

**In Re: Anandi Mahar**

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**Court :** Mumbai

**Decided On :** Feb-11-1937

**Reported in :** AIR1937Bom388; (1937)39BOMLR468

**Judge :** John Beaumont, Kt., C.J. and; N.J. Wadia, J.

**Appeal No. :** Criminal Application in Revision No. 386 of 1936

**Appellant :** In Re: Anandi Mahar

**Disposition :** Application allowed

**Judgement :**

John Beaumont, Kt., C.J.

1. This is an application in revision against an order made by the District Magistrate of Poona under the Bombay Children Act, 1924. It appears that the original applicant, who alleges that he is the father of the three children of the respondent, Anandi, but who failed to prove that fact, instituted proceedings under Section 7 of the Bombay Children Act, and on those proceedings the Magistrate made an order directing that the three children should be placed under the care of Revd. Mother Superior of the Mount Mary Convent High School, Bandra, for a period of three years, and the mother was to pay the boarding and other fees. Then the mother's right of access was restricted by the order which states that 'the children should be continually under the care of the Revd. Mother and not allowed to go home for their holidays. But their mother only may be permitted to visit them

and correspond with them according to the rules of the Convent. All letters addressed to them or by them should pass through the hands of the Rev. Mother.

2. The mother did not object to that order, and she does not now object to it, but the applicant appealed from that order to the District Magistrate. Whether a person, who alleges, but fails to prove, that he is the father of a child, has any locus standi to appeal, may be a question. In point of fact, the whole proceedings seem to me to have been somewhat irregular.

3. Under Section 7 of the Act the only persons who can move the Court are a police-officer or other person authorized in this behalf in accordance with rules made by the Governor in Council. Those persons include Probation Officers and certain other persons, but not an alleged putative father. So that, strictly speaking, the applicant had no locus standi in the first instance. However, the Court does seem to have asked the Probation Officer to make certain enquiries. It may be, therefore, that the Court having knowledge of the condition of these children induced the Probation Officer to take action under Section 7, in which case the proceedings would be regular.

4. In appeal, the District Magistrate upheld the order except in this respect, that he limited the visits of the mother to not more than two per year, and the mother applies in revision from that order because she objects to that limitation.

5. The first point taken by the respondent is that no revision application lies under Section 51 of the Act. That section provides that against certain orders an appeal may be brought to a District Magistrate, and it also provides that

No appeal shall lie from any order passed in any such appeal.

6. Sub-section (3) of that section provides that

Any order passed under the provisions of this Act and not subject to appeal under Sub-section (1) may be revised by the High Court.

The order sought to be revised in this case is the order of the District Magistrate made in appeal, which is not subject to appeal under Sub-section (1), So that,

strictly speaking, Sub-section (3) does not seem to apply to an application to revise this particular order. In any case, however, Sub-section (3) is in terms an enabling section and not a disabling section, and if it purports to restrict in any way the High Court's powers of revision, it does so only by implication. As those powers of revision are conferred by statute, it would be wrong to hold that they have been limited by implication when they have not been limited by any express words. I think, therefore, that we have power to deal with the matter in revision.

7. [After dealing with the question of fact arising in the case, the judgment concluded :] I think that the proper order in this case is to set aside the order of the District Magistrate, and to restore the order of the trial Court.

**N.J. Wadia, J.**

8. I agree.

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