

## REG. v. SU'RYA' bin KRISHNA MA'NDAVKAR.

*Whipping Act, No. VI. of 1864—Previous Conviction.*

On a reference by a Session Judge, under Sec. 434 of the Crim. Proc. Code, a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in Sec. 2 of Act VI. of 1864, was annulled: as the offence was not *committed* after previous conviction.

1866.  
December 12.  
Referred Case.

THE prisoner was charged before Rámchandra Amrit Dugal, Magistrate F. P. in the Ratnágiri District, with three several instances of theft (Cases Nos. 133, 134, and 135) committed respectively on the 20th of August, the 15th of August, and the 23rd of July, 1866; and was convicted on the 20th of September in Nos. 133 and 134, and on the 21st of September in No. 135, in which case he was sentenced to suffer six months' rigorous imprisonment, *and* to receive fifty stripes, under Sec. 379, Ind. Pen. Code, and Act VI. of 1864, Secs. 2, 3, and 9.

The records and proceedings had been called for by R. H. Pinhey, Session Judge of the Konkan, on a review of the District Magistrate's monthly report; and were referred for the orders of the High Court, under Sec. 434 of the Code of Criminal Procedure, on the 28th of November, with a view to the sentence of whipping *in addition to* imprisonment in Case No. 135 being reversed: it appearing to be illegal, as the offence was not *committed* after previous conviction.

The case came on for hearing this day before COUCH, C.J., NEWTON and WARDEN, JJ.

PER CURIAM:—The Court annuls the sentence of whipping; as, in cases of offences specified in Sec. 2 of the Act, the law does not authorise the infliction of that punishment *in addition to* any other punishment to which the offender may be liable under the Indian Penal Code, unless where the offence has been committed after a previous conviction of the same offence.

*Sentence of whipping annulled.*