

Naidu is the author, but a book of which the complainant is the proprietor. RAGHAVALU
NAIDU

If this is made out, and if it be further shown that the accused has applied the name "P. Abboyi Naidu" to books published by himself, in a manner reasonably calculated to evidence the belief that those books belong to the complainant, it will then lie on the accused to show that what he has done was done without intent to defraud the complainant or any one else.

v.
SCNDRA-
MURTHI
MUDALI.

The question is a question of fact. To us it may appear that there are in the way of the complainant difficulties so great as to be almost insuperable : to others more conversant than we are with the book trade of the Madras Presidency the matter may bear a different complexion. The complainant will have to satisfy the Magistrate by sufficient evidence ; and it is not for us, on evidence having as yet been recorded, to say that he cannot do so.

The Magistrate is accordingly directed to make further inquiry into all the charges made by the complainant against the accused.

APPELLATE CRIMINAL.

Before Mr. Justice Sankaran-Nair.

JOGHI KANNIGAN

v.

EMPEROR.*

1908
September
11.

Criminal Procedure Code, Act V of 1898, ss. 123, 397—Sentence of imprisonment on person already in prison under s. 123.

A person committed to prison under section 123 of the Code of Criminal procedure is not undergoing a 'sentence' of imprisonment.

Where such a person is convicted of an offence and sentenced to a term of imprisonment, such term cannot, under section 397 of the Code of Criminal Procedure, be made to commence on the expiry of the period for

* Case referred No. 62 of 1908 (Criminal Revision Case No. 274 of 1908) for the orders of High Court, under section 438 of the Code of Criminal Procedure by the Acting District Magistrate of Chingleput in his letter, dated 1st June 1908.

KANNIGAN which he has been committed to prison under section 123, but must commence from the date of the order.

v.
EMPEROR.

Emperor v. Muthukumara, (I. L. R., 27 Mad., 525), followed.

King-Emperor v. Tulakhan, (I. L. R., 30 All., 334), dissented from.

THE facts are stated in the reference which was as follows :—

One Joghi Kannigan was convicted of an offence under sections 394 and 75, Indian Penal Code, and sentenced, on 18th November 1904, by the Joint Magistrate, Chingleput, in Calendar Case No. 148 of 1904, to undergo rigorous imprisonment for two years (of which three months should be in solitary confinement) and to receive 30 lashes, and was further ordered under section 565, Criminal Procedure Code, to notify his residence to the police for three years after his release. The prisoner was released from the jail on 20th September 1906 but failed to notify his residence to the police. He was arrested and prosecuted under section 176, Indian Penal Code, before the Stationary Sub-Magistrate, Chingleput, who convicted and sentenced him to six months' simple imprisonment on the 27th February 1908. Meanwhile the accused was put up before the Joint Magistrate, Chingleput, under security sections 109 and 110, Criminal Procedure Code, and ordered to furnish security for good behaviour for one year. On his failure to do so, the accused was committed (a copy of the Joint Magistrate's warrant is submitted) to Jail, on the 27th January 1908, under section 123, Criminal procedure Code, for one year or until the security would be sooner furnished by him. The Sub-Magistrate while passing sentence upon him under section 176, Indian Penal Code, as shown above, has inadvertently directed that the sentence should commence after the expiry of the imprisonment which the accused is undergoing under the security sections. He has overlooked the High Court's decisions in Criminal Revision Cases Nos 393 and 466 of 1903. The prisoner appealed to the Head Assistant Magistrate, Chingleput, who confirmed the conviction, but reduced the sentence to one month's simple imprisonment, as the offence came under the purview of the first part of section 176, Indian Penal Code. As the stationary Sub-Magistrate's order in respect of the currency of the sentence is illegal with reference to the High Court's decisions quoted above, I request that the High Court may be pleased to modify it to take effect from the day on which it was passed.

The Acting Public Prosecutor in support of the reference.

ORDER.—I follow the decision in *Emperor v. Muthukumara*(1) KANNIGAN
v.
EMPEROR. which was followed by Subramania Ayyar and Boddam, JJ., in *Venkatigadu v. Emperor*(2).

The decision of the Allahabad Full Bench in *King-Empero' v. Tulakhan*(3) is opposed to the Madras decisions.

To me it appears to be quite clear that a person committed to prison under section 123, Criminal Procedure Code, is not undergoing a 'sentence' of imprisonment. It is not for the commission of any offence that he is committed to prison under section 123, and section 397 of the Criminal Procedure Code therefore does not apply.

The sentence of imprisonment for the offence under section 176, Indian Penal Code, should have been ordered, therefore, to commence from the date of the order, and it is modified accordingly.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Sankaran-Nair.*

1907
August 17,
18, 19, 21.

SIVASANKARA PILLAI (THIRD PLAINTIFF), APPELLANT,

v.

SOOBRAMANIA PILLAI AND OTHERS (DEFENDANTS NOS. 1
TO 4 RESPONDENT.*

*Will, construction of—Indian Succession Act, ss. 101, 102—Hindu Wills
Act, s. 3, para. 4.*

A power to distribute property conferred by a testator under his will, which is exercisable "when my grandsons may attain their age" is void under sections 101 and 102 of the Indian Succession Act, as extending the period beyond the limit allowed by section 101, whether the point of time referred to is taken to be the attaining of age by the grandsons in existence at the date of the testator's death, or such attaining of age by all his grandsons. If the intention of the testator to benefit *all* his grandsons is

(1) I. L. R., 27 Mad., 525.

(2) 2 Weir p. 452; Cr. L. R. C. No. 466 of 1903 (unreported.)

(3) I. L. R., 30 All., 334.

* Original Side Appeal Nos. 78 and 79 of 1906, presented against the judgment and decree of Mr. Justice Boddam, dated 1st November 1906, in Civil Suit No. 238 of 1906.