

claiming paramount title intervened and successfully prevented the petitioner from doing so by obtaining an injunction from Court. The case is thus one where there never was any consideration and the sale failed *ab initio*. The liability to refund the purchase money therefore arose when it was received by the respondent, i.e., on 29th September 1931 [see *Hanuman Kamat v. Hanuman Mandur*(1) already referred to] and falls under section 8 of the Act.

The revision petition is dismissed with costs.

V.V.C.

PARAVAN
v.
GOPALAN
NAIR.
—
PATANJALI
SASTRI J.

APPELLATE CRIMINAL.

Before Mr. Justice Lakshmana Rao.

PUBLIC PROSECUTOR, APPELLANT,

v.

CHELLIAH TEVAN AND ANOTHER (ACCUSED),
RESPONDENTS. *

1940,
August 9.

Madras Borstal Schools Act (V of 1926), sec. 7—Sub-Magistrate submitting proceedings under sec. 7 (1) with opinion that it is proper to detain the convicted persons in a Borstal School—Powers of Joint Magistrate under sec. 7 (2).

Where a Sub Magistrate, under section 7 (1) of the Madras Borstal Schools Act (V of 1926), submitted the proceedings in a case to the Joint Magistrate to whom he was subordinate, with his opinion that the respondents, who were adolescent offenders, were proper persons to be detained in a Borstal School, and the Joint Magistrate acquitted them,

(1) (1891) I.L.R. 19 Cal. 123 (P.C.).

* Criminal Appeal No. 172 of 1940.

PUBLIC
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held that it was not permissible to the Joint Magistrate to acquit them.

Under section 7 (1) of the Act a conviction has to be recorded before the proceedings are submitted as otherwise there would be no "adolescent offender" and when the proceedings reach the Joint Magistrate he has to deal with a person who has been convicted. The powers conferred by section 7 (2) of the Act are neither appellate nor revisional, and the order permissible under that provision is only such as can be passed upon a convicted person.

APPEAL under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid respondents (accused) by the Joint Magistrate of Tuticorin in Calendar Case No. 173 of 1939 on his file.

Public Prosecutor (V. L. Ethiraj) for appellant.
N. T. Ragunathan for respondents.

JUDGMENT.

LAKSHMANA
RAO J.

LAKSHMANA RAO J.—The respondents were convicted by the Sub Magistrate of Tuticorin for offences punishable under sections 323, 324 and 114 of the Indian Penal Code and the proceedings were submitted to the Joint Magistrate of Tuticorin under section 7 (1) of the Madras Borstal Schools Act with the opinion of the Sub Magistrate that the respondents who are adolescent offenders as defined in section 2 (1) of the Act are proper persons to be detained in a Borstal School. The Joint Magistrate acquitted the respondents and the question is whether this is permissible.

The proceedings were submitted under section 7 (1) of the Madras Borstal Schools Act which provides that when a Magistrate not empowered to pass sentence under that Act is of opinion that an adolescent offender is a proper person to be detained in a Borstal School he may without passing sentence

record such opinion and submit his proceedings and forward the adolescent offender to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate and the Joint Magistrate to whom the proceedings are submitted has to dispose of the case as prescribed in section 7 (2) of the Madras Borstal Schools Act. That section provides that he may make such further enquiry (if any) as he may think fit and pass such sentence or order dealing with the case as he might have passed if the adolescent had been tried by him, and, as pointed out in *Public Prosecutor v. Gurappa Naidu*(1), with reference to the analogous provision in section 380 of the Code of Criminal Procedure, it is not permissible to the Joint Magistrate to acquit the accused. A conviction has to be recorded before the proceedings are submitted under section 7 (1) of the Madras Borstal Schools Act as otherwise there would be no "adolescent offender" and when the proceedings reach the Joint Magistrate he has to deal with a person who has been convicted. The powers conferred by section 7 (2) of the Madras Borstal Schools Act are neither appellate nor revisional, and the order permissible under section 7 (2) is only such as can be passed upon a convicted person. The order of acquittal is therefore set aside and the case will go back to the Joint Magistrate for disposal according to law.

PUBLIC
PROSECUTOR
v.
CHELMAH
TEVAN.
—
LAKSHMANA
RAO J.

V.V.C.

(1) (1933) I.L.R. 57 Mad. 85.
