
(1937) 39 BOMLR 470

Bombay High Court

Case No: Criminal Appeal No. 524 of 1936

Emperor

APPELLANT

Vs

Motiram Bhikoba
Marudkar

RESPONDENT

Date of Decision: Feb. 11, 1937

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 391(1)(b), 404, 411

Citation: (1937) 39 BOMLR 470

Hon'ble Judges: N.J. Wadia, J; John Beaumont, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

John Beaumont, Kt., C.J.

This is an appeal by the accused against his conviction by a Presidency Magistrate under Sections 454 and 380 of the Indian Penal Code, read with Section 149, and sentence to five stripes.

2. A preliminary objection is taken that no appeal lies. u/s 404 of the Criminal Procedure Code no appeal lies from any judgment or order of a criminal Court except as provided for by the Code or by any other law for the time being in force. Section 411 provides that¹/₂

Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court, if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

The sentence here is to receive five stripes, and it is not a sentence of imprisonment for a term exceeding six months or of fine exceeding two hundred rupees. Therefore from the terms of Sections 404 and 411 it would appear that no appeal lies.

3. Mr. Patwardhan on behalf of the appellant relies on the language of Section 3 of the Whipping Act which provides that for certain offences the accused may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code. He argues that this sentence was passed in lieu of a sentence which could have been passed under the Code, and he asks us to assume that such sentence would have been an appealable sentence; but obviously we cannot assume that, and hold that a sentence of whipping must be in lieu of an appealable sentence. Reliance is also placed on Section 391(1)(b) of the Criminal Procedure Code, which refers to a sentence of whipping being confirmed by the appellate Court, but that section does not in terms confer any right of appeal, and its effect may be limited to sentences passed by Magistrates other than Presidency Magistrates. It seems to me impossible to get over the plain words of Section 411. I think, therefore, that the preliminary objection must be upheld.

N.J. Wadia, J.

4. I agree