

Emperor Vs Mallapa Mallapa Tavargi

Court: Bombay High Court

Date of Decision: June 18, 1915

Acts Referred: Penal Code, 1860 (IPC) â€” Section 188

Citation: (1915) 17 BOMLR 676 : 30 Ind. Cas. 652

Hon'ble Judges: Hayward, J; Batchelor, J

Bench: Division Bench

Judgement

1. This is an appeal against an order made by the learned District Judge of Dharwar directing that the appellant should be prosecuted for

disobedience of the District Court's order made under the Guardians and Wards Act.

2. It appears that a temporary injunction was issued against the present appellant directing him not to marry the two minor girls, Hanmava and

Basava, but that thereafter he handed over the minors to his sister Baslingava and she brought about the marriage of the infants. It is stated by Mr.

Mulgaorikar, on behalf of the appellant, that the temporary injunction issued against the present appellant was never carried further, but was

merged in the ultimate order of the Court which vested the guardianship of the minors in one Hanmantgavda. It may be that these circumstances

would throw difficulty in the way of the execution of the order under appeal. But, however that may be, it seems to us that the order is

unsustainable upon another ground. The learned Judge, though he directs the prosecution, does not specify under what section of the Indian Penal

Code the prosecution should be instituted. It is, however, agreed between the learned pleaders that the only section of the Code which could be

used for such a prosecution would be Section 188, and it seems clear from the wording of that section that its operation is limited to the

promulgation by public servants of public orders relating to the safety, the health or the convenience of the public. That, as we say, is the view

which appears upon the wording of the section, and that is the interpretation which was placed upon the section by a Bench of this Court, viz., Mr.

Justice Aston and Mr. Justice Heaton in *Imperator v. Hanmant* (1906) Crim. Revn. No. 157 of 1906 (Unreported.) Following that ruling we must

hold that the order made by the District Judge is invalid.

3. The rule, therefore, must be made absolute and that the order must be discharged.