

State Vs. Devassi Ouseph

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SooperKanoon Citation : sooperkanoon.com/718071

Court : Kerala

Decided On : Aug-05-1953

Reported in : 1954CriLJ640

Judge : Govinda Pillai, J.

Appellant : State

Respondent : Devassi Ouseph

Judgement :

ORDER

Govinda Pillai, J.

1. The Special First Class Magistrate, Trichur, started proceedings in M. C, 6 of 1952 against one Ouseph alias Kunhani under Section 110(a), Criminal P. C. and passed orders directing him to execute a bond for Rs. 500/- with two sureties each for a like amount for good behaviour for a period of two years. On his failure to execute the bond, the Magistrate detained him in custody and referred the matter to the Sessions Judge, Trichur, under Section 123(3), Indian Criminal P. C. The learned Judge accepted the reference and committed him to prison to undergo rigorous imprisonment for a period of two years from the date of his order which was on 3-6-1952. The Magistrate had by his warrant dated 31-3-1952 detained Ouseph in custody.

2. The learned Public Prosecutor then filed this petition pointing out that the direction of the Sessions Judge to commence the imprisonment from the date of his order was wrong and illegal, and that the same was to commence from the date of his detention in prison by the Magistrate. It was, therefore, prayed that the mistake committed by the Sessions Judge might be corrected. Notice of this petition was given to the prisoner and he has sent a petition through the jail authorities that he might also be heard in this matter. That is Criminal M. P. 190 of 1953. He had not complained against the order of the Sessions Judge and he could not advance any argument against the petition moved by the state for, if the same be allowed, it would only be to his advantage. So, his petition for a personal hearing is not allowed.

3. It was the considered view of five Judges of the Allahabad High Court in - Emperor v. Tula Khan 30 All 334 (A) that where a person is ordered by a Magistrate, to be 'detained in prison' pending the orders of the Sessions Judge under Section 123, Criminal P. C., such person must be considered as a person undergoing a sentence of imprisonment and not merely as an under-trial prisoner in custody. The proviso to Section 123(3), Criminal P. C., enacts that the period for which any person may be imprisoned for failure to give security shall not exceed three years. Thus when the Sessions Judge orders imprisonment for three years, such order should have effect not from the date of his own order but from that of the Magistrate. Otherwise, the said proviso will be infringed. Thus, the order of the Judge is to take effect from the date on which the Magistrate by his warrant detained the person in custody. Support for this position is obtained from a Full Bench decision of the Rangoon High Court in - In re Naga Pye AIR 1931 Rang 127 (B) and a Division Bench decision of the Judicial Commissioner's Court, Sind, in - Allahadad v. Emperor AIR 1924 Sind 120 (C). Accepting the views thus expressed I hold that the direction of the Sessions Judge to commence the rigorous imprisonment for two years from the date his order was illegal and that the said two years will run from the date on which the Magistrate by his warrant detained Ouseph in prison. The jail authorities will be informed accordingly. Criminal M. P. 170/53 is allowed as mentioned above and Crl. M. P. 190/53 dismissed.

