that of the complainant, the forest ranger, and this evidence, even if the fullest credence be given to it, is utterly insufficient for the conviction of the taluk maistry. The taluk maistry was admittedly absent, and even if his coolies had actually quarried within British limits (which is denied) he ought never to have been convicted of the quarrying. He was not charged with the "abetment" of such quarrying and a charge for "abetment" even if one had been framed on the ground of alleged instigation, would have been utterly without any foundation unless it could be proved that the taluk maistry directed his coolies or indicated to them in any way to cross the boundary and to quarry on British land. There is no attempt of any kind to prove any such direction or indication by the taluk maistry. And altogether the conviction of the taluk maistry is not supported by any evidence.

whatsoever and is for that reason alone illegal. We may next see if there is any evidence to show that the taluk maistry's coolies quarried on British land. There is no such evidence. All that the complainant (the only prosecution witness) says is that he saw 27 coolies "some carrying stones, some breaking stones, others heaping stones." He saw no one actually quarrying stones at any place. Later on he says: "The stones have been quarried out of the forest and I have seen the pits out of which they were quarried." This statement is evidence of the witness' opinion, but not of any actual fact; the opinion is valueless for no one who did not actually see particular stones being removed can say whether they came from the pits on the British bank or from those on the Mysore bank. The ranger does not pretend that he saw the removal, and is therefore really unable to contradict the accused taluk maistry who says: "I did not get stones quarried in the Mavinhalla reserved forest. I quarried stones from the right bank of the Mavinhalla river and stored them in Mavinhalla Forest." The ranger in his questioning of the coolies on 6th April did not elicit anything about the place of quarrying but only elicited that the taluk maistry had pointed out the "locality where stones ought to be broken." Indeed the ranger's objection on 6th and 7th April was to stacking of stones within the forest (*vide* taluk maistry's report, dated 10th April 1898, enclosure No. 2). The complaint of quarrying stones within the forest made 19 days afterwards was an afterthought.

6. Turning next to the defence it will be seen that the accused, while admitting that the metal was kept in the forest in British territory for breaking and carting, explained that it was excavated from the right bank of the Mavinhalla river on land belonging to the Mysore State. This statement was supported by four witnesses. The Magistrate considered their evidence as utterly valueless on the ground that they did not speak with special reference to the 6th of April—the date on which the ranger inspected the forest. That no one could be expected to remember any particular date unless refreshed by some notes taken at the time is too obvious to need any comment. But the question of date was really of no consequence, for it was for the prosecution to prove affirmatively that the quarrying on 6th April was done on the British bank, and this it failed to do; it was not for the defence to prove the negative that no quarrying was done on the British bank on 6th April. Moreover it is worthy of note that the Magistrate who would not believe the quarrying on the Mysore bank spoken to by defence witnesses was done on 6th April had no difficulty in believing the quarrying on 6th April on the British bank, without absolutely any evidence whatever on which to base such belief.

7. The action of the Magistrate in directing the confiscation of the Mysore Government tools was arbitrary and illegal, as they were not found in the possession or custody of the accused (*i.e.*, the taluk maistry) against whom the complaint was lodged, and the coolies who actually held possession of the tools were not charged or convicted of any forest offence in the committing of which the tools were used, as required by section 43 of Act V of 1882.

8. The Mysore Executive Engineer's report, dated 14th August 1898, and the enclosures thereto (*vide* enclosure 4 of this letter) contain valuable information regarding the place on the Mysore side where the taluk maistry had caused quarrying to be carried on. The Darbar had no opportunity of adducing this information in evidence or of getting overseer Mr. Seppings to appear as a defence witness. In this and other ways the taluk maistry stationed at a distant corner has been prejudiced in his defence. Upon this and other similar points the Darbar lay no particular stress, as upon the record, as it stands, no conviction of the taluk maistry could be based.

9. The Darbar have no doubt that if the illegal character of the Magistrate's proceedings as above pointed out and the annoyance and inconvenience thereby caused to this State be kindly brought to the notice of the Madras Government by the Resident, that Government will readily instruct their legal advisers to take steps to get the Magistrate's proceedings quashed by the Madras High Court. The Darbar in soliciting this mode of redress from the Madras Government, also beg that that Government may be pleased to give an emphatic expression of its disapproval of the arbitrary and irregular conduct now brought to notice on the part of subordinate officials employed on the frontier in their dealings with neighbouring officials of the

Darbar. Officials of the two Governments employed on the frontier have very often need of each other's help and the public work of both Governments must suffer if the feelings which underlies the present vexatious proceedings is not firmly suppressed. The Darbar characterize these proceedings as vexatious, for even if as a matter of fact the taluk maistry had really quarried stones on the British side of the frontier (as had apparently been done by Messrs. Mitchell and Mackenzie without objection), the matter surely was protected from being a penal offence by section 95 of the Indian Penal Code under which "nothing is an offence by reason that it causes or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm." A frontier road work would often be impossible of execution if the workmen are liable to the unjust treatment which has been the Mysore Public Works subordinate's experience in this case.

