

In Re: Veluchami

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SooperKanoon Citation : sooperkanoon.com/781067

Court : Chennai

Decided On : Mar-13-1958

Reported in : (1958)2MLJ175

Appellant : In Re: Veluchami

Judgement :

ORDER

Ramaswami, J.

1. This is an unnecessary reference made by the District Magistrate, Tirunelveli, in the following circumstances.

2. One Veluchami, an adolescent offender, was tried by the Sub-Magistrate, Tuticorin, for an offence under Section 379, Indian Penal Code, in C.G. No. 2794 of 1957. The accused pleaded guilty. On a reference made to the District Probation Officer to enquire into the antecedents of the accused, the latter reported that the accused had criminal propensities and that institutional treatment would be beneficial to him in view of his tender age and criminal tendencies. The medical evidence shows that the accused is 18 years of age. The Sub-Magistrate, who was not empowered under the Madras Borstal Schools Act, submitted the records to the Sub-Divisional Magistrate, Tuticorin, for necessary orders under Section 8 of the Act. The Magistrate unwittingly or out of ignorance added Section 349, Criminal Procedure Code, also in submitting the reference.

3. The Sub-Divisional Magistrate, to whom the records had been submitted, went into the records and found that it is a fit case for detaining the adolescent offender in the Borstal School. Therefore, he ordered his detention in the Borstal School, Palayamcottai, for a period of three years.

4. This unexceptional order is the subject-matter of this reference made by the District Magistrate, because the District Magistrate conceived that the reference should have been made under Section 349, Criminal Procedure Code and once such a reference was made, it was open to the Sub-Divisional Magistrate, Tuticorin, to go into the whole matter and come to the conclusion as to whether the accused should be convicted or even acquitted. In other words, the District Magistrate found fault with the Sub-Divisional Magistrate, Tuticorin, for the view held by him that if such a reference under the Madras Borstal Schools Act is made he can only pass sentence or order as might have been passed if such an adolescent offender had been originally tried by him. In this connection the term, 'adolescent offender' has been defined in Section 2 as meaning any person who has been convicted of any offence punishable with imprisonment, etc.

5. There is a vital distinction which has been overlooked by the learned District Magistrate regarding Section 349 and Section 7(1) of the Madras Borstal Schools Act. Under Section 349, Criminal Procedure Code, a Magistrate can send records only under two circumstances : (1) Where the punishment to be inflicted is different in kind from that which he is empowered to inflict and (2) the punishment must be more severe than that which he can inflict. Vide 1953 M.W.N. 145. It is a well-settled principle that a Magistrate in submitting the proceedings under Section 349, Criminal Procedure Code, cannot express that he has convicted the accused. Vide *Paglakahar v. King-Emperor* I.L.R.(1946) Pat. 153. It is for the Magistrate to whom the proceedings are submitted, if he thinks fit, to examine the parties and recall and examine any witness who has already given evidence in the case and to call for and take any further evidence and pass such judgment, sentence or order in the case as he thinks fit, and as is according to law. In other words, it is open to the Magistrate to whom the records are submitted to come to his own conclusion regarding the conviction itself and then pass the appropriate sentence or order.

6. On the other hand, Section 7(1) of the Madras Borstal Schools Act lays down that when any Magistrate not empowered to pass sentence under this Act is of opinion that an adolescent offender who is denned in Section 2 as any person who has been convicted of any offence, etc., is a proper person to be detained in a Borstal School, he may, without passing sentence, record such opinion and submit his proceedings and forward the adolescent offender. In other words so far as the finding of the accused guilty is concerned, that is done by the Magistrate who submits the records. On receipt of these records, Section 7(2) states that the District Magistrate to whom the proceedings are so submitted may make such further inquiry (if any) as he may think fit and may pass such sentence or order dealing with the case as he might have passed if such adolescent offender had originally been tried by him. In other words, in regard to the sentence, namely, the detention, it will be open to the District Magistrate to enquire and come to his own conclusion, but he cannot go behind the finding of guilty and the conviction resulting therefrom. His function is confined only to giving of sentence, namely, detention in the Borstal School or otherwise by way of imprisonment or fine or both or binding over, etc.

7. The net result of this analysis is that the procedure adopted by the Sub-Divisional Magistrate, Tuticorin, is irreproachable and there is no necessity for this reference. This reference is rejected. If the learned District Magistrate has circularised as is implied in the reference that it is open to the Subordinate Magistrates not empowered under the Borstal Schools Act, and the Children Act to submit reference only under Section 349, Criminal Procedure Code, that circular will stand cancelled.