

In Re: Muthu Nadar

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Court : Chennai

Decided On : Jan-18-1945

Reported in : AIR1945Mad313; (1945)1MLJ180

Appellant : In Re: Muthu Nadar

Judgement :

Alfred Henry Lionel Leach, C.J.

1. The accused was found guilty by the Sessions Judge of Tinnevely of an offence under Section 323 of the Indian Penal Code and was sentenced to imprisonment till the rising of the Court. Under the provisions of Section 439 of the Code of Criminal Procedure, Byers, J., called upon the accused to show cause why a sentence should not be passed upon him according to law. In *In re Kunhi Baud* (1928) 56 M.L.J. 550, Jackson, J., had expressed the opinion that such a sentence was not in accordance with law and in *In re Ramalingayya* : AIR1942 Mad723 , Horwill, J., had said the same. The question whether such a sentence is a sentence passed according to law has been fully argued before us and for reasons which we shall state we consider that these decisions must be overruled.

2. Neither the Indian Penal Code nor the Code of Criminal Procedure directs where a sentence of imprisonment shall be served. In most of the punishment sections to be found in the Indian Penal Code only the maximum period of imprisonment is stated, but in a few sections which related to offences of a very serious nature a minimum sentence is fixed. For instance, the minimum sentence

for murder is transportation for life and for robbery or dacoity with attempt to cause death or grievous hurt it is seven years' imprisonment. Unless the punishment section fixes a minimum the Court has full discretion to pass a sentence of imprisonment for any period less than the maximum, for instance, for five minutes if this would fit the offence.

3. In the well-known case of *Bird v. Jones* (1845) 7 Q.B. 742 : 115 E.R. 668, the question of what amounted to imprisonment was fully discussed. Coleridge, J., quoted the dictum of Coke, that:

every restraint of the liberty of a free man will be an imprisonment, although he be not within the walls of any common prison,

and Williams, J., quoted Blackstone's statement that:

every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public street.' (3 B.L.C. 137.)

The definition of imprisonment to be gathered from these judgments was accepted by this Court in *P. Narasayya Pantulu v. Capt. R.A.C. Stuart* (1865) 2 M.H.G.R. 396. It was there stated that the retaining of a person in a particular place or the compelling of him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action was an imprisonment on the part of the person who exercised that exterior will. Therefore, a direction by the Court that a person shall be confined in the Court premises till the Court rises constitutes imprisonment and in our judgment, imprisonment within the meaning of the Penal Code and the Code of Criminal Procedure.

4. In *In re Kunhi Bava* (1928) 56 M.L.J. 550, a person was convicted under Sections 193, 196 and 471 of the Indian Penal Code and was sentenced to imprisonment till the rising of the Court and to a fine of Rs. 300. Dealing with the adequacy of this sentence, Jackson, J., said :

When the statute lays down that for a certain offence, as for that under Section 471 of the Indian Penal Code or under Section 193, the punishment shall be

imprisonment, it means that the offender shall go to jail, and imprisonment till the rising of the Court is a clear evasion of that intention.

Possibly in rare cases when the offence is obviously technical, a Court may be justified in taking the extreme step of evading the statute which it is appointed to administer; but on the learned Judge's own showing, this was not such a case.

If the learned Judge intended to lay down that where a person is convicted of an offence under any of these sections the Indian Penal Code contemplates that ordinarily he shall be sentenced to imprisonment in jail, but where the offence is of a very technical nature the Court would be justified in passing a nominal sentence of imprisonment we could understand him, but we cannot agree that the passing of a sentence until the rising of the Court would mean the evasion of the statute. If such a sentence amounted to an evasion the Court would be wrong in passing it, because it would be illegal.

5. In re Ramatingayya : AIR1942 Mad723 ; Horwill, J., observed:

Even in cases where the alternative of fine is not permissible by law, it is objectionable to sentence persons to imprisonment till the rising of the Court; because it is not a form of imprisonment recognised by law, and it is used to circumvent the provisions of law that require a sentence of imprisonment in jail for a particular term.

Horwill, J., did not refer to the judgment of Jackson, J., but he evidently had it in mind. The only difference is the use of the word 'circumvent' instead of the word evade.

6. Section 510 of the Indian Penal Code provides that a person who in a state of intoxication appears in a public place and there conducts himself in such manner as to cause annoyance shall be punished with simple imprisonment which may extend to 24 hours. If such a sentence were passed, say, for instance, by a Magistrate when in camp it might be impossible to send the accused person to a jail, for such a short period. Is it reasonable to suppose that the offender could not lawfully be compelled to serve his sentence of imprisonment in some place other

than a jail? The answer we give is emphatically in the negative.

7. Our attention has been drawn to Section 383 of the Code of Criminal Procedure and we are told that it has been suggested that it indicates that a sentence of imprisonment must be undergone in jail. The section reads as follows:

Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by Section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail with the warrant.

We certainly do not agree with the suggestion and consequently do not find in it any support for the opinions expressed in *In re Kunhi Bava* (1928) 56 M.L.J. 550 and *In re Ramalingqyya* : AIR1942 Mad723 . The requirement of the section that the Court passing the sentence shall forthwith forward a warrant to the jail in which the accused person is to be confined only contemplates the case where the Court intends the sentence of imprisonment to be undergone in jail. It leaves entirely untouched the case where the Court passing the sentence directs that the imprisonment shall take place within the precincts of the Court.

8. The validity of a sentence of imprisonment till the rising of the Court is recognised in the Criminal Rules of Practice framed by this Court. The first paragraph of Rule 102 says:

The Government consider the awarding of short term imprisonments as undesirable and Magistrates, before passing such sentences, should consider whether imprisonments till the rising of the Court allowed by law could not appropriately be passed instead, or the provisions of Section 56a of the Code of Criminal Procedure applied in favour of accused person.

Of course, if a sentence till the rising of the Court were not one allowed by law, we should not be bound to have regard to this rule, but it was inserted after consideration and we do not doubt the wisdom which lies behind it. It may well be that a sentence of imprisonment until the rising of the Court should only be

imposed in very exceptional cases, but where the facts warrant it we hold that the Court has power to pass it.

9. In the present case the Crown has made no suggestion that the sentence is inadequate, and we see no reason why it should not stand. The records will be returned to the Sessions Court.

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