

**Karuppayee and Another Vs. State Represented by Inspector of Police  
Tirupur Rural Police Station, Tirupur**

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**Court :** Chennai

**Decided On :** Aug-21-1996

**Reported in :** 1997CriLJ1627

**Judge :** J. Kanakaraj and ;Rengasamy, JJ.

**Appeal No. :** Crl. Revision Case Nos. 684 of 1993

**Appellant :** Karuppayee and Another

**Respondent :** State Represented by Inspector of Police Tirupur Rural Police  
Station, Tirupur

**Advocate for Pet/Ap. :** M. Shahjakhan, Adv. and ;Shanmughasundaram, Public  
Prosecutor

**Judgement :**

**Rengasamy, J.**

1. These two suo motu revisions relating to the detention of the Juveniles have come before us by way of reference by a learned single Judge as the connected appeals filed by the Juvenile accused after conviction, are pending before the Division Bench. These suo motu revisions are on the letters of the Director of

Social Defence Madras who has raised certain doubts as to the judgments of two Sessions Courts directing juveniles to undergo imprisonment by transferring them to the jail after the period of detention in the approved schools up to their respective age namely, 20 years in the case of girl and 18 years for the boy. So as this question was raised by the Director of Social Defence in her letters, the matters were taken up for suo motu revisions for consideration of the legal sanction of the sentences of imprisonment on the juveniles.

2. Of these the two juveniles, Karuppayee was found guilty of the offence under S. 302 read with 34 by the learned III Additional Sessions Judge, Madurai in S.C. No. 182/90 and has been convicted to undergo life imprisonment whereas the other juvenile Kaman alias Kamatchi has been found guilty by the learned Additional Sessions Judge, Coimbatore in S.C. No. 56/93 for the offence under S. 304, Part II to undergo R.I., for five years. The learned Sessions Judges giving direction in their judgments to detain these juvenile accused upto the age of 20 in the case of Karuppayee and upto the age of 18 in the case of Kaman alias Kamatchi, in the respective approved schools and thereafter to transfer them to the jail to undergo the balance period of sentence in the jail. As the Director of Social Defence felt that the juveniles cannot be directed to suffer imprisonment in the jail and that they cannot be detained beyond the respective age in the approved schools, she has written to the High Court to consider the sentences awarded to the above mentioned juveniles. Therefore, on those letters suo motu revisions are ordered and these matters have come before us.

3. Both the learned amicus curiae appointed in these revisions M/s. Selvakumaraswamy and K. N. Basha argued before us that the Court cannot impose the sentence of imprisonment on the juveniles by way of punishment for the commission of the offence and they can be only detained in the approved schools or borstal school upto the age of 18 years in the case of boy or 20 in the case of girl and beyond that the Court has no powers either to detain them in the schools or direct to transfer them to undergo the imprisonment in the jail.

4. Learned public Prosecutor Mr. Shanmuga Sundaram fairly concedes this position of law and according to him the judgments in the above mentioned cases

directing the juveniles to undergo imprisonment in the jail after the detention in the approved school is illegal and is as against the spirit of the provisions of the juvenile Justice Act. This aspect has been considered by this Court as well as the apex Court in some of the cases.

5. In spite of *Andhra Pradesh v. Vallabhapuram Ravi*, : 1984 CriLJ1511 the apex Court has held that the detention of the juveniles beyond the age of either 20 or 18 respectively, is illegal and they cannot be imprisoned after the period of detention in the approved school or Borstal School as directed by the trial Court. It appears that the trial Courts being conscious of S. 433(A) of the CrI. P.C. felt that the sentence of imprisonment is a must in line with the penal provisions. This aspect has been considered in the above decision holding that 'Section 433-A of the Code refers to a person who is actually undergoing imprisonment. As soon as an order is made under S. 10-A of the Act (Madras Borstal School Act) in respect of a person who is sentenced to imprisonment for life and is sent to a Borstal School pursuant thereto, he ceases to be a prisoner undergoing imprisonment. As observed earlier he would be a detenu in a Borstal School and the provisions of S. 8 of the Act will have to be given their full effect in this case also. Under S. 8 of the Act the person detained in a Borstal School can be kept there for a maximum period of 5 years and in no case after he has attained 23 years of age. I have already noticed that there is no provision for sending him back to prison except S. 14 of the Act which will not be applicable to a person against whom no report is made by the Superintendent of a Borstal School as stated therein. If S. 14 of the Act is inapplicable there is no legal way in which he can be sent to prison to satisfy the requirement of S. 433-A of the Code.' So the view taken by the Supreme Court is that when a person was detained in a Borstal school, he shall not be transferred to the prison after he served out the term of the detention in the school with reference to the age as prescribed under the Act, as it will defeat the very object of the Borstal School Act. This Court also had the occasion to consider this question after the commencement of the Juvenile Justice Act of 1986 in '*Rajan alias Thiruvengada Karthigeyan v. State* 1993 MLJ (Cri) 257' as has held that :

'The Children Act as well as the Juvenile Justice Act treat the delinquent children/juvenile as a special class and provide special procedure for enquiry in

respect of charges levelled against them. Even if those charges are established, a very liberal approach has been provided in respect of punishment for such offences. Different sections put a strict bar on the child/juvenile being sent to jail custody either before an enquiry or after the conclusion of the enquiry in respect of the offence alleged or proved to have been committed. Even if such a child has committed a murder, in view of S. 22, neither he can be sentenced to death nor to imprisonment. It is true that in many cases as in the present one, the offences committed by such delinquent children may be shocking to the conscience and their conduct and behaviour may be abhorring, but S. 22 is quite conscious of such situations. Still it provides for keeping the delinquent child/juvenile accused of such serious offences in safe custody at the place ordered by the State Government. This benefit has to be extended not only to an accused who is a child/juvenile at the time of the commission of the offence and has continued as such till the conclusion of the enquiry but even to an accused who has ceased to be a child/juvenile during the pendency of the enquiry.' Therefore, it is the confirmed view that a child or juvenile can be ordered to be detained in the places mentioned under the Act till the age referred to in S. 21 and not beyond that to undergo the imprisonment being the residue of the sentence imposed.

6. In view of these ratio, the sentence imposed by the learned Additional Sessions Judge of Madurai and Coimbatore in SC 182 of 1990 and 56 of 1993 directing for the imprisonment of these minors in the Jails after the age of 20 and 18 respectively, is certainly illegal and therefore the sentence of imprisonment beyond the above said period has to be set aside. Accordingly, the sentence part of the Judgment in which imprisonment is directed is set aside and these juveniles if they had completed their respective age (20 and 18) they will be released forthwith. Reference is accepted and the revisions are allowed to the above extent. We also record our appreciation to M/s. Selvakumarasamy and K. N. Basha for their valuable assistance to the Bench in bringing to our knowledge the legal position on this matter.

7. Criminal Appeal No. 127 of 1991 :-

Learned amicus curiae represents that as the juvenile has been ordered to be released from the home, there is no necessity to argue the appeal and this appeal might be dismissed as withdrawn. In view of the representation, the appeal is dismissed.

8. Criminal Appeal No. 296 of 1994 :-

Learned counsel appearing for the appellant who is a juvenile represents that the order of the trial Court for incarceration has been set aside by the Bench and therefore there is no necessity for taking up of the appeal for enquiry. He also has made an endorsement withdrawing this appeal. In view of the endorsement, appeal is dismissed as withdrawn.

9. Order accordingly.