

Empress of India Vs. Partab

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All666

Judge : Spankie, J.

Appellant : Empress of India

Respondent : Partab

Judgement :

Spankie, J.

1. The whipping in this case might have been awarded in lieu of the punishment to which the accused was liable under Section 411, and if previously convicted of an offence under this section, he might have been punished with whipping in lieu of or in addition to any other for which he would have been liable for the offence, But there is no record of the previous convictions of accused. He does not admit that he was twice before punished for a similar offence to that with which he was now charged. He stated that he had been twice punished for theft, but the offence of theft is not the same offence as that of dishonestly receiving stolen property, knowing the same to have been stolen. Whipping therefore should not have been added as a punishment, and that portion of the sentence is annulled.

2. In making an order for security for good behaviour I presume that the Magistrate holds the powers of a first class Magistrate, and that he was acting under Section 505 of the Criminal Procedure Code. I have some doubt whether the Magistrate had adduced before him such evidence as to general character as to justify his dealing with the accused as a person known by repute to be a thief or receiver of stolen property. He had already sentenced the accused for the offence of which he was found guilty, and in the record of the trial I find no evidence from which it could be gathered that the accused was by repute a receiver of stolen property. But the prisoner certainly allowed that he had been punished twice for theft, and here he was again tried and found guilty of receiving stolen property. I am therefore unwilling to disturb the order. But the order should be no part of the sentence for the offence of which accused was convicted. There should have been a proceeding drawn out representing that the Magistrate from the evidence as to general character adduced before him in this case, was satisfied that Partab was by repute an offender within the terms of Section 505 of the Criminal Procedure Code, and therefore security would be required from him. But as he had been sentenced to two years' rigorous imprisonment, which term has not expired, an order should have been recorded to the effect that, on the expiration of the term, the prisoner should be brought up for the purpose of being bound (Clause 2 Section 504)