

REVISIONAL CRIMINAL.*Before Mr. Justice Shadi Lal, Chief Justice.***THE CROWN—Petitioner.***versus***SUHELA—Respondent.**

Criminal Revision No. 1040 of 1920.

Restriction of Habitual Offenders (Punjab) Act V of 1918, sections 8, 12 and 13—Whether an order of restriction for a period exceeding one year passed by a Magistrate requires confirmation by the Sessions Judge—Criminal Procedure Code, Act V of 1898, section 123.

Held, that an order of restriction for a period exceeding one year passed by a Magistrate under the provisions of the Restriction of Habitual Offenders (Punjab) Act, does not require confirmation by the Sessions Judge.

Case reported by E. R. Anderson, Esquire, Sessions Judge, Karnal, with his No. 876 of 3rd July 1920.

MEHTAB SINGH, Public Prosecutor, for Petitioner.

NEMO for Respondent.

The facts of the case are given in the order of the Sessions Judge which runs as follows:—

The accused, on conviction by Mr. E. A. Penhearow, exercising the powers of a Magistrate of the 1st Class in the Karnal District, was sentenced, by order, dated 14th May 1920, under the Habitual Offenders Act restricting him for a period of three years subject to confirmation by the Sessions Judge.

The proceedings are forwarded for revision on the following grounds:—

Notice was issued to the accused Suhela, a *Gujar* of *Mauza Asan Kalan, Tahsil Panipat*, to show cause why he should not be required to furnish a bond for Rs. 500 with one surety in a like sum to be of good behaviour for three years, or to be restricted for a period of three years.

On the 14th May 1920 Mr. E. A. Penhearow exercising powers of a Magistrate, 1st Class, in the Karnal District, passed an order directing that the said Suhela be restricted in his movements to his village Asan Kalan for a period of three years, and submitted the record of the case to this Court for confirmation of his order.

The case coming up for hearing in this Court on the 14th June 1920, the file was returned to the Magistrate on the ground that the Habitual Offenders Act, V of 1918, did not require confirmation by the Sessions Judge of any order by a Magistrate restricting an accused for a period exceeding one year. As, however, some more cases of the same nature have been referred to this Court, I deemed it expedient to obtain the file of Suhela's case again from the Magistrate's Court with a view to referring the question to the High Court for a ruling.

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Under section 123, Criminal Procedure Code, a reference is made to the Sessions Judge only in those cases where the accused having been ordered to furnish security for a period exceeding one year fails to do so and is committed to prison in consequence.

I am unable to find anything in the Habitual Offenders Act which makes the provisions of section 123, Criminal Procedure Code, applicable to proceedings under it. Section 8 (1) merely empowers a Sessions Judge in a case referred under section 12 Criminal Procedure Code, to substitute an order of restriction for one requiring the accused to furnish security.

Under the Criminal Procedure Code an appeal lies to the District Magistrate from an order passed under section 118, but no appeal whatsoever is provided for against an order passed by the Sessions Judge under section 123 (3) of the Code. That order is an original one and not simply one of confirmation of the Magistrate's order. Under section 13 of the Habitual Offenders Act the District Magistrate has power to hear appeals against orders of restriction passed by any Magistrate in the district. This does not include an order passed by a Sessions Judge under section 8 (1) of the Act. If then a Magistrate passes an order of restriction for a period exceeding one year and such order is confirmed by the Sessions Judge, the original order being that of the Magistrate an appeal would still lie to the District Magistrate notwithstanding the order of the Sessions Judge confirming that of the Magistrate. Such a state of things was surely never contemplated by the Legislature.

For the reasons given I refer the question as to whether an order of restriction for a period exceeding one year passed by a Magistrate under the provisions of the Habitual Offenders Act, V of 1918, requires to be confirmed by the Sessions Judge to the Hon'ble Judges of the High Court for orders.

SHADI LAL, C. J.—The question for determination in this case is whether an order of restriction for a period exceeding one year passed by a Magistrate under the provisions of the Restriction of Habitual Offenders Act (V of 1918), requires confirmation by the Sessions Judge. Now, I have perused the relevant sections of the aforesaid Act, and am unable to discover

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any provision which requires the Magistrate to submit the proceedings to the Sessions Judge for his confirmation. It is true that in the Criminal Procedure Code there is a provision contained in section 123 which makes it obligatory upon the Magistrate to submit the proceedings in connection with an order requiring a person to furnish security to the Sessions Judge for confirmation, but that provision applies only to a case where the period for which security is demanded exceeds one year and the person against whom the order is passed does not comply with it. In that case failure to furnish security renders the man liable to imprisonment, and probably it was for this reason that the Legislature provided that a superior Court should examine the proceedings before the man is sent to jail.

Now, that reason is inapplicable to the case of a person whose movements are restricted under Act V of 1918. If he disobeys the order, then he cannot forthwith be sent to jail. He can be only prosecuted, and the propriety of conviction can be questioned on an appeal from the order of conviction. It is, therefore, clear that there is no danger of a person dealt with under the aforesaid Act being sent to jail without the Appellate Court adjudicating upon the question whether the order of imprisonment is or is not justified.

Accordingly I am of opinion that the order of restriction for a period exceeding one year passed under the provisions of Act V of 1918 does not stand in need of any confirmation by the Sessions Judge.

A. N. C.