

Public Prosecutor Vs. Nelliappa Pillai

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Court : Chennai

Decided On : Dec-05-1947

Reported in : (1948)1MLJ23

Appellant : Public Prosecutor

Respondent : Nelliappa Pillai

Judgement :

ORDER

Govinda Menon, J.

1. The learned Sessions Judge has found that the accused when he committed the murder was by reason of the unsoundness of mind incapable of knowing that he was doing an act which was contrary to law and hence has held that he was not guilty. This order was passed under Section 470, Criminal Procedure Code and the consequential order necessary under Section 471(1) had therefore to be issued. The accused was ordered to be detained in the custody of his father-in-law and brother. The learned Public Prosecutor seeks to revise this order of detention on the ground that it does not conform to the provisions of the section. In *Legal Remembrancer v. Srish Chandra Roy* I.L.R.(1928) Cal.208 a bench of that (Calcutta) Court has laid down that 'detained in safe custody' in Section 471 does not mean detained in the custody of the relatives. *Kumaraswami Sastri, J.*, in *Mahommad v. Emperor* (1921) 42 M.L.J. 72 was of the view that Section 471

should not be interpreted as compelling a Court to send the accused to lunatic asylum. All that is necessary is to see that such safe-guards are taken as to keep the accused from mischief and therefore it is permissible to order the accused to be kept under the control and custody of his parents. This decision was passed on 28th October, 1931 when the word in the unamended section was 'kept' which was altered to 'detained' when the Criminal Procedure Code was amended in 1923. As the section now stands it is essential that the accused should be detained in 'a place'. The words 'detained' denotes the curtailment of liberty. This is made clearer by the subsequent use of the words 'in a place.' Such being the case it is obligatory upon the Court to order the detention in a place and not with a person. The order of the lower Court cannot therefore be sustained and has to be set aside. The learned Public Prosecutor states that he is instructed to inform the Court that the accused should be detained in a mental hospital, which in this case is the mental hospital at Cuddalore according to the proviso to Section 471, Criminal Procedure Code.

2. I therefore direct that the accused be detained in the mental hospital at Cuddalore subject to further orders of the Provincial Government.

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