

Before D. S. Tewatia and S. S. Kang, JJ.

COURT ON ITS OWN MOTION,—Petitioner.

versus

CHARAN SINGH AND ANOTHER,—Respondents.

Criminal Revision No. 562 of 1985

August 27, 1985.

Punjab Excise Act (1 of 1914)—Sections 61, 66 and 75—Report filed against accused by a police officer for an offence under Section 61 of the Excise Act—Magistrate—Whether competent to take cognizance on such report—Police Officers—Whether invested with the powers of Excise Officer under the Act.

Held; that under section 75 of the Punjab Excise Act, 1914, cognizance of an offence under section 61 can be taken by a Magistrate, *inter-alia* on the report of an excise officer. Every police officer in the State of Punjab is an excise officer and as such when the report for an offence under Section 61 made by a police officer, who is also invested with the powers of an excise officer under section 71 falls within the purview of section 75 and entitles the Magistrate to take cognizance of the offence. As such for the purpose of Section 75 of the Act a police officer would be considered an excise officer and consequently on his report the Magistrate would be competent to take cognizance of an offence under the Excise Act.

(Paras 6 and 7)

Basti Ram vs. State of Haryana, 1985 (1) C.L.R. 382.

(Over Ruled)

Case referred by Hon'ble Mr. Justice I. S. Tiwana to a Division Bench for decision of an important question of law involved in this case on 11th April, 1985. The Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice Sukhdev Singh Kang, quashed the order dated 27th March, 1985, of the Additional Chief Judicial Magistrate, Rupnagar and remitted back the case to him for a fresh decision in accordance with law, on dated August 27, 1985.

These proceedings have been taken by this Court on its own motion,—vide inspection note dated 11th April, 1985 recorded by Hon'ble Mr. Justice I. S. Tiwana. When his Lordship inspected the Court of Shri B. S. Teji, Additional Chief Judicial Magistrate, Rupnagar, on dated 27th March, 1985.

Nemo for the Petitioner.

G. S. Bains, A.A.G., (Punjab), for respondent No. 1.

G. S. Dhillon, Advocate, for respondent No. 2.

JUDGEMENT

D. S. Tewatia, J. (Oral)

(1) The Additional Chief Judicial Magistrate, Rupnagar decided case No. 76 of 1984 on 27th March, 1985, dictated the judgment in the presence of Hon'ble Mr. Justice I. S. Tiwana, who was inspecting his Court on that day. He acquitted respondent Charan Singh of the charge under section 61(1)(a) of the Excise Act (hereinafter referred to as the Act) on the ground that no cognizance under sections 61 and 66 of the Act could be taken by a Judicial Magistrate on a report submitted by the police official in view of the provisions of section 75(1) of the Punjab Excise Act, 1914. The learned Magistrate took that view on the basis of a single Bench decision of this Court reported as *Basti Ram v. State of Haryana* (1). The Inspecting Judge issued *suo moto* notice in exercise of revisional power of this Court and also directed the revision to be admitted to a Division Bench by his reference order dated 11th April, 1985 and that is how this revision petition is before us.

(2) It deserves to be mentioned at the very outset that the view expressed by the learned single Judge in *Basti Ram's case* (supra) runs counter to the view authoritatively taken by this Court since almost the year 1900 onwards as would be presently shown.

(3) It would be appropriate first to notice the provisions of section 75(1) of the Punjab Excise Act, which is in the following terms:—

“75(1) No Judicial Magistrate shall take cognizance of an offence punishable,—

(a) under section 61 or section 66 except on his own knowledge or suspicion or on the complaint or report of an excise officer; or”

(4) The learned Judge who decided *Basti Ram's case* (supra) proceeded on the untenable assumption that a Police Officer could not be an excise officer, and a Judicial Magistrate could take cognizance of an offence under section 61 of the Act, *inter alia*, on a report of an excise officer only in view of the provision of section 75(1) of the Act.

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(5) The following paragraph from the judgment represents the only discussion of the vital issue:—

“The sole point raised by the learned petitioner’s counsel is that in view of section 75 of the Act the trial Magistrate could not take cognizance of the offence under section 61 of the Act against the petitioners. Section 75(1) (a) of the Act is as under:—

“75(1) No Judicial Magistrate shall take cognizance of an offence punishable,—

(a) under section 61 or section 66 except on his own knowledge or suspicion or on the complaint or report of an excise officer; or”

It becomes clear from these statutory provisions that the trial Magistrate was not competent to take cognizance of the offence under section 61 of the Act on the basis of a report submitted by the police under section 173 of the Code of Criminal Procedure. He could take cognizance either on his own knowledge or suspicion on a complaint or report filed by an Excise Officer. It is, therefore, manifest that the proceedings being taken by the trial Magistrate in pursuance of the aforesaid First Information Report are illegal and without jurisdiction”.

