

caution should be sanctioned, a Magistrate who makes an order for compensation cannot be said to exercise his discretion wrongly.

These are the considerations to be borne in mind in making an order under section 250 of the Code of Criminal Procedure. We therefore set aside the order of the Deputy Magistrate and direct the appeal to be heard and disposed of in the light of the above observations.

IN THE  
MATTER OF  
TAMMI  
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## APPELLATE CRIMINAL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice Moore.*

BANGARU ASARI, APPELLANT,

*v.*

EMPEROR, RESPONDENT.\*

1903.  
July 27.

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*Criminal Procedure Code—Act V of 1898, ss. 199, 238—Charge of kidnapping and conviction for enticing married woman—No complaint by husband—Legality.*

The provision in section 199 of the Code of Criminal Procedure that no court shall take cognizance of an offence under section 498 of the Indian Penal Code except upon a complaint made by the husband of the woman, means a complaint by the husband of an offence under section 498, not any complaint made by the husband.

An accused was charged with kidnapping or abducting a woman under section 366, Indian Penal Code, but the Sessions Judge, holding that the prosecution had failed to prove either kidnapping or abduction, convicted the accused, on the evidence, of an offence under section 498. In doing so he purported to act under section 238 of the Code of Criminal Procedure. The complaint before the court had been made by the husband, but was only general in terms:

*Held*, that the conviction was bad.

*Empress v. Kallu*, (I.L.R., 5 All., 233), followed and approved.

CHARGE of kidnapping a woman under section 366 of the Indian Penal Code. The Sessions Judge held that the prosecution had failed to prove either kidnapping or abduction, but, on the evidence, he convicted the accused of having enticed away a married woman, under section 498. A complaint had been preferred by the woman's husband, in general terms, in which he stated that his wife had been missed, that he searched for and found her in the backyard of the accused who subsequently brought the girl out

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\* Criminal Appeal No. 238 of 1903, presented against the sentence of K. C. Manavedan Raja, Sessions Judge of North Arcot Division, in Case No. 17 of the Calendar for 1903.

BANGARU  
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EMPEROR.

and locked himself in his house. The complaint concluded by stating that the woman had informed the complainant that the accused had carried her into her house and gagged her mouth and confined her in a room and threatened to stab her if she cried out. The accused was charged under section 366, Indian Penal Code, with the result that has already been stated.

The accused preferred this appeal.

*T. Venkatasubba Ayyar* and *Narayana Sastri* for appellant.

The Public Prosecutor in support of the conviction.

JUDGMENT.—In this case the accused was charged with an offence under section 366 of the Indian Penal Code. The Sessions Judge held that the prosecution had failed to prove either kidnapping or abduction but on the evidence he convicted the accused of an offence under section 498. In so doing he purported to act under section 238 of the Code of Criminal Procedure. Sub-section (3) of this section provides that nothing in the section shall be deemed to authorise a conviction of any offence referred to in section 199 when no complaint has been made as required by that section. Section 199 says no court shall take cognizance of an offence under section 498 of the Indian Penal Code except upon a complaint made by the husband of the woman. We think this means a complaint made by the husband of an offence under section 498, not *any* complaint made by the husband.

This is the view adopted by the Allahabad High Court in *Empress v. Kallu*(1). The Calcutta High Court has taken a different view—see *Jatra Shekh v. Rezat Shekh*(2). We agree with the reasoning, and with the conclusion of the Allahabad High Court. The conviction is bad and must be set aside on the ground that, there being no complaint by the husband of an offence under section 498, the Court had no jurisdiction to convict.

The prisoner must be set at liberty.

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(1) I.L.R., 5 All., 233.

(2) I.L.R., 20 Calc., 483.