

(1913) 01 AHC CK 0024

Allahabad High Court

Case No: None

Rama and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Jan. 7, 1913**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 188

Citation: 18 Ind. Cas. 682**Hon'ble Judges:** Tudball, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Tudball, J.

Certain persons have been convicted by a Magistrate of an offence u/s 188, Indian Penal Code, and have been sentenced to pay certain fines. The case has been referred to this Court by the Sessions Judge with the recommendation that the convictions and sentences be set aside and the fines refunded. As far as it is possible to do so from the record, I gather the facts to be more or less as follows: Some officer or other has published an order forbidding the accused, who are Pandas, from going on the Railway Station at Bindhachal except for bona fide purposes of travelling. The record does not show by whom that order was issued and whether he had power to issue it. There is nothing to show that it was issued to the accused personally; apparently it was generally proclaimed. The record shows that the accused went on to the platform and importuned certain pilgrims. The Magistrate has, therefore, held them guilty u/s 188, Indian Penal Code. That section runs as follows:

Whoever, knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his

management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any persons lawfully employed be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

2. There is nothing on the record to show that any order was promulgated by a public servant lawfully empowered to promulgate such order. It is true that the case was tried summarily and in a summary trial the evidence need not be recorded, but the record shows that no evidence whatsoever was taken to prove the order that was promulgated or to prove that the person who issued the order was authorised to issue it. Moreover, if the order be, as described in the opening clause of the judgment, forbidding persons to enter railway quarters except for bona fide purposes of travelling, such an order is far from being legal. The public have a right to go to the railway premises for many other purposes than travelling and orders forbidding persons to enter railway premises except for travelling purposes could not legally be issued. It would indeed defeat many other purposes for which railways are intended. For this reason, the order must be set aside.

3. There are other grounds as pointed out by the learned Sessions Judge on which it is open to this Court to set aside these convictions, but I do not think it necessary to discuss them. It is incumbent on the prosecution to prove the necessary ingredients which go to constitute an offence. Unless the proof is before the Court, it cannot be said that the offence has been established. I, therefore, set aside the convictions and sentences and direct that the fines, if paid, be refunded.