SINGARAM NAGABHU-SHANAM.

The accused preferred this Criminal Revision Petition.

P. Nagabhushanam for petitioner.

K. Sreenivasa Ayyangar for complainant.

DAVIES, J.—I am unable to see wherein the defamation consists. The complainant had, as a matter of fact, been convicted of theft and sent to jail and that theft was of property belonging to the very temple the appointment to the "archakaship" of which was in question. There was no harm in the accused, who is the trustee of the temple, publishing that fact in order to forestall the complainant from setting up his rights in regard to a joint "archakaship" because it was in the interests of the temple that the trustee so acted. The conviction must be set aside and the fine, if levied, be refunded.

BENSON, J.—The statement alleged to be defamatory is that the complainant had gone to jail for having carried away certain idols. That statement was true, and the alleged defamatory statement was no more than the publication of the result of proceedings in a Court of Justice, which is specially declared to be no defamation by exception 4 to section 499 of the Indian Penal Code.

The conviction must be reversed and the fine, if levied, refunded.

APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Benson.

MEYYAN AND ANOTHER (ACCUSED),

v.

EMPEROR (RESPONDENT).*

1902. October 7.

Criminal Procedure Code—Act V of 1898, ss. 391, 407—Sentence of whipping by Second-class Magistrate—Appeal—Application for postponement of sentence till hearing of appeal—Refusal—Validity.

When a Second-class Magistrate passes a sentence of whipping only, without imprisonment, he has no power to postpone the execution of the sentence pending

* Case referred (Criminal Revision Case No. 147 of 1902) for the orders of the High Court in accordance with the proceedings of this Court, dated 9th September 1902, No. 1756 J, by A. G. Cardew, District Magistrate of Madura.

MEYYAN v. EMPEROR.

an appeal by the accused. It is only when whipping is added to imprisonment in an appealable case that the whipping may, and ought to, be postponed under section 391 of the Criminal Procedure Code.

SENTENCE of whipping passed by the Second-class Magistrate of Sivaganga. The Magistrate refused to allow time for an appeal to be preferred, and the sentence of whipping was executed. Upon the appeal being heard, the sentence was quashed. The District Magistrate made this reference to the High Court as to whether the execution of a sentence of whipping, when it is the sole punishment, may be postponed to allow time for an appeal to be preferred.

ORDER.—In our opinion the refusal of the Second-class Magistrate to postpone the sentence of whipping pending the intended appeal of the accused was the only order he could legally pass. The Code makes no provision whereby a Magistrate imposing a sentence of whipping only can suspend its execution, nor does it provide for the detention of a person so sentenced to allow of his appealing, nor for his re-arrest to undergo the whipping if the sentence is confirmed on appeal. It is only when whipping is added to imprisonment in an appealable case that whipping may, and ought to, be postponed (section 391, Criminal Procedure Code).

No doubt this state of the law, in effect, deprives persons sentenced by a Second-class Magistrate to whipping only, of the right of appeal which section 407, Criminal Procedure Code, gives them and we agree with the District Magistrate that such a result is unsatisfactory. It can, however, only be corrected by the Legislature. The difficulty does not arise in the case of First-class Magistrates, as the Code gives no right of appeal against a sentence of whipping only by such Magistrates (section 413 of the Criminal Procedure Code).