

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Handley.

SUBRAMANYA

v.

SOMASUNDARA.*

1891.
October 23.

*Penal Code, s. 166—Public servant—Regulation XXIX of 1802 (Madras), s. 12—
Duties of zamindari karnam.*

Per cur: A zamindari karnam is a public servant and is bound by law to produce accounts to the proprietor or farmer of a zamindari.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by S. H. Wynne, Acting District Magistrate of Madura.

The case was stated as follows:—

“The offence of which the accused was convicted is that he being a public servant disobeyed a direction of law with intent to cause injury (section 166, Indian Penal Code), and he was imprisoned for three weeks and made to pay a fine of Rs. 25.

“He is, what both Magistrates call the *de facto* karnam of a zamindari village, *i.e.*, they both admit that he is not legally occupying that post, but he is deemed to be liable to the penalties under section 21, explanation II, Indian Penal Code.

“Both Magistrates hold the accused to be a public servant on the authority of the High Court, the Lower Court quoting High Court Proceedings No. 1381, dated 25th July 1881. The Head Assistant Magistrate says it has ‘often been ruled,’ but does not quote any rulings. The Regulation of 1802 sets out in the preamble the object with which the office is maintained, and it seems to me that the karnam is not appointed to do anything in the interest of the landholder, but to secure the revenue of Government, to protect the rights and property of the people, and to secure authentic information and accounts for the officers of Government and the Courts of Judicature. Here he has been convicted of conducting himself as a public servant in dis-

* Criminal Revision Case No. 462 of 1891.

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“obedience to legal directions so as to injure the landholder. In the case quoted, High Court Proceedings No. 1381, dated 25th July 1881, the prosecutor was a receiver under a Court of Judicature; although a zamindari karnam is a public servant for the purposes set out in the preamble, it does not follow that he is so in all his functions. His ‘conduct’ in this case is the not keeping or not preparing in time certain accounts. The first set of accounts are the demand, collections, and balance accounts for faslis 1299 and 1300. The accounts which a zamindari karnam has to keep are described in Section 11 of Regulation XXIX of 1802. A demand, collection, and balance account is not one of them. The Court of first instance explains that under clause 8 an account of land cultivated and of money rents must be prepared and under clause 10, a register of quit-rent and ready money payments must be prepared, and he says ‘the balance must be worked out from both accounts.’ But this is a criminal charge, and in respect of it the law must be construed strictly. Moreover the account in clause 8 is one which clearly comes within the wording of the preamble as an account necessary in the interests of Government and the Courts, and the account in clause 10 comes within the wording of the preamble as an account to secure individual persons from injustice, but a demand, collection, and balance account is one whose object is the convenience of the landholder only, and therefore it seems to me that in the preparation of it a karnam is not conducting himself as a public servant. Both the demand account (clause 8) and the tandal or collection account (clause 10) for fasli 1299 were produced at the inquiry, one witness stated that the latter had not been ‘furnished,’ but he does not say that it was not prepared, and the Magistrate does not find that it was not prepared, nor even that it was not produced when asked for, but says ‘the collections have been totalled twice and the second account is obviously a second addition’ whatever that may mean. The Appellate Court also records no finding on the point.

“The second account was the demand, collection, and balance account for fasli 1300, *i.e.*, the current fasli, and the accused urged that it was too soon for the preparation of the account. As already stated, I do not think the karnam is required as a public servant to prepare this account. An account showing

“ the gross demand (clause 8) was produced. As to collections (clause 10) it must be remembered that they are made at the very end of the fasli. There is no distinct finding by either Court as to whether there was any negligence in respect of the keeping of the account (clause 10) such as was a breach of the Regulation. SUBRAMANYA
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“ The third account is the harvest account of fasli 1300. The account which a karnam is bound to keep is described in clause 6. It is admitted that the account was kept, but there is the oral evidence of the complainant and others that, in practice, it should be prepared previous to division, whereas it was in point of fact prepared at or after division.

“ There is nothing in the Regulation prescribing the time at which it is to be prepared, and ‘ practice ’ cannot vary the law on a criminal charge.

“ The Lower Court found that the karnam had broken the law in preparing the account at division, because there was so much ‘ rule of three ’ to be gone through in the preparation of the account that it ought to be prepared beforehand.

“ There is one other point requiring notice on the facts. If the finding of the Magistrate in the Lower Court is that the tandal (account in clause 10) for fasli 1299 was asked for but not produced (which may be his meaning, though he does not say so), then this may be an infringement of section 12 of the Regulation which directs the karnam to produce certain accounts on the requisition of the proprietor supposing ‘ revenue ’ to mean collections. But the prosecutor and the person, if any, who ‘ required ’ the production of the accounts is one Raman Chetti. The zamindar has leased the whole zamindari to certain lessees, who in turn have sub-let this village to one Alagappa Chetti. The latter is therefore the proprietor and he has given no power of attorney or other authority to Raman Chetti. The Appellate Court says the accused was ‘ estopped ’ from denying Raman Chetti’s right to demand production of accounts, because he had for a considerable time recognised Raman Chetti’s management. But under section 115, Evidence Act, estoppel acts in a suit or proceeding between the parties themselves. This is a proceeding between the accused and the crown.”

Mr. E. Norton and Parthasaradhi Ayyangur for complainant.
Accused was not represented.

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JUDGMENT.—This case has been so much complicated by the Lower Courts having wandered into the consideration of many irrelevant matters that it is very difficult to understand what has been decided. From what we can make out of the confused judgments the karnam has been convicted for not producing certain accounts as he is required by section 12 of Regulation XXIX of 1802 to do to the proprietor or farmer.

We think the Lower Courts have rightly held that the accused is a public servant and that he was bound by law to produce the accounts in question to the proprietor or farmer.

But in our opinion the prosecution has failed to prove that the person complaining of the non-production of the accounts was the proprietor or farmer within the meaning of the Regulation. The complainant Subramanya Ayyar is said to be the peishcar of one Ramasami Ayyar, the agent of one Raman Chetti, the undivided brother of Alagappa Chetti, the lessee, who is said to be absent in Singapore. It is impossible in a criminal case, where every thing must be strictly proved against the accused, to hold that the agent of the undivided brother of a lessee is the proprietor or farmer within the meaning of the Regulation. It is said that Alagappa Chetti subsequently recognized Raman Chetti's appointment of Ramasami Ayyar as his agent, but the only proof of this is a letter which is certainly not sufficient to constitute such an agency as is required to give Ramasami Ayyar all the powers of Alagappa Chetti under the Regulation.

Upon this ground we hold that the conviction is illegal.

We also agree with the District Magistrate that even if accused had been rightly convicted the sentence was under the circumstances far too severe, although we consider that a karnam who does persistently and wilfully refuse to produce accounts to the landowner should be severely punished.

The convictions of sentence are set aside, and the fine, if paid, must be refunded.