

In Re: A.B. Mahammad

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SooperKanoon Citation : sooperkanoon.com/785362

Court : Chennai

Decided On : Oct-28-1921

Reported in : (1922)42MLJ72

Appellant : In Re: A.B. Mahammad

Judgement :

ORDER

Kumaraswami Sastri, J.

1. The Sessions Judge finds that the accused took away the coal of the girl but acquits him as he was of opinion that the accused was insane when he committed the act. Reading the judgment as a whole, I think there is a specific finding that the accused committed the act complained of and the provisions of Section 470, Criminal Procedure Code have been complied with.

2. He was however wrong in not having passed orders under Section 471. Mr. Adam, Public Prosecutor, contends that the High Court has no power to pass orders and that the case must go back to the lower court. He relies on Section 439, clause 4, Cr. P. Code which prevents the High Court from converting a finding of acquittal into one of conviction, I do not think that the passing of an order under Section 471 after an acquittal has been recorded, can be said to alter a finding of acquittal into one of conviction. The acquittal is maintained but in view of the desirability of keeping the accused from further mischief the court passes

orders as to his safe custody.

3. So far as the High Court is concerned, it has in revision, all the powers of a court of appeal. Section 439 Clause (1) makes this clear and confers on the High Court powers under Section 423. Under clause 1 to Section 423, the Appellate Court can make any consequential or incidental order as may be just and proper.

4. When an Appellate Court finds a man insane, it is bound to acquit him and any order that it may pass subsequently under Section 471 Cr. P.C. is not part of any sentence for the offence. It is, in my opinion, an order which the court passes as consequential on or incidental to the acquittal.

5. Section 471 confers the power to order the insane accused 'to be kept in safe custody in such place and manner as the Magistrate or court may think fit'. Clauses 2 and 3 have been repealed by Act IV of 1912 and the powers of the court are wide. I see nothing in the section as it now stands compelling the court to send the accused to a lunatic asylum. All that is necessary is to see that such safeguards are taken as would keep the accused from mischief. There are various degrees of lunacy and it would in many cases be quite unnecessary to take a person out of the control of his parents or relations and confine him in a lunatic asylum if he can otherwise be kept from harm. I think that in the present case the accused can safely be kept under the custody and control of his father on the father's executing a bond for a sum of Rs. 1,000 to assure for 2 years undertaking to keep the accused from committing any offence. I modify the order of the lower court accordingly.