

In Re: Nondi Alias Chinnaswami

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SooperKanoon Citation : sooperkanoon.com/791098

Court : Chennai

Decided On : Feb-03-1938

Reported in : AIR1938Mad653; (1938)1MLJ761

Appellant : In Re: Nondi Alias Chinnaswami

Judgement :

ORDER

Horwill, J.

1. The Stationary Sub-Magistrate of Tittagudi found the accused guilty of theft in two cases, C.C. Nos. 120 and 121 of 1934 on his file. As he thought that the accused should be dealt with under the Borstal Act he referred the case to the Sub-Divisional Magistrate of Chidambaram for orders under Section 8 of that Act. The accused was already under sentence of detention in a Borstal School for three years upon an order passed on the 24th February, 1934; and he was serving that sentence when the matter came before the Sub-Divisional Magistrate for orders in C.C. Nos. 72 and 73 of 1934. The Sub-Divisional Magistrate passed an order that the accused should be detained in a Borstal School for a period of one year in each case, the two sentences to run consecutively and to take effect after the expiry of the three years' sentence passed on 24th February, 1934.

2. If the Sub-Divisional Magistrate had read Section 8 of the Borstal Act before passing his order, he would have seen that he could not pass a sentence for

detention for a lesser period than two years. The District Magistrate has referred this case to this Court because of this illegality and also because the Sub-Divisional Magistrate had ordered the sentence to have effect from the date of his release after the previous term of three years awarded on 24th February, 1934. The Borstal Act does not contain a provision corresponding to Section 397, Criminal Procedure Code, and so a sentence of detention in a Borstal School must take effect at once and cannot be postponed. Even if the two sentences of one year to run consecutively be enhanced each to two years to run concurrently, these sentences would expire before the three years' sentence from the 24th February, 1934. Under these circumstances, to remove any doubt that may exist in the minds of the Borstal School authorities or others as to the effect of sentences imposed during the currency of a term already being served and because the accused is already serving a term of three years, the sentences passed under C.C. Nos. 72 and 73 of 1934, will be set aside as unnecessary.