From the aforesaid it is clear that neither any earlier decision of this Court had been brought to the notice of the learned Judge nor there is any discussion in depth of the relevant provisions of the Act or the notification that is issued conferring powers upon an excise officer.

(6) A Division Bench of the Punjab Chief Court as far back as 1900 in *Queen Empress v. Sunder Singh* (2) had the occasion to consider the very question and it was held that a Magistrate can take cognizance of an offence of working an illicit still on the report of chalan of a Deputy Inspector of Police, who is an Excise Officer under Punjab Government Notification No. 735 dated 26th March, 1885, which notification under section 2(2) of the Excise

Act of 1896 is still in force, the police chalan being under section 190(6) of the Code of Criminal Procedure, a police report of facts constituting an offence. The Chief Court in coming to that decision relied on three earlier decisions in *Empress of India v. Chet Singh* (3), *Chatra v. The Empress* (4) and *Dewa Singh v. Queen Empress* (5). Thereafter Dulat, J. in *Mukhtiar Singh v. State*, (6) in a judgement rendered in and also in a later judgement in *Jagga Singh v. State* (7) repelled the contention to the contrary advanced on behalf of the accused. The very question again came to be posed before a Division Bench of this Court in *State v. Amar Singh* (8), Dua J. who delivered the opinion for the Bench held that under section 75, cognizance of an offence under section 61 can be taken by a Magistrate, *inter alia*, on the report of an excise officer. Every police officer in the State of Punjab is an excise officer. A report of an offence under section 61 made by a Police Officer, who is also invested with the powers of an excise officer under section 71 falls within the purview of sections 75 and entitles the Magistrate to take cognizance of the offence. It was also held that the report mentioned in section 75 cannot be held to be different from the report contemplated under section 71. The language of section 71 is clear and unambiguous and a strained construction cannot be placed on section 71 merely because on a police report, the trial is to be held following the procedure specified in section 251-A and in other case, the procedure specified in the other provisions of the Chapter XXI of the Criminal Procedure Code.

(7) The very question cropped up before another Division Bench of this Court in *Darshan Singh v. The State of Punjab* (9). The Division Bench after an exhaustive review of the relevant provision of the Act held that under the provisions of Punjab Excise Powers and Appeal Order every police officer of the rank of Head Constable or above was invested with the powers of first class excise officer, which, *inter alia*, included powers to investigate under section 46 of the Excise Act. A perusal of the provisions of section 71 of the Excise Act showed that an investigating Officer, empowered under section

(3) 22 Pun. Re. Cr. 1900

(4) 15 Pun. Re. Cr. 1887

(5) 4 Pun. Re. Cr. 1893

(6) Cr. Rev. 1163/61 decided on 25th January, 1962

(7) Cr. Rev. 1500/61 decided on 7th May, 1962

(8) 1963 (1) Cr. 2. J. 271

(9) 1971 P.L.R. 942.

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46 of the Act, was duty bound to submit a report to a Magistrate having jurisdiction to enquire into or try the case regarding an excise offence in which it appeared to such an excise officer that there was sufficient evidence to justify the prosecution of the accused. So for the purposes of section 75 of the Act, a police officer would be considered an Excise Officer and consequently on his report the Magistrate would be competent to take cognizance of an offence under the Excise Act.

(8) In *Darshan Singh's case* (supra) yet another material contention was raised that section 20 of the Police Act, 1861, clearly prohibited the conferment or investiture of the powers of an Excise Officer under the Punjab Excise Act, 1914, or otherwise on a police officer and as such the notification No. 990-E&T-56/724, dated 19th March, 1956, Revenue Department Punjab Government so far as the said notification purported to confer or vest the powers of an Excise Officer on a Police Officer was *ultra vires* the powers of the Punjab Government. Repelling this contention the Bench held that the provisions of section 20 of the Police Act restricted the conferment of those powers or functions of an excise officer or a Police Officer which were qualitatively different from the powers and functions which a Police Officer under the Police Act was entitled to exercise, this provision additionally might also be envisaged to put restriction regarding conferment of power or authority which was wider in amplitude and scope than the power and authority conferred on him by the Police Act. This section could not be held to have debarred a Police Officer from being designated as an Excise Officer, so long as the Excise Act did not require him to perform such functions and exercise such authority which he could not do under the Police Act and which was not in consonance with the functions and authority exercisable by him under the Police Act.

(9) For the reasons aforementioned, we hold that *Basti Ram's case* (supra) does not lay down the correct law and we, therefore, overrule the same.

(10) The result is that the order of the Additional Chief Judicial Magistrate, Rupnagar, dated 27th March, 1985 is quashed and the case is remitted back to him for a fresh decision in accordance with law and in the light of the observations made in this judgment.

H.S.B.