

(1889) 09 CAL CK 0003
In the Calcutta High Court
In Re: Dhuronidhur Ghose

Date of Decision : 28-09-1889

Acts Referred:

Penal Code, 1860 (IPC) — Section 361

Citation : (1890) ILR (Cal) 299

Hon'ble Judges : Tottenham, J; Banerjee, J

Bench : Division Bench

Judgement

Tottenham and Banerjee, JJ.—This is an application to direct the Presidency Magistrate of the Northern Division of Calcutta to issue a process upon the petitioner's complaint that his wife, a minor under sixteen years of age, had been kidnapped from his lawful guardianship by her own father, the allegation being that the wife was taken from her husband's house while he was asleep by her father, and had been removed to Rungpore.

2. The Magistrate refused to issue a process. In his letter to this Court, in showing cause against the rule, he says that there is no criminality in the act of a father taking away his own daughter, and that during his long course of experience as a Magistrate, he has refused many such applications.

3. We think that the cause shown is not sufficient, inasmuch as the act of the father distinctly falls within the definition of Section 361, Penal Code. He may have had no criminal intention in taking away his own daughter, but the law provides, and the fact is undeniable, that the husband of a Hindu girl of the age of fifteen is her lawful guardian, and taking her away from him without his consent amounts, according to the definition given above, to kidnapping from lawful guardianship. We think, therefore, that the Magistrate must proceed according to law, and, if he believes the complaint, he is bound to issue a process.