

Phool Singh and ors. Vs. Emperor

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Court : Allahabad

Decided On : Sep-17-1919

Reported in : AIR1919All396; 53Ind.Cas.831

Judge : Ryves, J.

Appellant : Phool Singh and ors.

Respondent : Emperor

Judgement :

Ryves, J.

1. In this case a Magistrate of the first class took proceedings under Section 110 of the Code of Criminal Procedure against five persons. He ordered security to be taken from two and directed that the three others should be discharged Under Section 190 of the Indian Penal Code. The two against whom the order was made appealed to the District Magistrate. He set aside all the proceedings of the learned Magistrate and ordered a re trial of the whole case, i.e., the case of the men who were discharged as well as of those who were bound over. He did this apparently without giving the three persons, who were not before him, an opportunity of showing cause against such an order. I would call the learned Magistrate's attention to the ruling of this Court in *Kharga v. Emperor* 22 Ind. Cas. 183; 36 A. 147; 12 A. L. J. 167; 15 Cr. L. J. 39. It was laid down in that ruling that a Magistrate, before taking proceedings under Section 437 of the Criminal

Procedure Code, should give notice to the persons against whom he proposes to pass orders to show cause. I, therefore, set aside the order of further enquiry so far as it concerns Phool Singh, Desraj and Zaharya. If the Magistrate is of opinion that further action should be taken, he will do so after giving these persons an opportunity of showing cause.

2. Let the record be returned.

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