

**Emperor Vs. Damodar Gopal**

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**Court :** Mumbai

**Decided On :** Jul-28-1942

**Reported in :** (1942)44BOMLR804

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

**Appeal No. :** Criminal Appeal No. 220 of 1942

**Appellant :** Emperor

**Respondent :** Damodar Gopal

**Judgement :**

John Beaumont, C.J.

1. This is an appeal from an order made by the Presidency Magistrate, Seventh Court, in which he directed a child, who was tried before him, to be sent to a certified school. There is, I think, no doubt that the order was a wise order, if the Magistrate had power to make it. But it is urged on behalf of the appellant that the ordinary Presidency Magistrates have no power to try children, who, it is said, fall within the exclusive jurisdiction of the Juvenile Court.

2. Section 46 of the Bombay Children Act, 1924, provides in Sub-section (I) that the Provincial Government may provide for the establishment in any area of one or more separate Courts for the conduct of proceedings under the Act at which the attendance of a child is required. Then there is a proviso:

that where a child is accused of an offence triable jointly with any other person not being a child, nothing in this Sub-section shall affect...the powers of the court, to try such other person under any other law for the time being in force.

3. The exact meaning of that proviso is not, I think, free from doubt, since there may be a question whether the Court named is the Juvenile Court or the ordinary Court. Then there is a second Sub-section, which says that where no such separate Court has been established, the Court before which a child is brought shall deal with the child under the special procedure there laid down ; the object being to prevent a child being tried in the atmosphere of an ordinary Police Court. Now, if I had to deal with that section as an independent Code, apart from the provisions of the rest of the Act, I should say that the Juvenile Court, when established, was to have exclusive jurisdiction over cases at which the attendance of a child is required. I think the proviso tends in that direction, because it seems to me to be a saving of the powers of the ordinary Court to deal with adult offenders charged along with a child, which seems to me to suggest that the powers of such Courts in relation to children are taken away. It would also seem to me strange on any other basis that whereas whilst no Juvenile Court has been established, the special procedure indicated in Sub-section (2) has to be observed, the Sub-section does not in terms apply after the Juvenile Court has been established. If other Courts have concurrent jurisdiction, one would expect them to be bound, under Sub-section (2), to adopt the special procedure indicated in the case of a child.

4. When one turns to the Notification of June 14, 1927, by which the Government of Bombay constituted a Juvenile Court in the City of Bombay, we find that it was constituted for the conduct of all proceedings under the said Act, and Government then made certain rules, of which Rule 9 provides that 'all cases falling under the said Act shall be taken before, and dealt with by, the Juvenile Court.' So that it certainly looks as if at the time when the Court was constituted it was intended that it should have exclusive jurisdiction. But it has to be noted that the rules framed in 1927 have been displaced by other rules brought into operation on March 27, 1936, and those later rules do not contain any rule corresponding, to Rule 9 in the earlier rules. It is necessary also to notice other sections of the Bombay Children Act.

5. Under Section 5 it is provided that the powers conferred on Courts by this Act shall be exercised only by (a) the High Court; (b) a Court of Session ; (c) a District Magistrate; (d) a Sub-divisional Magistrate; (e) a salaried Presidency Magistrate; (f) any Juvenile Court constituted under Section 46; and (g) any Magistrate of the first class. So that under that section the powers can be exercised by salaried Presidency Magistrates as well as by any Juvenile Court. The object of that section seems to be to exclude from the exercise of powers under the Act all Courts other than those specified, and not to confer jurisdiction, and I am inclined to think that, notwithstanding that section, it would be open to Government to confer jurisdiction on the Juvenile Court to the exclusion of other Courts named. But, so far as that section goes, it indicates that the jurisdiction could be exercised both by Presidency Magistrates and by the Juvenile Court.

6. Then Section 6 provides that:

(1) When any Magistrate not empowered to pass an order under this Act is of opinion that a child brought before him is a proper person to be sent to a certified school or to be dealt with in any other manner in which the case may be dealt with under this Act, he shall record such opinion and submit his proceedings and forward the child to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate or to the Magistrate presiding over the nearest Juvenile Court having jurisdiction in the case or in the City of Bombay to a salaried Presidency Magistrate.

7. That section does not in terms say that the jurisdiction of the Presidency Magistrates is confined to the trial before a Juvenile Court is established. But the strongest indication that the two Courts may function side by side is to be found in Section 51, which provides that an appeal from an order made by a Court under various sections of the Act shall lie, if passed by a Juvenile Court, in the City of Bombay, to the Chief Presidency Magistrate; and, if passed by a Court of Session or a Presidency Magistrate, to the High Court. That section seems to me to indicate clearly that you may have an order made under the provisions of the Act either by a Juvenile Court or by a Presidency Magistrate.

8. Reading the Bombay Children Act as a whole, I think, one must say that the jurisdiction of the Children's Court is not exclusive; the other Presidency Magistrates can try cases in which children are concerned. I reach that conclusion with a certain amount of regret, because I cannot help feeling that one object of the Bombay Children Act was to provide a special Court for the trial of a child, or a special procedure where there was no special Court, and it is, I think, a defect in the Act that prosecuting authorities may send children up before one of the ordinary Courts in a place where a Juvenile Court is available, and that the ordinary Court is not then bound under the Act to try the case by the special procedure. No doubt, Rule 15 of the Rules of 1936 provides for a special procedure, but rules may be altered from time to time, and have not the stability of an Act. But I think the provisions of the Act taken as a whole make it impossible to say that the jurisdiction of the Juvenile Court is exclusive in relation to children.

9. We must, therefore, dismiss the appeal.

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