

1870.
Sept. 8.REG. V. MEHTARJI GOPA'LJI *et al.**Review—Criminal Trial.*

The Code of Criminal Procedure contains no provision for a review of an order passed in a criminal case.

THIS was an application to the High Court in the exercise of its extraordinary criminal jurisdiction.

On the 13th of November 1869, the petitioners, Mehtarji Gopálji and Bhujá valad Jairám, were tried for murder, and were, by the Session Judge at Ahmednagar, convicted and sentenced to transportation for life.

From the conviction and sentence a petition of appeal was presented to the High Court, when Shivshankar Govindrám, a Pleader of the Court, appeared for the petitioners. The petition was rejected, and the sentence confirmed, on the 19th of January 1870, by GIBBS and SARGENT, JJ.

The petitioners now applied for a review of that order, on the ground that the conviction and sentence were contrary to law and against the weight of evidence.

The petition came on for hearing this day, before GIBBS and MELVILL, JJ.

Vasantráv Bálmutund appeared for the petitioners.

GIBBS, J. :—The papers in this case were before the court on a former occasion, and the present applicants were then heard through a Pleader, when the conviction and sentence were affirmed. No provision is made in the Code of Criminal Procedure for the reviewing of orders passed in criminal cases, which, under Sec. 428, are final; and I have never known any case in which a review has been allowed under circumstances like the present. In a few cases, where the order of rejection had been made on the petition itself, prepared in the jail and forwarded by the jailor, without hearing a Pleader, this court has allowed a Pleader to move the court to call for the papers on proper grounds being shown. The order sought to be reviewed by this petition was passed by a

1870. Division Court after hearing the Pleader for the petitioners,
 REG. v. and the grounds of review now sought to be brought forward
 MEHTARJI are the same as those which were urged on the appeal. For
 GOPALJI these reasons we reject the application.
 et al.

MELVILL, J., concurred.

Application rejected.



Sept. 22.

REG. v. CHA'NGIA' valad SHUMIA'.

*Whipping—Conviction of Theft in a Dwelling-house—Previous
 Conviction of Theft—Act VI. of 1864, Sec. 3.*

A prisoner convicted of "theft in a dwelling-house" who has previously been convicted of "simple theft" is not thereby rendered liable to whipping, under Act VI. of 1864, Sec. 3.

CASE referred by G. F. Sheppard, Magistrate of Tháná, under Sec. 434 of the Code of Criminal Procedure, for the orders of the High Court:—

"The First Class Subordinate Magistrate of Murbár convicted one Chángiá valad Shumiá, under Sec. 380 of the Indian Penal Code, of the offence of "theft in a dwelling-house," and sentenced him to fifteen days' imprisonment and to receive in addition twenty lashes.

"On referring to the record of a previous conviction against the prisoner, I find that he was formerly convicted of simple theft, being an offence distinct from that with which he has been now charged.

"I am, therefore, of opinion that, under the provisions of Sec. 3 of Act VI. of 1864, the sentence of whipping is illegal, and, accordingly, refer the proceedings for the orders of the High Court."

PER CURIAM (WESTROPP, C.J., GIBBS and LLOYD, JJ.):—The Court annuls the sentence of whipping passed upon Chángiá valad Shumiá as illegal.

The offence, under Sec. 380 of the Indian Penal Code, of theft in a dwelling-house, is a distinct offence from that of theft under Sec. 378, and is not included under it.

Order accordingly.