

Act in so far as it relates to the agreement which was not the subject of the Court's order of the 16th July 1909; and that, therefore, no appeal lies.

We dismiss the appeal with costs.

Appeal dismissed.

Attorneys for the appellant: Messrs. *Malvi, Hiralal, Mody and Ranchhoddas.*

Attorneys for the respondent: Messrs. *Bicknell, Merwanji and Romer.*

K. McL. K.

CRIMINAL REVIEW.

Before Mr. Justice Batchelor and Mr. Justice Rao.

EMPEROR *v.* FULJI DITYA.*

Criminal Procedure Code (Act V of 1898), section 565—Indian Penal Code (Act XLV of 1860), section 75—Whipping Act (IV of 1909), section 3—Sentence of whipping only passed on accused—Order to accused to notify his residence—Validity of the order.

Section 565 of the Criminal Procedure Code (Act V of 1898) must be strictly construed. The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict. It cannot be made where the Court, instead of passing that sentence, passes a sentence of whipping.

THE High Court sent for the papers of this case on review of statement of criminal work.

The facts of the case are stated in the judgment.

L. A. Shah, acting Government Pleader, for the Crown.

There was no appearance for the accused.

BATCHELOR, J.:—In this case one Fulji valad Ditya has been convicted of house-breaking under section 454 and of having suffered certain previous convictions which bring his case within

* Criminal Review No. 232 of 1910.

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section 75 of the Indian Penal Code. The sentence upon him was that he should suffer 30 stripes under the Whipping Act IV of 1904, and to that sentence there was added an order, under section 565 of the Criminal Procedure Code, directing that the convict should notify his residence or change of residence for a period of five years.

We called for the papers in the case in order to satisfy ourselves whether this order under section 565 could be supported, and we have heard the learned Government Pleader in its favour. We are of opinion that the order cannot stand. So far as the plain words of section 565 go it seems to us clear that the order cannot be brought within them. For the section in terms allows of such an order being made only at the time of passing sentences of transportation or imprisonment on the accused, and it provides that his residence and change of residence "after release" be notified.

It seems clear that where there is no sentence of transportation or imprisonment and no release of the convict thereafter the section does not justify the making of such an order.

The Government Pleader has, however, called our attention to the fact that the words of section 535 of the Criminal Procedure Code professedly follow the words of section 75 of the Indian Penal Code, and, therefore, are limited to the case of a sentence of transportation or imprisonment as described in section 75 of the Penal Code, and it is urged that the Court convicting the accused person is not deprived of its power to make this order under section 565, merely by reason of the circumstances that instead of passing a sentence of transportation or imprisonment it prefers that alternative sentence of whipping which is a mere substitute for transportation or imprisonment, and in support of this argument it is pointed out that whereas section 565 was added to the Code in 1898, the present Whipping Act did not become law until 1909.

This latter argument, however, which might otherwise have force, seems to us to be met by the fact that when section 565 was enacted in 1898, there was on the Statute Book a Whipping Act, namely, VI of 1864, which, so far as we are concerned with

it, was identical with the latter Act of 1909. That being so, it seems to us that section 555 must be construed strictly and that when the Legislature says that such an order, as is there described, may be made at the time of passing sentence of transportation or imprisonment so as to provide for a certain notification after the release of the convict, it must be taken that the Court's power is limited to the cases there specifically described, and does not extend to cases where the Court, instead of passing that sentence, passes a sentence of whipping.

For these reasons we set aside the order under section 565 of the Criminal Procedure Code.

Order set aside.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

CHANMALAPA CHENBASAPA TENGINKAI (ORIGINAL PLAINTIFF),
 APPELLANT, v. ABDUL VAHAB VALAD MAHOMED HUSEN SAHEB
 KHATIB (ORIGINAL DEFENDANT), RESPONDENT.*

1910.
 August 1.

Limitation Act (XV of 1877), section 14—Court—Interpretation—Court in British India—Court in a Native State in India not included.

The word "Court" as used in section 14 of the Indian Limitation Act (XV of 1877) means a Court in British India, and not a Court in a Native State of India.

APPEAL from the decision of Mr. R. G. Bhadbhade, First Class Subordinate Judge, at Dharwar.

Chanmalapa (the plaintiff) lent Rs. 10,000 to Ladsaheb and Mahomedsaheb on a hypothecation bond passed by a letter on the 30th June 1899; and the defendant Abdul Vahab passed to him a letter of security for the debt on the 21st March 1901.

The plaintiff filed a suit to recover the money against all of the three persons in the District Court of Shivmoga (Mysore

* First Appeal No. 104 of 1909.