

**In Re: Abbulu**

**In Re: Abbulu**

**SooperKanoon Citation :** [sooperkanoon.com/806397](http://sooperkanoon.com/806397)

**Court :** Chennai

**Decided On :** Oct-29-1909

**Reported in :** 5Ind.Cas.743

**Judge :** Munro and ;Abdur Rahim, JJ.

**Appellant :** In Re: Abbulu

**Judgement :**

ORDER

1. Under Section 221, Criminal Procedure Code, if the accused has been previously convicted of an offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction should be stated in the charge. Thus if it is intended to rely upon a previous conviction in order to justify the imposition of a sentence of whipping in addition to other punishment, the previous conviction should be mentioned in the charge as it is relied upon for the purpose of affecting the punishment. Section 75, Indian Penal Code, has, we may observe, no application to such a case. Mere omission to set out the previous conviction is not, however, sufficient reason for interfering in appeal or revision with the sentence passed. Under Section 535, Criminal Procedure Code, no sentence shall be deemed invalid merely on the ground that no charge was framed. To justify the Court's interference there must also in its opinion have been a failure of justice caused by the omission. See also Section 537, Criminal Procedure Code. In the present case the fact of the previous

conviction was put to, and admitted by, the accused and it cannot be said that there was any failure of justice which justified interference with the sentence of whipping by the appellate Court. In the present case, however, we do not think it necessary to interfere with the order of the appellate Court.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**