

NARASIMHA-  
MURTHY  
v.  
OFFICIAL  
RECEIVER,  
WEST  
GODAVARI.

given to the executing Court of the admission of the insolvency petition and, since it is also not alleged that the property ever vested in the interim receiver, we are unable to agree that the sale was bad for want of notice to him. No other point arises in this appeal which is dismissed with costs of the contesting respondents separately to be paid by the Official Receiver out of the estate.

A.S.V.

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## APPELLATE CRIMINAL.

*Before Mr. Justice King.*

IN RE RAJARATNAM PILLAI (ACCUSED), PETITIONER\*.

1936,  
January 16.

*Criminal Procedure Code (Act V of 1898), sec. 246—Summons case—Magistrate taking cognisance of—Charge in, of offence triable as a warrant case—Framing of—Legality of—Sec. 190 (1) (c)—Magistrate taking cognisance of offence under, upon his own knowledge—Opportunity to accused of saying if he wishes to be tried by him or not—Necessity of.*

Where a Magistrate took cognisance of a case under section 121 of the Indian Railways Act (IX of 1890), and recorded evidence according to the procedure applicable to summons cases, but framed a charge both under section 323, Indian Penal Code (Act XLV of 1860), and under section 121 of the Railways Act, thereby converting the proceedings before him from a summons case to a warrant case,

*held*, that the Magistrate was precluded under section 246, Criminal Procedure Code (Act V of 1898), from framing a charge under section 323, Indian Penal Code.

Under section 246, Criminal Procedure Code, once a Magistrate has taken cognisance of a summons case, he cannot convict the accused for anything but an offence triable as a summons case.

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\* Criminal Revision Case No. 638 of 1935.

Where a Magistrate takes cognisance of an offence under section 190 (1) (c), Criminal Procedure Code, upon his own knowledge gained by the evidence to which he has listened, he is bound to afford the accused an opportunity of saying whether he wishes to be tried or not by him.

RAJARATNAM  
PILLAI,  
*In re.*

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Court of the Second-class Magistrate of Thiruvadamardur in Calendar Case No. 179 of 1935.

*K. S. Jayarama Ayyar* and *G. Gopalaswami* for petitioner.

*Public Prosecutor (L. H. Bewes)* for the Crown.

#### ORDER.

The petitioner in this case has been prosecuted by the police on a charge sheet in which it is alleged that he had interfered with a certain Station Master in the exercise of his duty, and in the course of that interference had slapped him on his cheek. The charge sheet specifically referred to his offence as falling simply within section 121 of the Railways Act (IX of 1890), the maximum punishment for which is a fine of Rs. 100. The Second-class Magistrate of Thiruvadamardur, on receiving this charge sheet, took cognisance of the case as involving an offence under that section of the Railways Act, and, as he was bound to do, he proceeded with the trial of the case under the procedure laid down for the trial of summons cases. After he had taken the evidence of the prosecution in full, it occurred to him that the evidence also established an offence under section 323, Indian Penal Code, for which offence the maximum punishment awardable is imprisonment for one year. The trial for an offence under

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section 323 must be held according to the procedure laid down for the trial of warrant cases, and what the Magistrate did was to convert the proceedings before him from a summons case into a warrant case and to frame a charge against the petitioner for both an offence under section 323, Indian Penal Code, and an offence under section 121 of the Railways Act.

It is argued in support of this petition that this procedure is illegal, that there is no provision in the Code which can justify it and that, once a Magistrate has taken cognisance of an offence which is triable only according to the procedure applicable to summons cases, he can in no circumstances proceed against an accused person for a more serious type of offence to be dealt with only under warrant cases. In support of this argument I have been referred to section 246 of the Criminal Procedure Code. That section runs as follows :—

“ A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this Chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons. ”

“ Triable under this Chapter ” means, of course, any offence triable under the procedure laid down for the trial of summons cases, and, although section 246 does not contain any explicit prohibition of the procedure now complained against, it is quite obvious that such prohibition is implied in it and that, once a Magistrate has taken cognisance of a summons case, he cannot convict an accused person for anything but an offence triable as a summons case. No doubt the Magistrate might, had he felt so inclined, have scrutinised

the charge sheet when he first received it and have come to the conclusion that an offence under section 323 was therein disclosed. He could then have commenced the whole proceedings according to the procedure laid down for warrant cases; but not having done that, it seems to me that under section 246 he is precluded from convicting the present petitioner for any offence under section 323 and, therefore, of course precluded from framing any charge of an offence under that section against him.

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PILLAI,  
*In re.*

It has also been pointed out that under section 190, Criminal Procedure Code, it is not upon a report in writing made by a police officer but upon the knowledge of the Magistrate himself gained by the evidence to which he has listened that the Magistrate has come to the conclusion that an offence under section 323 may have been committed and that, if the Magistrate takes cognisance of such an offence under section 190 (1) (c), it is his bounden duty to afford the accused person an opportunity of saying whether he wishes to be tried or not to be tried by that Magistrate. This procedure also has not been followed in the present case.

On these grounds this petition will be allowed and the order of the Magistrate complained against will be set aside. The case will be sent back to the Magistrate, who should proceed to dispose of it according to law on the understanding that the only offence with which he is concerned is the offence under section 123 of the Railways Act.

K. W. R.