

In Re: Subbai Goundan and ors.

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Court : Chennai

Decided On : Jan-19-1945

Reported in : (1945)1MLJ241

Appellant : In Re: Subbai Goundan and ors.

Judgement :

Alfred Henry Lionel Leach, C.J.

1. This reference has been made by the District Magistrate of Coimbatore under Section 438 of the Code of Criminal Procedure. It raises a question with regard to the effect of Section 349 when there are several accused and one of them is a child or young person within the meaning of the Madras Children Act, 1920.

2. Three persons were accused before the Stationary Sub-Magistrate of Udumalpet with an offence punishable under Section 355 of the Indian Penal Code. The first and third accused were adults, the second accused was a boy of 14 years of age and therefore a ' young person ' within the meaning of the Children Act. The Stationary Sub-Magistrate was of the opinion that all the accused were guilty of the offence with which they were charged and sentenced each of the adults to pay a fine of Rs. 40, and in default to suffer rigorous imprisonment for two months. He considered that the second accused should be dealt with under the Children Act and accordingly referred the case so far as the second accused was concerned to the joint Magistrate, Pollachi, under Section 5 of that Act. The Joint Magistrate was of the opinion that all the accused should

have been sent to his Court and as they had not, the convictions of the adult accused were unlawful. He referred the matter to the District Magistrate who agreed with him. Hence this reference.

3. Sub-section (1) of Section 349 of the Code of Criminal Procedure states that whenever a Magistrate of the second or third class, having jurisdiction, is of opinion after hearing the evidence of the prosecution and the accused that the accused is guilty and that he ought to receive a punishment different in kind from, or more severe than, that which he is empowered to inflict, he may record the opinion and submit his proceedings and forward the accused to the District Magistrate or Sub-Divisional Magistrate to whom he is subordinate. Sub-section (1. -A) states that when more accused than one are being tried together and the Magistrate considers it necessary to proceed under Sub-section (i) in regard to any of the accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-Divisional Magistrate. This sub-section was inserted in 1923 by the Amendment Act of that year, three years after the Madras Legislature had passed the Children Act. Therefore it must be assumed that it was inserted with knowledge of that Act.

4. The Stationary Sub-Magistrate was of the opinion that the second accused ought to receive a punishment different in kind from that which he was empowered to inflict. He had no power to deal with the second accused under the Children Act. Section 4 of that Act says that the powers conferred on Courts by it shall be exercised only by the High Court, a Court of Session, a District Magistrate, a Sub-Divisional Magistrate, a salaried Presidency Magistrate, a juvenile Court constituted under Section 36, and a Magistrate of the first or second class specially authorised in that behalf. The Stationary Sub-Magistrate could have proceeded under Section 562(1i-A) of the Code of Criminal Procedure and have released the second accused after an admonition. Evidently he thought that the second accused should not be dealt with so lightly and decided to make use of Section 5 of the Children Act.

5. His action clearly fell within Sub-section (1) of Section 349 of the Code of Criminal Procedure, which meant that he could not convict any of the accused and

was required to send all of them to the Joint Magistrate. It has been suggested that the Children Act stands quite apart from the Code of Criminal Procedure and that it could never have been intended that Section 349 of the Code should be applied when a Magistrate wished to have a child or youthful offender dealt with under the Children Act. In inquiring into the intention of the Legislature we can only have regard to the words used in the statute. There is nothing in the Code of Criminal Procedure which places a case in which there are several accused and one of them is a child or youthful person outside the provisions of Section 349 and the same observation applies to the Children Act. A decision to this effect was given by Lakshmana Rao, J., in *Emperor v. Mottayyan alias Perumal* : AIR1941 Mad500 and it follows from what we have said that we consider it to be right.

6. The conviction of the first and third accused by the Stationary Sub-Magistrate must be set aside and he will be directed to send all the accused before the Joint Magistrate, Pollachi.

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