
(1997) 06 MAD CK 0029

In the Madras High Court

Case No : Criminal Revision Case No. 830 of 1996

**In Re : K. Ramalingam, I.P.S., Inspector General of Prisons, Anna Salai,
Madras**

Date of Decision : 14-06-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 511

Citation : (1997) 2 LW(Cri) 567 : (1998) 1 RCR(Criminal) 590

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : N.R. Elango, for the Appellant;

Judgement

M. Karpagavinayagam, J.—The question in this suo motu revision is whether the appellate Court, while dealing with an appeal against

conviction and sentence, ordering detention of the accused for two years under the Madras Borstal Schools Act, the minimum imprisonment, has

got powers to modify or reduce the said detention. The straight answer is emphatic "no".

2. The circumstances for the above answer are these :-

(i) One Sabi of Nagercoil was charge-sheeted for the offence u/s 379 read with Sec. 511, IPC, by the Central Crime Branch Police, Nagercoil,

before the Judicial Magistrate No. 1, Nagercoil, which was taken on file in C.C. No. 198 of 1994, for having attempted to commit theft of the bag

from the complainant on 20-3-1994.

(ii) On 26-9-1995, the learned Judicial Magistrate No. 1, Nagercoil, on finding him guilty, convicted for the above offence and sentence to R.I. for

two years, and ordered him to be detained in Borstal School, for the said period u/s 8(1) of the Madras Borstal Schools Act, as he was found to be

aged about 21 years.

(iii) In pursuance of the said Judgment, on 19-10-1995, the said Sabi was admitted in the Borstal School, Pudukottai, for undergoing two years"

detention. Having aggrieved over this Judgment, the detenu filed an appeal before the Additional Sessions Judge, Kanyakumari District at

Nagercoil, in C.A. No. 31 of 1995, on 4-12-1995.

(iv) After hearing arguments of both parties, viz. the detenu as well as from the Public Prosecutor, on 29-12-1995, the appellate Court

pronounced the Judgment on 2-1-1996, confirming the conviction, but, however, reduced the period of detention of two years into one year.

(v) On receipt of this copy of Judgment, the Superintendent of Borstal School, Pudukottai, sent a letter on 8-1-1996, to the Additional Sessions

Judge, requesting clarification, with reference to the Judgment relating to the reduction of the detention into one year, by pointing out the provision

u/s 8(1) of the Madras Bostral Schools Act, providing minimum period of two years" detention. However, the learned Additional Sessions Judge,

in his reply dated 19-1-1996, stated that the appellate Court, despite the provision regarding the minimum detention of two years, is empowered

by the appellate powers, to either modify or reduce the sentence, and further directed the Superintendent of Borstal School, Pudukottai, to

implement his Judgment dated 2-1-1996, reducing the period of detention as one year.

(vi) As a matter of fact, the very same question was referred to this Court through a reference earlier, and Justice Maheswaran, (as he then was)

was pleased to order the reference stating that the minimum period of two years" detention cannot be reduced by the Court.

(vii) On the basis of these factors, Mr. K. Ramalingam, IPS, Inspector General of Prisons, Madras, sent a letter to this Court, on 20-2-1996,

seeking clarification for the above Judgment passed by the learned Additional Sessions Judge, Nagercoil, and for further suitable directions in

regard to above.

(viii) Finding prima facie illegality in the Judgment referred above, this Court has taken up the matter as suo motu revision.

3. On hearing Mr. N. R. Elango, learned Government Advocate, with reference to the illegality, this Court, by order dated 7-4-1997, called for

remarks from the Additional Sessions Judge, Nagercoil, by pointing out the facts stated above, and the earlier order passed by this Court in Crl.

R.C. No. 771 of 1984, dated 16-8-1985, clarifying the position with reference to the powers of the Court to interfere in regard to the minimum

detention as provided in Section 8(1) of the Madras Borstal School Act.

