

In Re : Muthuswami

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Court : Chennai

Decided On : Aug-04-1964

Reported in : 1966CriLJ830

Judge : Kailasam, J.

Appellant : In Re : Muthuswami

Judgement :

ORDER

Kailasam, J.

1. This reference by the learned Sessions Judge, Salem, arises out of an order passed by the Assistant Sessions Judge, Salem, directing the detention of P.W. 1 for a period of one year.

2. In S.C. No. 84 of 1963 one Kumari Ammani was examined as P.W. 1. The case against the accused in that case was that he kidnapped P.W. 1, an offence punishable under Section 366, I.P.C. During the trial, on 19.8.1963, the Principal Assistant Sessions Judge sent P.W. 1 to the Vigilance Rescue Centre, Vidyalaya Road, Salem. She was detained there for 3 days. At the conclusion of the trial, the learned Assistant Sessions Judge referred to the refusal of P.W. 1 to go to her parents' house and to her insistence to go with the accused, and ordered that she should be kept in the Vigilance Home for a period of one year. The provision of law under which the committal was made was not referred. The Chief Inspector; of

Approved Schools and Vigilance Service, Royapettah High Road, Madras, referred the matter to the Sessions Judge, Salem, stating that the Rescue Home at Salem to which P.W. 1 was sent was intended for intermediate custody of female under-trials and, that therefore P.W. 1 could not be kept there for a period of one year, as directed by the Principal Assistant Sessions Judge. In his reference, the officer referred to Section 10(2) of the Suppression of Immoral Traffic in Women and Girls Act of 1956, according to which the period of placement should not be less than two years and not more than five years. On receipt of the reference, the Assistant Sessions Judge directed the Matron, Government Vigilance Rescue Shelter, Salem to send P.W. 1 to Sri Sadhana Rescue Home. The Chief Inspector of Approved Schools and Vigilance Service, by letter dated 16.10.1963, requested the Principal Assistant Sessions Judge, Salem to issue a committal warrant. A committal warrant was issued by the Assistant Sessions Judge on 13.12.1963. In columns 5 and 6 of the warrant, namely 'offence charged' and 'the offence for which the accused was convicted' were left blank. The Chief Inspector, again, by his letter dated 30.1.1964 pointed out that the detention should be for a minimum of two years and not more than five years and requested the Principal Assistant Sessions Judge, Salem, to amend the warrant accordingly.

3. In the meantime, an appeal preferred against the conviction of the accused was heard by the Sessions Judge, Salem. He found the accused not guilty, holding that the prosecution failed to prove that P.W. 1 was below 16 years of age, and acquitted the accused. The result is that the accused has been acquitted and it has been held that the prosecution has not proved that P.W. 1 was below 18 years of age.

4. The learned Principal Assistant Sessions Judge, Salem, passed the order of detention in the Vigilance Rescue Centre for three days in the first two instances and then for a period of one year at the conclusion of the trial. It is obvious that he failed to look into the provisions of law. Subsequently, his attention was drawn repeatedly by the Chief Inspector of Approved Schools and Vigilance Service on 25.9.1963 and 16.10.1963. At least then, if the learned Principal Assistant Sessions Judge had looked into the provisions of law, he might have corrected his

mistake instead, he persisted in his mistake and, what is worse, he issued a warrant for detention under Section 10(2) of the Suppression of Immoral Traffic in Women and Girls Act, though she was never tried for that offence. There is no warrant in law for the procedure adopted by the Principal Assistant Sessions Judge, and the order of detention is clearly illegal.

5. The reference made by the learned Sessions Judge is accepted, and the order of detention made-by the Principal Assistant Sessions Judge, Salem is quashed. P.W. 1 will be set at liberty forthwith.

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