
(1910) 09 BOM CK 0005
In the Bombay High Court
Case No : Criminal Review No. 232 of 1910

Emperor	Vs	APPELLANT
Fulji Ditya		RESPONDENT

Date of Decision : 09-09-1910

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 565
Penal Code, 1860 (IPC) — Section 75

Citation : (1910) 12 BOMLR 901

Hon'ble Judges : Rao, J;Batchelor, J

Bench : Division Bench

Judgement

Batchelor, J.—In this case one Fulji walad Ditya has been convicted of house-breaking u/s 454 and of having suffered certain previous convictions which bring his case within Section 75 of the Indian Penal Code. The sentence upon him was that he suffer thirty stripes under the Whipping Act IV of 1909 and to that sentence there was added an order u/s 565 of the Criminal Procedure Code directing that the convict should notify his residence or change of residence for a period of five years.

2. We called for the papers in the case in order to satisfy ourselves whether this order u/s 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.

3. 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.

4. The Government Pleader has, however, called our attention to the fact that the

words of Section 565; 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 Indian Penal Code, and it is urged that the Court convicting the accused person is not deprived of its power to make this order u/s 565, merely by reason of the circumstance that instead of passing a sentence of transportation or imprisonment it prefers to pass 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.

5. This latter argument, however, which might otherwise have (sic), 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 later Act of 1909. That being so, it seems to us that Section 565 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.

6. For these reasons we set aside the order u/s 565 of the Criminal Procedure Code, 1898.