4. On 24-4-1997, the learned Additional Sessions Judge, sent his remarks, in which he has stated as follows :-

I submit that while I was disposing the Criminal Appeal in C.A. 31/95, I wrongly believed that I could exercise the powers of Appellate Court as

enumerated under S. 386, Cr. P.C., without seeing the Circular issued by the Honourable High Court in Crl. R.C. 771 of 1984, dated 16-8-1985.

Due to the lack of memory I could not recollect the decision rendered by the Honourable High Court in Crl. R.C. 771 of 1984.

I further submit that the age of the accused as seen from the charge-sheet filed by the police on 30-3-1994 was 22 years, and as per the remand

report dated 21-3-1994 his age was 22 years. The records did not disclose that the trial Court has conducted any inquiry to fix the age of the

accused at the time of passing the sentence of detention. According to the provisions of Section 8 of the said Act the accused should not be

detained in a Borstal School beyond the date on which he attained the age of 23. Hence I bonafidely believed that he should not be detained

further.

I humbly pray that the Honourable High Court may kindly be excused.

5. As stated in the first paragraph of the remarks of the Additional Sessions Judge, the Judgment reducing the period of detention into one year

was under the wrong belief that he could exercise the powers of appellate Court, u/s 386 Cr. P.C., despite the minimum detention prescribed in

Section 8(1) of the Madras Borstal Schools Act, and due to the lack of memory about the contents of the circular issued by this Court, intimating

the decision of Justice Maheswaran (as he then was) in Crl. R.C. No. 771 of 1984, dated 16-8-1985.

6. So, there is no difficulty in coming to the conclusion, that the Judgment passed in C.A. No. 31 of 1995, dated 2-1-1996, reducing the period of

detention into one year, is not legally valid.

7. Sub-section (1) of Section 2 of the Madras Borstal School Act, would say that

""adolescent offender"" means any person who has been

convicted of any offence punishable with imprisonment or who having been ordered to give security u/s 118 of the Code of Criminal Procedure

has failed to do so and who at the time of such conviction or failure to give security is not less than 18 or more than 21 years of age.

8. Section 8(1) of the said Act runs as follows :-

8. POWDER OF COURT TO PASS SENTENCE OF DETENTION IN BORSTAL SCHOOL
- (1) When it appears a a Court having

jurisdiction under this Act that an adolescent offender should by reason of his criminal habits or tendencies, or association with persons of bad

character, be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the

repression of crime, it shall be lawful for the Court, in lieu of passing a sentence of imprisonment, to pass a sentence of detention in a Borstal

School for a term which shall not be less than two years and shall not exceed five years, but in no case extending beyond the date on which the

adolescent offender will, in the opinion of the Court, attain the age of twenty three years.

9. Section 20 of the said Act, states that for purposes of appeal and revision under the Code of Criminal Procedure, a sentence of detention u/s 8

of the Act shall be deemed to be a sentence of imprisonment for the same period.

10. As per the finding of the trial Court, on the date of conviction, he was aged about 21 years. Therefore, he was directed to be detained for two

years u/s 8(1) of the Act. But the appellate Court, without referring to Section 8 of the Act, simply stated that the detention could be reduced for

one year, for the reason that the accused himself admitted the offence before the Judicial Magistrate, and the offence was only an Court has never

looked into the provisions under Sections 8(1) and 20 of the said Act, while disposing the appeal.

11. The disturbing feature is that in spite of the letter, pointing out Section 8(1) of the Act, by the Superintendent of Borstal School, the learned

Additional Sessions Judge, replied saying that he has got powers to reduce the detention into one year, and directing to implement his Judgment,

earlier passed. This would show only his anxiety to see his Judgment, whether correct or not, is to be implemented. He could very well say, in his

reply, that he could not pass a fresh Judgment, cancelling the earlier Judgment passed on 2-1-1996 in C.A. No. 31 of 1995, reducing the period

of detention into one year, in view of Section 362 Cr. P.C., and he could very well ask the authorities to approach the appellate forum, questioning

his Judgment. This was not done. As stated earlier, the learned Additional Sessions Judge, was not interested in knowing the correct position of

law, whereas, he was very particular about the implementation of his Judgment.

