

**Emperor Vs. Amir Bala**

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**SooperKanoon Citation :** [sooperkanoon.com/327555](http://sooperkanoon.com/327555)

**Court :** Mumbai

**Decided On :** Mar-02-1911

**Reported in :** (1911)13BOMLR203

**Judge :** N.G. Chandavarkar, Kt. and ;Heaton, JJ.

**Appeal No. :** Criminal Application for Revision No. 420 of 1910

**Appellant :** Emperor

**Respondent :** Amir Bala

**Judgement :**

N.G. Chandavarkar, Kt., J.

1. Clause 3 of Section 123 of the Criminal Procedure Code provides:--

Such Court after examining such proceedings and requiring from the Magistrate any further information or evidence, which it thinks necessary, may pass such order on the case as it thinks fit.

2. The words are wide enough to give discretionary power to the Sessions Judge or the High Court, as the case may be, to deal with the case on the merits and pass such order as the circumstances of the case, in his opinion, may require.

3. We must, therefore, make the Rule absolute and ask Sessions Judge to deal with the matter, having regard to this order.

**Heaton, J.**

4. I agree to the proposed order. Unless the words used in Section 123 of the Criminal Procedure Code are intended to confer on the Court of Session power to go into the merits in a case of this kind, and, indeed, unless they require it to go into the merits, if any point is raised which involves the merits, I am unable to understand what these words mean. It is true that Section 406 provides that an appeal lies to the-District Magistrate. But I think that the Sessions Judge is wrong in arguing that although he himself might make an order under Section 123, the order requiring security would still be the order of the Magistrate, and would still be open to appeal to the District Magistrate under Section 406. It seems to me that when the Sessions Judge has dealt with a case under the provisions of Section 123, the order passed by him, whatever it may be, becomes the order in the case; and there is no longer an order by a Magistrate made under Section 118, which can be the subject of an appeal to the District Magistrate.

5. Therefore, the Sessions Court is the only Court which has the power to deal with these cases; and being that only Court it must go into merits if required; and if the Judge is to go into the merits, he is bound, according to the general principles of justice, which are applicable in British India, to give the person affected by the order an opportunity of being heard. Therefore, I consider that the Rule must be made absolute.

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