

**Emperor Vs. Jinga Gamaji**

**LegalCrystal Citation** : [legalcrystal.com/344987](http://legalcrystal.com/344987)

**Court** : Mumbai

**Decided On** : Nov-20-1924

**Reported in** : (1925)27BOMLR111

**Judge** : Norman Macleod, Kt., C.J. and ;Crump, J.

**Appeal No.** : Criminal Application for Review No. 268 of 1924

**Appellant** : Emperor

**Respondent** : Jinga Gamaji

**Judgement** :

Norman Macleod, Kt., C.J.

1. The accused was convicted under Section 381, Indian Penal Code, of the theft of gold and silver ornaments and clothes belonging to the complainant in whose service he had been for three years as a cook. The Magistrate convicted him, and as it was his first offence, ordered him to be released on a bond on probation of good conduct for a period of one year under Section 562, Criminal Procedure Code. The matter has been referred to this Court on the ground that as sentence of imprisonment is obligatory when an offence under Section 381, Indian Penal Code, has been proved, the Magistrate could not give the convicted person the benefit of Section 562, Criminal Procedure Code. We think that on a proper construction of Section 562, a first offender, provided the other provisions of the section apply, is entitled to the benefit of the section, even when without such provisions the Magistrate would be obliged to pass a sentence of imprisonment. Any other construction would entirely nullify in a great number of cases the provisions of Section 562. We discharge the rule.