

EMPEROR
v.
MADDIPATLA
SUBBA-
RAYUDU.

The Acting Public Prosecutor in support of the Reference.

ORDER.—From the language of section 31 of the Court Fees Act it is clear that the order directing the accused who was convicted of a non-cognizable offence to repay to the complainant the fee paid on the latter's petition of complaint does not form part of the sentence passed upon the accused for the offence, and in fact, the section itself says that the order levying the amount of Court fee is to be in addition to any penalty that may be imposed for the offence itself. This view has also been adopted in *Emperor v. Karuppana Pillai* (1) and in *Madun Mundul v Haran Ghose* (2). That being so, the Head Assistant Magistrate hearing the appeal, from the conviction of the accused under section 352, Indian Penal Code, was not competent to set aside the order of the trying Magistrate under section 31, Court Fees Act. The order of the Head Assistant Magistrate is therefore reversed to that extent, and that of the trying Magistrate restored.

APPELLATE CRIMINAL.

Before Mr. Justice Munro and Mr. Justice Pinhey.

EMPEROR

v.

HUSSAIN BEG.*

1908

October 2.

Criminal Procedure Code—Act V of 1898, s. 565 (4)—Indian Penal Code, ss. 176, 177—Meaning of words “for the commission of an offence.”

The second part of section 176 of the Indian Penal Code, which provided an aggravated punishment for omitting to give notice to a public servant, when such notice is required for preventing the commission of an offence, applies only when the object is to prevent the commission of a particular offence and not of offences generally.

The notice of residence required to be given by convicted persons under section 565 (4) is not required for preventing the commission of any particular.

(1) I. L. R., 29 Mad, 188.

(2) I. L. R., 30 Calc., 687.

* Case Referred No. 1 2 of 1908 (Criminal Revision Case No. 448 of 1908) for the orders of the High Court by F. D. Bird, Esq., Chief Presidency Magistrate, Egmore, Madras, in his letter, dated 27th August 1908.

offence and the failure to give such notice must be dealt with under the first part of section 176 of the Indian Penal Code. EMPEROR

THE facts are sufficiently stated in the following letter of reference by the Chief Presidency Magistrate, Madras : —

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“I have the honour to submit copy of judgment in Calendar Case No. 19694 on the file of my Court and to request that the following question may be submitted for the orders of the Honourable the Judges and their decision communicated to me for the guidance of the Presidency Magistrates :

“Should cases under section 565 (4) of the Criminal Procedure Code be dealt with under the first or second part of section 176, Indian Penal Code ? ’

“Under section 565, Criminal Procedure Code, certain previously convicted offenders may, on re-conviction, be directed to notify their residence (to the Police) for a term not exceeding five years from the date of expiration of sentence. Under clause (4) of that section a person refusing or neglecting to comply with such an order shall be punished ‘ as if he had committed ’ an offence under section 176, Indian Penal Code.

“Under the first part of section 176, Indian Penal Code, whoever, being legally bound to give any notice to a public servant, intentionally omits to do so may be punished with one month’s simple imprisonment ; and (under the second part of the section) if the notice ‘ is required for the purpose of preventing the Commission of an offence, ’ the punishment may extend to six months’ simple imprisonment. The normal application of section 176, Indian Penal Code, is presumably to cases arising out of sections 44 and 45, Criminal Procedure Code.

“In High Court Criminal Revision Case No. 61 of 1908 a case of the nature referred to was dealt with. The late Mr. Justice Boddam passed the following order : —

‘ Order :—The accused was convicted under the first part of section 176, Indian Penal Code, and was sentenced to three-months’ simple imprisonment. The maximum sentence under this part of section 176, Indian Penal Code, is one month’s simple imprisonment. The conviction is right but the sentence passed is illegal, and is therefore reduced to one month’s simple imprisonment.’

“I submit that the point whether such cases should be dealt with under the first or the second part of section 176, Indian

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Penal Code, is not definitely settled by the foregoing order, and it is desirable that it should be settled, for, at present, some Magistrates hold one view and some the other.

“I would respectfully submit that the object of the notice under section 565, Criminal Procedure Code, is that the man may be kept under the surveillance or the Police in view to preventing him from committing further offences. The law apparently assumes that a man who has been convicted twice is likely to commit further crime. The notice to the Police is therefore introduced as a deterrent, and in the majority of cases it undoubtedly acts as such. The residences of such men are frequently visited by the Police, and if they happen to be away from home at the time of occurrence of a crime in the locality they stand a fair chance of being suspected in connection with it.

“I venture to submit for consideration that such cases fall for disposal under the second part of section 176, Indian Penal Code.”

The Acting Crown Prosecutor in support of the Reference.

ORDER.—We are of opinion that cases under section 565 (4) of the Code of Criminal Procedure should be dealt with under the first part of section 176 of the Indian Penal Code. We are fortified in this opinion by the ruling in *Panatulla v. Queen-Empress*(1), in which it was held that the aggravated penalty constituted by the second clause of section 177 of the Indian Penal Code can only be inflicted when the information required to be given relates to the commission of some particular offence, and not of offences generally. The words “for the purpose of preventing the commission of an offence” in section 176 of the Indian Penal Code, should, we think, be construed in the same way. The information required to be given under section 565 (4) of Code of Criminal Procedure, cannot be said to be required for the purpose of preventing the commission of any particular offence though it may be required for the purpose of preventing the commission of offences generally.

(1) I. L. R., 15 Calc., 386.