

1933.

BALDEO
PRASAD
v.
KING-
EMPEROR.

DHAVLE, J.

framed the two charges on one of which the appellant was ultimately given the benefit of the doubt and of the other he was convicted. It seems clear that the trying Magistrate, who was not empowered to take cognizance under clause (c) of sub-section (1) of section 190 did not (as indeed he could not) take cognizance of any offence under clause (c), but that being properly in seisin of the whole case on its transfer to him by the Subdivisional Magistrate, he had authority, on the evidence, to frame a charge with respect to the Provident Fund monies as well.

Rule discharged.

REVISIONAL CRIMINAL.

Before James and Dhavle, JJ.

SITARAM AHIR

v.

KING-EMPEROR.*

1933.

Mar. 21.

Code of Criminal Procedure, 1898 (Act V of 1898), section 123—person affected by the order, whether should have opportunity of being heard before final order.

The person affected by the order under section 123, Code of Criminal Procedure, 1898, must have an opportunity of being heard before the final order is made under that section.

Emperor v. Amir Bala(1), followed.

The facts of the case material to this report are stated in the judgment of James, J.

Mahabir Prasad and Tarakeshwar Nath, for the petitioners.

Assistant Government Advocate, for the Crown.

* Criminal Revision no. 88 of 1933, from an order of R. C. Chaudhuri, Esq., Sessions Judge of Shahabad, dated the 10th December, 1932, modifying an order of Bahu Sukhdeo Narain, Subdivisional Magistrate of Buxar, dated the 9th September, 1932,

(1) (1911) I. L. R. 35 Bom. 271.

1933.

SITARAM
 AHIR
 v.
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 EMPEROR.

JAMES, J.—The petitioners were required to execute bonds for good behaviour under section 118 of the Code of Criminal Procedure by the Special Magistrate of Buxar, who then placed the proceedings before the Sessions Judge of Shahabad under section 123 of the Code. The Sessions Judge before taking up the reference directed that the prisoners should be informed of the date fixed for hearing which should have been done through the District Magistrate. The petitioners say that they had no information regarding the proceedings in the Court of the Sessions Judge and it appears that the District Magistrate referred the notice to the Special Magistrate who directed that his Bench clerk should see that the prisoners were informed; but it does not appear that anything further was done. The proceedings under section 123 should not have been taken without notice to the persons affected by the order. The case of *Emperor v. Amir Bala*⁽¹⁾ only need be cited as authority for this rule that the person affected by the order must have an opportunity of being heard before the final order is made under section 123 of the Code of Criminal Procedure. The order of the Sessions Judge must, therefore, be set aside and the case is remanded to him for re-hearing after giving notice to the petitioners according to law.

The prisoner Chandrika Ahir has not moved the High Court; but it appears that notice was not served on him. The whole of the order of the Sessions Judge will be set aside and the case against the four men Sita Ram, Ujagir, Chandrika and Kulbans will be re-heard.

DHAVLE, J.—I agree.

Rule made absolute.

(1) (1911) I. L. R. 35 Bom. 271.