12. In the first paragraph of his remarks, the learned Additional Sessions Judge, submitted an explanation to this Court, that he wrongly believed

that he has got powers and that he could not recollect the earlier order passed by Justice Maheswaran. Ultimately in the last paragraph of his

remarks, learned Additional Sessions Judge, requested this Court to excuse him. I am also of the view, that he could be excused, for the reason

mentioned above.

13. In the second paragraph of his remarks, learned Additional Sessions Judge, made a faint attempt to justify his Judgment, for reducing the

detention of two years into one year, by stating that at the time of filing the charge-sheet, as stated in the charge-sheet, as well as in the remand

report, as on 30-3-1994, the detenu was aged about 23 years, and therefore, he thought that he could not be detained beyond the date on which

he attained the age of 23 years. The contents of this second paragraph are without any basis. In the order of the trial Court, dated 26-9-1995, it

has been specifically stated that the detenu, the accused was aged 21 years. Even in the Judgment of the appellant Court, the learned Additional

Sessions Judge has mentioned in first paragraph that he was aged about 21 years.

14. Even the form of Order of detention of youthful offenders issued by the Additional Sessions Judge, shows the age of the accused as 21 years,

as provided in the descriptive roll, dated 2-1-1996. Therefore, the Additional Sessions Judge, cannot take advantage of the dates mentioned in the

charge-sheet and the remand report, in order to show that his Judgment was justified.

15. A perusal of the Judgment dated 2-1-1996 of the appellant Court would never indicated that the Judgment reducing the period of detention is

on his ground. Therefore, the reasons in the impugned Judgment, for reduction

of the detention, as well as the reasons given in second paragraph of remarks dated 24-4-1997, are unsound and unacceptable. However, since the learned Additional Sessions Judge, requested this Court to excuse his alleged bona fide mistake, this Court is not inclined to take any further action against the Sessions Judge concerned.

16. The object of the Section providing for minimum period of detention for the adolescent offender, would be, that they should be reformed by putting them in Borstal School, at least for a continuous period of two years, so that suitable instructions and discipline could be imparted in the mind of adolescent, which would be most conducive to his reformation and the repression of the crime. So, the Court, in light of the above object, while imposing the sentence, on the adolescent offender, has to bear in mind, in order to see that the offender is getting reformed, so that he would become an useful citizen for the society.

17. It is, therefore, this Court views seriously the Judgment passed by the lower Court, violating the mandate enshrined in Sections 8(1) and 20 of the Madras Borstal Schools Act, while the period of detention of two years has been reduced into one year. It is disquieting to see, that despite the order of this Court, by Justice Maheswaran, (as he then was) which has been circulated to all the subordinate Judicial Officers, and in spite of the mandatory provisions provided under the Act, for passing the minimum detention of two years in the Borstal School, the Subordinate Courts are not careful enough to follow the same. Therefore, it has become necessary again to issue circular, enclosing the copy of this Order, to all the subordinate Judicial Officers in the State, so that at least in future, the lower Court would pass correct orders, in the light of the above situations.

18. In view of the above reasonings, I am of the view that the impugned Judgment dated 2-1-1996, passed by the learned Additional Sessions Judge, Nagercoil, is liable to be set aside, and is set aside. However, in view of the lapse of considerable period, and for the reason that the detenu has already been released on 25-9-1996 itself, in pursuance order, and despite of issue of notice to the detenu, the accused, service has not been effected, due to his non-availability, I am not inclined to recommit him to custody to undergo the remaining period of detention. A copy of this order is directed to be sent to the Judicial Officer concerned, in name cover, so

that he could correct himself in future.

19. Order accordingly.