

[Full Bench.]

1914.

Present : Wood Renton A.C.J., Pereira J., and De Sampayo A.J.

THE KING *v.* BARONCHI

127—D. C. (Crim.) Tangalla, 809.

Appeal—Criminal Procedure Code, s. 335—Accused sentenced to three months' imprisonment and to a term of police supervision—Accused has right to appeal—Punishment—Penal Code, s. 52.

The word "punishment" as used in section 335 (1) of the Criminal Procedure Code does not mean a punishment mentioned in section 52 of the Penal Code.

An accused sentenced by a District Court to a term of three months' imprisonment and to a term of police supervision has a right to appeal on the facts without leave of the District Judge.

THIS case was referred to a Full Bench by Pereira J. for the decision of a preliminary objection to the appeal raised by counsel for respondent.

van Langenberg, K.C., S.-G., for the respondent.—The accused was sentenced to three months imprisonment and one year's police supervision. No appeal lies against a sentence of three months' imprisonment, except on a point of law or with the leave of the Court. The sentence directing the accused to be under police supervision does not enable the accused to appeal on the facts without leave. "Police supervision" is not a punishment within the meaning of the term as used in the Criminal Procedure Code. The term "punishment" is used in the Criminal Procedure Code in the sense in which that term is used in the Penal Code. Police supervision is not "punishment" in the sense in which that term

is used in the Penal Code. Council cited *Culantaivalu. v. Soma-*
Sundaram,¹ *Cassim v. Kandappa*,² *Daniel v. Elaris*,³ *Dissanayake*
v. Fernando,⁴ *Fernando v. Mathes Pulle*.⁵

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Bartholomeusz, for accused, appellant, not called upon.

Cur. adv. vult.

September 3, 1914. WOOD RENTON A.C.J.—

This case has been reserved by my brother Pereira for argument before three Judges on a preliminary objection to the hearing of the appeal taken by the Solicitor-General. The accused was charged, under section 450 of the Penal Code, with having been found in a building for an unlawful purpose. The District Judge convicted him, and sentenced him to three months' rigorous imprisonment and one year's police supervision. Under section 335 (1) of the Criminal Procedure Code no appeal lies on the facts without the leave of the Court, which has not been given here, from a sentence to a term of imprisonment not exceeding three months, "without any other punishment." The question that we have to decide is whether the addition in the present case, to the term of imprisonment of a term of police supervision, is a "punishment" within the meaning of section 335 (1) of the Criminal Procedure Code.

Apart from authority, I should answer this question, without hesitation, in the affirmative. Police supervision, as we all know, is in point of fact a punishment. It effects a material curtailment of the personal liberty of the offender on whom it is imposed, and subjects him to treatment which is distinctly penal in its character. Moreover, the Habitual Criminals and Licensed Convicts Ordinance, 1899 (No. 7 of 1899), itself describes police supervision as a punishment. The difficulty, however, which has rendered the argument of this case before three Judges necessary, arises from the view expressed by the Full Court—although no decision of the point was necessary—in *Culantaivalu v. Somasundram*,¹ approving of the decision of Bonser C.J. in *Cassim v. Kandappa*,² that binding over a party to keep the peace is not a "punishment" within the meaning of the Criminal Procedure Code. The reasoning that underlies those cases may be stated as follows. There is no definition of the term "punishment" in the Criminal Procedure Code itself. But section 3 (1) of the Code provides that "all words and expressions used herein and defined in the Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code." Now, while the Criminal Procedure Code does not, the Penal Code, it is said, does, define "punishment." Section 52 enumerates the punishments to which the offenders are

¹ (1904) 2 *Bal.* 122.

² (1901) 5 *N. L. R.* 311.

³ 2 *Br.* 191.

⁴ 6 *N. L. R.* 144.

⁵ (1909) 12 *N. L. R.* 159.

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liable under the provisions of the Code, and neither an order binding a person over to keep the peace or an order for police supervision comes within the category. It appears to me, however that the answer to this argument is a very simple one. Section 52 merely prescribes the punishments to which an offender is liable under the Code itself. It nowhere prevents the Legislature from creating by independent enactment new forms of punishment within the meaning of section 335 (1) of the Criminal Procedure Code. Ordinance No. 7 of 1899 is, in my opinion, an independent enactment of that character.

I would over-rule the preliminary objection, and allow the case to be argued on the merits before a single Judge.

DE SAMPAYO A.J.—

I entirely agree, and have nothing to add.

PEREIRA J.—

I agree. "Punishment" in the ordinary acceptation of the term is some loss or pain inflicted for a crime or fault, and I see no reason why that meaning should not be given to the term as used in section 335 (1) (d) of the Criminal Procedure Code, unless, of course, the term is given a special interpretation in that Code or the Penal Code. In *Cassim v. Kandappa*¹ it appears to have been assumed by some oversight that the word was defined in the Penal Code. There is no definition of the word in the Penal Code. The particular punishments to which offenders are liable under the Code are mentioned therein (section 52), and thereafter, wherever it is necessary to refer to them, they are referred to by the specific names given to them. The terms in which the punishments referred to above are set forth in the Penal Code, namely, "the punishments to which offenders are liable under the provisions of this Code are," &c., imply by themselves the assumption that there are other punishments recognized by law.

Objection over-ruled.

¹ (1901) 5 N. L. R. 311.