

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Russell.

EMPEROR

v.

MUTHUKOMARAN.*

1903.
December 1.

Criminal Procedure Code—Act V of 1898, s. 123—Committal to prison for failure to give security to be of good behaviour—“ Sentence of imprisonment.”

When a person is committed to prison under section 123 of the Code of Criminal Procedure for failure to give security to be of good behaviour, he is not undergoing a “ sentence of imprisonment ” within the meaning of section 397 of the Code.

AN accused was committed to prison for a year for failure to furnish security for good behaviour, and while undergoing imprisonment committed an assault on a warder. He was charged for this offence and convicted and sentenced to undergo rigorous imprisonment for six months, the sentence to “ take effect as from the expiry of the sentence which the prisoner was then undergoing.” The case was referred to the High Court for consideration whether the sentences should not run concurrently.

The Public Prosecutor in support of the reference.

JUDGMENT.—We are of opinion that when a person is committed to prison under section 123, Criminal Procedure Code, for failure to give security to be of good behaviour, he is not undergoing a “ sentence of imprisonment ” within the meaning of section 397, Criminal Procedure Code. When a person has been convicted of an offence, the code directs that “ sentence ” shall be passed upon him. The word “ sentence ” does not occur in section 123, Criminal Procedure Code. The language there is that he shall be “ committed ” to prison. We direct that the sentence of the Sub-Magistrate shall take effect from this date.

* Criminal Revision Case No. 393 of 1903 referred for the orders of the High Court under section 438 of the Code of Criminal Procedure by E. B. Elwin, Acting District Magistrate of South Arcot, in his letter, dated 23th October 1903, Ref. on No. 1768.