

Linganna Elanna Vs Emperor

Court: Bombay High Court

Date of Decision: July 27, 1934

Acts Referred: Bombay Children Act, 1924 " Section 27(1)

Citation: 153 Ind. Cas. 33

Hon'ble Judges: Beaumont, C.J; Macklin, J

Bench: Division Bench

Judgement

Beaumont, C.J.

In this case a boy alleged by his paternal uncle, with, whom he was living, to be under seven, and on the evidence

apparently about seven, was brought before the Magistrate in the Children's Court on a charge of theft. The learned Magistrate was satisfied of his

guilt, but in a case dealt with u/s 27(1) of the Bombay Children Act, 1924, there is not, properly speaking, any conviction. Being satisfied of the

guilt of the boy, the learned Magistrate directed him to be sent to a certified school for five years under Sub-clause (d) of Section 27. The paternal

uncle, objects to that course having been adopted, but, in my opinion, it was much the best course to adopt in the case of this boy. Our attention

has been drawn to the proviso at the end of Section 27(1), which is curiously expressed, because it provides that "nothing in this section shall be

construed as authorizing the Court to deal with any case in any manner in which it could not deal with the case apart from this section." It would be

useless to confer, by a section powers which already exist under some, other law, and it would be senseless to give new powers under a section,

and then provide at the end that the new powers are not to operate. I think the only way, to give any sensible effect to the proviso is to treat it as

applicable only to, the last sub-clause, viz., Sub-clause (1), which enables the Magistrate to deal with the case "in any other manner in which it may

legally be dealt with." I think the proviso is only intended to apply to that sub-clause, and shows that the sub-clause does not confer any fresh

power on the Magistrate. That being so, I think the, order of the Magistrate was justified, and there is no occasion for us to interfere. The Rule is,

discharged.

Macklin, J.

2. I agree.