

**In Re: Mala Chengadu**

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**SooperKanoon Citation :** [sooperkanoon.com/791192](http://sooperkanoon.com/791192)

**Court :** Chennai

**Decided On :** Mar-22-1934

**Reported in :** AIR1934Mad457; 150Ind.Cas.796

**Appellant :** In Re: Mala Chengadu

**Judgement :**

ORDER

**Bardswell, J.**

1. One Mala Chengadu alias Peva Doss was bound over by the Joint Magistrate of Chandragiri, to be of good behaviour for the space of one year with reference to Section 109, Clauses (a) and (b), Criminal P.C. He failed to give security and he was then ordered by the Joint Magistrate to be detained in a Borstal School for a period of two years, his age being 20. Under the Madras Borstal Schools Act, the minimum period for an adolescent offender to be ordered to be detained in a Borstal School is one of two years. Had Mala Ohengadu been ordered under Section 123 Criminal P.C., to be committed to or detained in prison, he could only have been kept in prison for the space of one year, even if he failed altogether to furnish security, that, being the period for good behaviour during which security had been ordered to be given by him. The learned Sessions Judge raises the question whether it was legal to 'send him to a Borstal School for, two years; and he also questions whether the committal of a person to prison under Section 123, Criminal P.C., amounts f to the passing upon him of a sentence of imprisonment.

The doubt as to what is the effect of an order passed under Section 123 is resolved by Proviso 2 to Section 397 of the Code, which refers to, cases where a person has been sentenced to imprisonment by an order under Section 123, in default of furnishing security. Therefore it is clear that by the express terms of the Code action under Section 123 amounts to sentencing a person to imprisonment.

2. Now, under Section 2, Madras Borstal Schools Act 5 of 1926, an adolescent offender means any person who has been convicted of any offence punishable with imprisonment or who, having been ordered to give security under Section 118, Criminal P.C. has failed to do so and who at the time of such conviction or failure to give security is not less than 16 or more than 21 years of age. Section 8 of the Act defines the powers of a Court as to sending an adolescent offender to a Borstal School in lieu of passing a term of imprisonment upon him; and Section 9 provides that any person detained in a Borstal' School for failure to furnish security when ordered to do so under Section 118, Criminal P.C. (1898), will be released on his furnishing such security or on the passing of an order under Section 124. The learned Judge is doubtful whether the order passed upon Mala Chengadu could be taken as one passed under Section 8, Borstal Schools Act. In view of what has been stated above as to what is meant by passing a sentence of imprisonment, it is clear that Section 8 does apply. It also appears from Section 8 that an order of detention in a Borstal School is something different from sentencing to imprisonment and that, even though the period for furnishing security is only one year, yet, when detention in a Borstal School is ordered instead of, imprisonment, then that detention can only be for such period as it provided for in the Borstal Schools Act and the least period that Act provides for is two years. In my opinion therefore the order of the Joint Magistrate is correct. The reference is returned.