

APPELLATE CRIMINAL.

Before Mr. Justice Abdur Rahim.

EMPEROR

1908.
October 2.

v.

MADDIPATLA SUBBARAYUDU.*

Court Fees Act, Act VII of 1870, s. 31—Power of Appellate Court to set aside order under s 31 of Court Fees Act.

An order under section 31 of the Court Fees Act directing the accused who was convicted of a non-cognizable offence to repay to the complainant the fee paid by him on the complaint is not part of the sentence passed on the accused for the offence.

On appeal against such conviction it is not competent to the Appellate Court to set aside the order under section 31 of the Court Fees Act.

THE facts of this case are sufficiently stated in the following letter of reference by the District Magistrate of Guntūr :—

“ One Maddipatla Subbarayudu was convicted by the Stationary Sub-Magistrate, Guruzala, in Calendar Case No. 103 of 1908, of an offence punishable under section 352, Indian Penal Code, and sentenced to pay a fine of Rs. 15 with two weeks' rigorous imprisonment in default of payment of fine, and ordered under section 31 of the Court Fees Act to pay to the complainant Rs. 1-2-0 being the cost of Court fees. An appeal was preferred against this conviction and sentence before the Head Assistant Magistrate Narasaraopet. The Appellate Court, while upholding the conviction, modified the sentence by reducing it to a fine of Rs. 5, and also cancelled the order of the lower Court as regards the payment to the complainant of costs and compensation.

“ The order cancelling the order for payment of costs under the Court Fees Act seems to be wrong, since section 31 of the Court Fees Act makes the award of court and process fees to the complainant imperative in case of conviction in non-cognizable cases. The Head Assistance Magistrate says that he lost sight of this provision.”

* Case Referred No. 82 of 1908 (Criminal Revision Case No. 356 of 1908) for the orders of the High Court under section 438 of the Code of Criminal Procedure by Mr. Young, Esq., District Magistrate of Guntūr, in his letter, dated 22nd July 1908.

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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.