

**Queen-empress Vs. Makimuddin**

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**Court :** Kolkata

**Decided On :** Jul-26-1899

**Reported in :** (1900)ILR27Cal133

**Judge :** Prinsep and ;Hill, JJ.

**Appellant :** Queen-empress

**Respondent :** Makimuddin

**Judgement :**

**Prinsep and Hill, JJ.**

1. The Magistrate in a summary trial has convicted the petitioner of theft and has sentenced him to 'three months' rigorous imprisonment, in lieu to undergo seven years detention in a Reformatory.'

2. The Sessions Judge has referred this case to this Court for revision because there has been no inquiry or evidence taken to ascertain the petitioner's age, and, therefore, no proper finding that he is a youthful offender; and he has also observed that the case should have been considered under Section 31 of the Reformatory Schools Act (VIII of 1897) rather than as a tit case for an order for detention in a Reformatory School.

3. In explanation the Magistrate has stated on a look of the boy I was satisfied that his age was about 10 years so I did not make any further inquiry.
4. Section 16 of the Act declares that no Court shall alter or reverse in appeal or revision any order passed with respect to the age of the youthful offender or the substitution of an order for detention in a Reformatory School for transportation or imprisonment.
5. In this case there has been no order in respect of the age of the youthful offender. He has been summarily declared to be a youthful offender.
6. We do not desire to be understood as holding that a Magistrate is under no circumstances competent to find from the appearance of a person convicted by him that he is a youthful offender within the definition given in the Act, but we think that it is generally desirable that, when it is procurable, there should be some reliable evidence on the point, and especially when it may be necessary to determine the period of the detention which is limited to his attaining eighteen years of age.
7. But that is not the matter really raised in this case. The real question seems to be whether this boy should be detained at all in a Reformatory School. Now, although we are debarred by Section 16 of the Act from altering or revising an order for detention in a Reformatory School in substitution for transportation or imprisonment it must be an order properly so passed. Section 8 of the Act declares that the Local Government may make rules for defining what youthful offenders should be sent to Reformatory Schools having regard on the nature of their offences or other considerations, and among the Rules So made (see Calcutta Gazette, March 1, 1899, Part I, p. 226) it is declared that such youthful offenders shall be those 'convicted of offences against property or any other offence showing dishonesty or depravity (1) in all cases, when they have been previously convicted of any such offence; and (2) on first conviction, when a brief term of imprisonment is considered an undesirable and inadequate punishment, or they are without proper parental or other control, or there is reasonable cause for supposing that they are being trained to, or are likely to relapse into, crime.'

8. We cannot regard the offence of which the petitioner has been convicted, stealing a lota from the side of a sleeping man, as within these terms, or as the Magistrate describes it in the explanation a 'serious' offence. It is admittedly also a first offence, and therefore it seems to come within Section 31, which apparently has been overlooked by the Magistrate. We accordingly set aside the order as not an order properly made and direct the Magistrate to proceed in accordance with the rules made by the local Government.

9. We also draw the attention of the Magistrate to Section 8 of the Indian Penal Code. He should, having regard to the age of the boy being under twelve years of age, find that the accused has attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on the occasion of his taking the lota. The fact that he offered it for sale very soon after taking it and in the same locality is remarkable, and would seem to throw some doubt whether he understood the nature and consequences of his act.

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