

1870.  
REG.  
v.  
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et al.

person for trial, he shall stay proceedings, and submit the case to the Magistrate to whom he is subordinate, or to such other Magistrate having jurisdiction "as the Magistrate of the District may direct. The Magistrate to whom the case is submitted shall either try the case himself, or refer it to any officer subordinate to him having jurisdiction, or he may commit the accused person for trial."

It appears clear from this section that the Magistrate of the District may refer to a Full Power Magistrate a case submitted under Sec. 276 of the Code of Criminal Procedure. The Court, therefore, sees no grounds for interference, and directs that the records and proceedings be returned.

REG. v. KUSA' valad LAKSHMAN.

Nov. 17.

*Juvenile Offender—Whipping—Act VI. of 1864, Sec. 3.*

Section 3 of Act VI. of 1864 (the Whipping Act) applies to juvenile as well as to adult offenders.

That section does not apply to cases in which the second conviction is for an offence committed previously to the first conviction.

**T**HIS was a case referred by A. C. Watt, Acting Session Judge of Puṇá, for the orders of the High Court.

The prisoner Kusá and a boy named Káshirám, aged respectively fifteen and twelve years, were tried for theft by H. F. Aston, 2nd Class Subordinate Magistrate at Puṇá, and were convicted of that offence. As the Magistrate considered their offence to call for a severer punishment than he was competent to adjudge, he submitted the proceedings to the Magistrate of the District.

Upon a review of the proceedings in the case, and the record of a previous conviction for theft committed by the same persons a few days before the one under inquiry, the District Magistrate considered that the younger boy, Káshirám, had been tempted and led away by the elder, Kusá. As Káshirám had been already ordered in the former case to be bound as an apprentice in the David Sassoon Reformatory, the District Magistrate reversed the conviction in his case,

but sentenced Kusá to receive twenty stripes with a rattan, and to be confined for six months in the Puná Jail Reformatory on the expiration of the sentence awarded for the previous conviction.

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The Acting Session Judge, in referring the case to the High Court, stated that, in his opinion, Sec. 3 of Act VI. of 1864 did not apply to juvenile offenders, to whom the section applicable was Sec. 5, under which a double punishment could not be inflicted upon a juvenile offender, even though he might have been previously convicted of the same offence. He thought that the case of *Reg. v. Abdool Khitmutgar (a)*, quoted at p. 788 of the Indian Digest, was applicable.

The reference was considered by GIBBS and MELVILL, JJ.

PER CURIAM :—The Court does not agree with the Acting Session Judge that Sec. 3 of Act VI. of 1864 is inapplicable to juvenile offenders.

But another question arises, and that is, whether the provisions of Sec. 3 are applicable when the second conviction is for an offence *committed* previously to the first conviction. This question has already been decided by this court in the negative : *Reg. v. Surya (b)*. The object of the law is to inflict whipping, in addition to the other punishment, upon those persons only who, after completing a previous sentence, and after having a *locus penitentiae* afforded to them, again commit the same offence, and thereby show that they are not to be deterred by a sentence of imprisonment only.

The Court, therefore, reverses so much of the sentence as directs the prisoner to receive twenty stripes with a rattan.

The Court would observe that the reason assigned by the Magistrate of the District for reversing the conviction of Káshirám, namely, that he was tempted and led away by the other prisoner, was not legally sufficient, though it might have justified the Magistrate in passing a lenient sentence.

*Sentence of whipping reversed.*

(a) Cal. W. Rep., Special Vol. 1864, Cr. Ca. 38.

(b) 3 Bom. H. C. Rep., Cr. Ca. 38.