

Emperor Vs. Abdul Rahman Ismail

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Court : Mumbai

Decided On : Sep-12-1921

Reported in : (1921)23BOMLR1199

Judge : Norman Macleod, Kt., C.J. and ; Shah, J.

Appeal No. : Criminal Appeal No. 473 of 1921

Appellant : Emperor

Respondent : Abdul Rahman Ismail

Judgement :

Norman Macleod, Kt., C.J.

1. If the second accused is sentenced to be detained under rigorous imprisonment in the Juvenile Prison at Dharwar for two years as he is a lad of sixteen, and the first accused who is an adult, although he admittedly has three previous convictions is sentenced to one year's rigorous imprisonment, it follows that the Magistrate gave the second accused a longer sentence because he considered that it would be for his benefit to remain within the walls of the Dharwar Institution for two years. It is nowhere laid down that a Magistrate has such powers to increase the sentence of imprisonment on this ground. However desirable it might be for the Magistrates to have such powers, the sentence is one under the Indian Penal Code, but as the rules with regard to the detention, of a juvenile in the

Dharwar Jail provide that no one should be admitted into the jail unless he has been sentenced to a period of one year or upwards, the result is, that in the case of juveniles Magistrates increase the sentences in many cases up to one year so as to enable them to be sent to the Dharwar Jail instead of to the ordinary jail, and to that extent we might overlook the fact that they increase the sentences on juveniles beyond what the sentences would amount to in the case of adults in order that juveniles should get the advantage of being detained in the Juvenile Prison, We doubt very much whether they are entitled to go beyond that and to sentence a juvenile to a period, as in this case, of two years, merely because they think that such detention would be to the benefit of the accused. We have to consider in the first instance the offence committed. Clearly, since the first accused, who was not only an adult but also had been previously convicted, only got one year's rigorous imprisonment, the second accused would, in the ordinary course, have been sentenced to less than one year. For these reasons we think the sentence must be reduced to one year.

Shah, J.

2. I agree.

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