10. In conclusion I am to request that the Resident will be so good as to move the Madras Government to direct the refund of the fine of Rs. 100 which the local Public Works department has paid on account of the taluk maistry as well the return of the Mysore Government tools which have been confiscated by the Magistrate of Vayittiri.

Endt. No. 2393.

Referred to the District Magistrate of Malabar for remarks.

(Signed) A. R. KNAPP,
Acting Under Secretary.

5th November 1898.

From G. W. DANCE, Esq., I.C.S., District Magistrate, Malabar, to the Chief Secretary to Government, dated Calicut, 1st January 1899, No. D. 1—M. 99.

I have the honour to re-submit the papers received with the endorsement, No. 2393, dated 5th November 1898, and to submit the following remarks.

2. The evidence of the forest ranger shows that the accused admitted to him having quarried in the reserved forest, and that he excused himself by saying that Messrs. Mitchell and Mackenzie had done the same. The Magistrate was clearly influenced by the evidence of the accused's previous admission, for he alludes to it in his judgment. That admission to the ranger coupled with the weakness of the defence evidence afforded reasonable grounds for a conviction. I do not therefore think that the Sub-Magistrate was to blame. Section 95, Indian Penal Code, which is quoted by the Secretary to the Mysore Government, has no bearing on the case, because quarrying in reserved forests is an offence *per se* irrespective of whether it causes any harm or not.

3. Although I do not consider that the Ranger or the Magistrate were to blame, the episode is nevertheless regrettable. Even if some stones were taken out of our forests the matter might have been easily arranged between the departments concerned in either territory. That this was not done appears to me to be due to the accused not having been openly supported by any of the higher officers of his department. The offence occurred on the 11th April and the accused was convicted on the 11th June. The interval was sufficiently long to have allowed of representations being made by the accused's departmental superiors. Yet they never moved in the matter and they did not even appeal against the conviction. It is therefore probable that the Ranger and the Magistrate, when they found that the accused was in no way supported by those in authority over him, considered that his action was unauthorized by the Mysore officials. Hence the heavy fine and the confiscation of the tools.

4. I would not advise an appeal to the High Court, because I do not think there are good grounds for its interference. But I would recommend that a refund of Rs. 100 should be made to the Mysore Government. No order is necessary with regard to the tools, because the accused in his statement before the Sub-Magistrate admits that they were handed over by him to the Mysore Government.

From G. W. DANCE, Esq., I.C.S., District Magistrate, Malabar, to the Chief Secretary to Government, dated Calicut, 24th January 1899, No. D. 93—M. 99.

ORDER—No. 550, Judicial, dated 5th April 1899.

A copy of the District Magistrate's report read above will be communicated to the Resident. On perusal of the record the Government sees no reason to doubt that the Sub-Magistrate was right in believing the ranger who deposed that the accused admitted quarrying on the British side of the river, and pleaded that he was only doing what the former contractors had done. There is thus no doubt as to the legality of the conviction and sentence, while the accused's conduct in not invoking the intervention of the Mysore authorities during the progress of the trial justified the presumption that he was acting on his own account, and not with their knowledge and countenance. The accused was given from May 25th to June 11th to produce his defence witnesses, and if during this period he had caused the necessary representation to be made by the Mysore authorities the prosecution would have been promptly stayed. The Government regrets the incident, but thinks that under the circumstances no blame attaches to the Forest Ranger or the Sub-Magistrate.

2. Under section 401 of Criminal Procedure Code the Government is pleased to direct that the fine imposed upon the accused be remitted and refunded. It is observed that though the tools were ordered to be confiscated they were as a fact left in the accused's possession.

3. The Resident will be requested to ask the Darbar to communicate with the Collector of Malabar if it in future desires to quarry or carry on work on the British side of the boundary.

(True Extract.)

Andruett

for Chief Secretary.

To the Resident in Mysore (with C.L.)
 „ Revenue Department.
 „ District Magistrate, Malabar.
 „ Accountant-General.

Encl. P. Seetharam.

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