

(1930) 12 BOM CK 0024

Bombay High Court

Case No: Criminal Reference No. 71 of 1930

Emperor APPELLANT
Vs
Natvarlal Nagindas RESPONDENT

Date of Decision: Dec. 16, 1930

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 29B

Citation: (1931) 33 BOMLR 312

Hon'ble Judges: J.W.F. Beaumont, C.J.; Murphy, J.

Bench: Division Bench

Judgement

J.W.F. Beaumont, C.I.

This is a reference to us by the District Magistrate of Surat. The two accused in this case who were alleged to be under the age of fifteen years were convicted of theft u/s 379 of the Indian Penal Code by the First Class Magistrate of Chorasi. The learned Magistrate, acting u/s 563 of the Criminal Procedure Code, released the accused on their entering into a bond of Rs. 50 to be of good behavior for two months. The District Magistrate has referred the case to us saying that the learned Magistrate who tried the case had no jurisdiction to do so because he is not one of those specially empowered u/s 29B of the Criminal Procedure Code,

2. Section 29B of the Criminal Procedure Code lays down that any offence, other than one punishable with death or transportation for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years may be tried by the class of Magistrates therein referred to including a Magistrate specially empowered by the Local Government to exercise the powers conferred by Section 8 (1) of the Reformatory Schools Act, 1897. It seems to me that the words " may be tried " are permissive. No doubt the word "may" is sometimes construed as "shall" but obviously its *prima facie* effect is merely permissive and not obligatory. It seems to me that u/s 29B of the Criminal Procedure Code a Magistrate other than one of those particularly referred to in the section before whom an

offender under the age of fifteen years is brought was intended to have a discretion. He may deal with the matter under the ordinary provisions of the Code or he may direct that the accused be dealt with u/s 29B of the Criminal Procedure Code, that is to say, be tried by one of the Magistrates specially empowered under the section. But, in my view, he is not bound to deal with the case in that way. I think this reference was, therefore, unnecessary (though it was proper to raise the point) and no order need be made upon it.

Murphy, J.

3. I agree.