

In Re: Public Prosecutor

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SooperKanoon Citation : sooperkanoon.com/777127

Court : Chennai

Decided On : Jul-06-1956

Reported in : 1957CriLJ402

Judge : Somasundaram, J.

Appellant : In Re: Public Prosecutor

Judgement :

ORDER

Somasundaram, J.

1. In this case the accused was first convicted by the Sub-Divisional Magistrate, Kum-bakonam, in C. C. No. 70 of 1953 on his file and sentenced to detention for a period of two years in a Senior Certified School by the judgment dated 26-9-1953. At that time the boy was aged only 16 years. When he was undergoing detention in the Senior Certified School, he was sent to the hospital on 8-12-1953 for treatment as an in-patient.

While he was in hospital, he escaped from the hospital on 12-12-1953. While he was at large he committed an offence of theft, which is the subject-matter of the case under review. In this case he was convicted of the offence and the Sub-divisional Magistrate Mayuram, has sentenced him under Section 8 of the Borstal School Act to detention for a period of two years, the sentence to take effect after the expiry of the sentence in the previous case. The second order of detention was

passed on 31-5-1954.

2. This revision is by the Government bringing to the notice of this Court that the consecutive sentence passed by the Sub-Divisional Magistrate, Mayuram, is not legal. In support of this the decision in the Public Prosecutor in re, : AIR1951 Mad607 , is relied on. In that case, Panchapakesa Aiyar J., held that there is no provision to direct an order of detention in a Borstal school to run consecutively with such a previous order of detention as in the case of a sentence of imprisonment.

The learned Judge has observed that a detention in a Borstal School is a reformatory measure like admonition and there is little point in piling detention on detention any more than in giving admonition after admonition. He, therefore, ordered the detention to be concurrent.

3. It is unnecessary to canvass the correctness of this decision in this case. Circumstances may arise in a particular case when an order of consecutive detention may not be possible to be worked out. Under Section 8 of the Borstal School Act, the minimum period of detention shall be two years and the maximum is five years, but in no case extending beyond the date on which the adolescent offender will attain the age of 23 years.

The adolescent offender must be one, who, at the time of his conviction is not less than 16 years nor more than 21 years of age. If a person of the age of 18 or 20 is convicted of an offence for which he can be sentenced to detention in a Borstal School for a period of 3 years, a second sentence of similar detention for period of three years will offend the provisions of Section 8, if the sentence is to be ordered to run consecutively.

Therefore, there may be cases where an order of consecutive detention may offend the provisions of Section 8. In such cases undoubtedly the sentences must be made to run concurrently. To this extent I agree with the view expressed by Panchapakesa Aiyar J., in the decision above referred to. But in certain cases, consecutive sentences of detention may well be ordered without offending the provisions of Section 8, that is to say, if an adolescent offender could be detained

in a Borstal School, for a period not exceeding five years, (inclusive of the second sentence, without his completing the age of 23 during this period of five years, then I do not see any reason why consecutive sentences should not be passed which will be within the scope of Section 8 of the Borstal School Act,

In this particular case, the boy was aged about 16 at the time of his first conviction, which was on 26-9-1953. He escaped from custody and he does not appear to have been in detention for full two years, as he escaped about three days prior to the expiry of his term of detention. At the time of his second conviction which was in May 1954, he was only 18, and a detention for two years more will be well within the five years prescribed under Section 8 and he would not have completed the age of 23 at the expiry of this detention. Therefore a further detention, i. e., the order of the consecutive detention in this case will not offend the provisions of Section 8 of the Borstal Schools Act.

In this case, I am, therefore, of the opinion that the order of consecutive detention passed by the Sub-Divisional Magistrate, Mayuram, can be upheld. As I have already pointed out, it cannot be held as an invariable rule in all cases that orders of consecutive detentions are bad. In certain set of circumstances where such an order is likely to offend the provisions of Section 8 of the Borstal School Act or the Children's Act, certainly an order of consecutive detention will be bad and cannot be upheld.

But in cases where such an order will not offend the provisions of either of those Acts, and which can well be within the scope of Section 8 both as regards the period of detention as well as the age of the offender, I do not see any reason why an order of consecutive detention! should not be upheld. I, therefore, uphold the order of the Sub-Divisional Magistrate of Mayuram and dismiss this revision.

4. Though the Magistrate directs the accused to be detained in a Senior Certified school, it can be construed over as an order of detention in a Borstal school, as the boy was aged 18 at the time of the second detention. The accused will, therefore, be detained in Borstal School from 7-11-1955 for a period of two years.

