

In Re: Ibrahim

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Court : Chennai

Decided On : Mar-21-1956

Reported in : (1956)1MLJ568

Appellant : In Re: Ibrahim

Judgement :

ORDER

Somasundaram, J.

1. This is a reference by the District Magistrate (Judicial), Coimbatore under the following circumstances. The Taluk First Class Magistrate, Gudalur, committed on 26th August, 1955, the respondent in M.C. No. 15 of 1955 on his file to the Borstal School Palamkottah, for a period of two years. There is a Government notification dated 19th December, 1955, under which the Taluk First Class Magistrate in question was invested by the Governor under Section 6 of the Borstal Schools Act with all the powers conferred on a Court by the said Act. The District Magistrate, is, therefore, of the opinion that on the 26th August, 1955, the Taluk First Class Magistrate was not empowered to exercise the powers under the Borstal Schools Act and hence this reference.

2. That the magistrate in question is a First Class Magistrate is not in doubt But the question is whether he should be specially empowered by the State Government to act under Section 6 of the Act.

3. S. 6 of the Borstal Schools Act is as follows:

The powers conferred on Courts by this Act shall be exercised only by (a) the High Court, (A) a Court of Session, (c) a District Magistrate, (d) a Sub-Divisional Magistrate, (e) a salaried Presidency Magistrate (or any other Presidency Magistrate empowered by the State Government to sit singly) and (f) any Magistrate of the first class or any bench of Magistrates constituted under Section 15 of the Code of Criminal Procedure, 1898, invested with the powers of a Magistrate of the first class specially empowered by the State Government in that behalf....

4. Now, under Clause (f) 'any Magistrate of the first class' is mentioned, Instead of there being a comma after the expression 'any Magistrate of the first class' the clause simply reads 'any Magistrate of the first class of any bench of Magistrates constituted under Section 15 of the Code of Criminal Procedure, 1898. invested with the powers of a Magistrate of the first class specially empowered by the State Government in that behalf.' Does the expression 'specially empowered by the State Government in that behalf ' qualify only the expression 'any bench of Magistrates constituted under Section 15 of the Code of Criminal Procedure' or both the expressions, viz., 'any Magistrate of the first class' and ' any bench of Magistrates constituted under Section 15 of the Code of Criminal Procedure, 1898'? If it is to qualify the expression 'any Magistrate of the first class' also, then it will read as follows:

Any Magistrate of the first class invested with the powers of a Magistrate of the first class, specially empowered by the State Government in that behalf.

A Magistrate of the first class has all the powers of a magistrate of the first class. He need not be empowered again with the powers of a magistrate of the first class. Section 6 confers powers on various magistrates which include Magistrates of the first class. Just as the other Courts mentioned in Section 6 need not be specially empowered, so is the magistrate of the first class. If there is a comma after the expression ' first class' in the expression 'invested with the powers of a Magistrate of the first class' then certainly it can be said that the expression ' specially empowered by the State Government in that behalf' would also qualify

the expression ' any Magistrate of the first class' first mentioned in Clause (f). But there is no such comma. As it is, in my opinion, this expression ' invested with the powers of a Magistrate of the first class specially empowered by the State Government in that behalf' can only apply to the expression ' any bench of Magistrates constituted under Section 15 of the Code of Criminal Procedure, 1898 ', and will not apply to the expression ' any Magistrate of the first class '. In this view, a Magistrate of the first class will be considered as having the powers conferred on a Court by this Act, and the Magistrate concerned being a Magistrate of the first class, he will certainly be entitled to exercise the powers conferred on Courts by the Act. It is the notification of the Government, dated 19th December, 1955, that has introduced complication in this case. No doubt, the Government has interpreted that the expression ' invested with the powers of a Magistrate of the first class specially empowered by the Government in that behalf' applies both to the first class Magistrate as well as to the Bench. But as pointed out by me, the proper interpretation of Clause (f) is that the expression ' invested with the powers of a Magistrate of the first class specially empowered by the State Government in that behalf ' applies only to ' any bench of Magistrates constituted under Section 15 of the Code of Criminal Procedure, 1898, ' and not to ' any Magistrate of the first class' mentioned earlier.

5. In this view, the reference is returned to the District Magistrate, as the Taluk First Class Magistrate in question has power to act under the Act.

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