

of the decision to be within his jurisdiction, his jurisdiction is lost because there is not material before him to give a decision on the merits of such an application. It is obvious that in such circumstances he retains the jurisdiction to decide the application for fixation of fair rent at the final stage.

(7) How he decides such an application on merits is entirely a different matter. His decision on merits may or may not be open to criticism in appeal or revision, but he has had jurisdiction to give the decision, and no possible attack can be made upon his jurisdiction merely because at the stage of decision what is found is that he has no evidence which answers the requirements of clauses (a) and (b), or any of them, of sub-section (2) of section 4 of the Act.

(8) So, our answer to the question posed in the order of reference is that in such a case the Rent Controller has the jurisdiction to give the final decision in disposing of an application for fixation of fair rent under section 4 of the Act. The two revision applications Nos. 928 of 1967 and 86 of 1968, will now go back for disposal before a Single Bench. The costs in this reference will abide the result of the revision applications in which this reference has been made.

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K. S. K.

CRIMINAL MISCELLANEOUS

*Before Gopal Singh, J.*

M/S. RAKESH INDUSTRIES,—Petitioner.

*versus*

STATE,—Respondent.

**Criminal Misc. No. 269 of 1969**

**in**

**Criminal Revision No. 117-R of 1968.**

May 21, 1969.

*Code of Criminal Procedure (V of 1898)—Sections 438, 439 and 440—Recommendation of a revision petition by Sessions Judge under section 438 to the prejudice of a party—Such party—Whether has a right to be heard by the High Court—Section 440—Whether gives discretion to the High Court not to hear the party.*

*Punjab High Court Rules and Orders, Volume V—Chapter 3-A, Rule 8—Party to a case in the High Court served for a tentative date—No Counsel*

M/S. Rakesh Industries v. State (Gopal Singh, J.)

*engaged by such party—High Court—Whether must serve another notice on the party for an actual date.*

*Held*, that when a recommendation of a revision petition is made by a Sessions Judge under section 438 of Code of Criminal Procedure to the prejudice of a party, that party has a right to be heard under section 439(2) of the Code. Section 440 of the Code does not confer discretionary power on the High Court in refusing to hear such a party. Proviso appended to this section leaves no doubt that that discretion cannot be exercised counter to the statutory obligation cast upon the High Court in hearing an accused person to whose prejudice an order has been made by a Court subordinate to the High Court, whose order is sought to be revised or recommendation has been made under section 438, of the Code to the prejudice of an accused person in respect of cases covered by sub-section (2) of section 439, Criminal Procedure Code. The power to exercise discretion in hearing or in not hearing a party has been taken away in cases, in which the order of the subordinate court sought to be revised is prejudicial to an accused person.

(Para 7)

*Held*, that under Proviso to Rule 8 of Chapter 3-A of Punjab High Court Rules and Orders, Volume V, it is imperative upon the office of the High Court to serve another notice for an actual date to be fixed by the office, if a party already served for a tentative date is not represented by a Counsel. Earlier service of a notice for a tentative date is no service at all, if the party so served has not engaged any Counsel and the Counsel has not put in appearance to represent that party.

(Para 7)

*Application under section 561-A of the Criminal Procedure Code against the order of the Hon'ble Mr. Justice J. S. Bedi, dated 14th January, 1969 passed in Criminal Revision No. 117 of 1968, for restoring the case to its original number and releasing the same.*

M. L. NANDA, ADVOCATE FOR C.B.I. GOVERNMENT OF INDIA, AND H. S. GYANI, ADVOCATE, FOR ADVOCATE-GENERAL, PUNJAB, for the Petitioner.  
RAJINDER SACHAR, ADVOCATE, for the Respondents.

JUDGMENT.

Gopal Singh J.—This is petition under section 561-A, Criminal Procedure Code for setting aside the order of Bedi J. dated January 14, 1969 passed in Criminal Revision No. 117 of 1968.

(2) The facts leading to the present petition are as follows :—

(3) On August 25, 1965, first information report was made by the State against the firm of the petitioner styled as Messrs Rakesh Industries for offence under Section 5 of the Imports and Exports (Control) Act, 1947. The punishment provided under section 5 of

the Act as it then stood was rigorous imprisonment for one year. Section 5 of the Act was amended in 1966 and the sentence for which a convict under that section could be punished was enhanced to rigorous imprisonment for two years. After investigation by the police, the petitioner firm was challaned to the Court of the Chief Judicial Magistrate, Chandigarh. The Court took cognizance of the case as a summons case. On February 28, 1969, the Court passed an order that the case be tried as a warrant case by virtue of the amendment of section 5 effected in 1966. The petitioner-firm preferred a revision petition with the Sessions Judge, Chandigarh from that order. By his order dated June 22, 1968, the Sessions Judge made a recommendation to the High Court under Section 438, Criminal Procedure Code to the effect that the offence having been committed before the amendment of Section 5 made in 1966, the petitioner was punishable for one year and consequently the case should be tried as a summons case and not as a warrant case.

(4) After the receipt of the recommendation in the High Court, notices were issued to the parties for November 18, 1968. In the notice issued to the petitioner-firm as it is specially mentioned in the office copy of the notice on the record the date for which the notice had been issued to the petitioner was a 'farzi' date. The petitioner was not represented by any Counsel. The case came up for hearing before Bedi J: on January 14, 1969. The petitioner neither appeared in person nor was represented by any Counsel on that date. The recommendation was accepted ex-parte without the petitioner being heard and the order of the trial Court dated February 28, 1968, by which the Court directed that the case be heard as a warrant case, was set aside.

(5) It is contended by Shri Rajinder Sachar appearing on behalf of the petitioner that under Rule 8, of Chapter 3-A, in Volume V of High Court Rules and Orders, it was obligatory on the office of the High Court to issue notice for an actual date after the petitioner had been served for the 'farzi' or tentative date of November 18, 1968 and he had not engaged any Counsel and was unrepresented on January 14, 1969, when the case came up for disposal.

(6) On the other hand, it is contended by Shri M. L. Nanda appearing on behalf of the respondent that by virtue of section 369, Criminal Procedure Code, the judgment signed by the learned Single Judge became final and cannot be reviewed. He has also relied

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upon section 440, Criminal Procedure Code in support of the contention that it was discretionary for the learned Single Judge to hear or not to hear the petitioner-firm in support of the reference and having chosen not to hear the petitioner, the present petition deserves dismissal.

(7) The recommendation was made by the Sessions Judge to the prejudice of the petitioner, who is an accused person. He had a right to be heard under section 439 (2), Criminal Procedure Code. According to proviso appended to the above referred to Rule 8 of the High Court Rules and Orders, it is imperative upon the office of the High Court to serve another notice for a pucca or an actual date to be fixed by the office if a party already served for a tentative date is not represented by a Counsel. Earlier service of a notice for a tentative date is no service at all if the party so served has not engaged any Counsel and the Counsel has not put in appearance to represent that party. Section 440, Criminal Procedure Code cannot confer discretionary power upon the High Court in refusing to hear an accused person to whose prejudice recommendation has been made by the Sessions Judge under section 438, Criminal Procedure Code. Proviso appended to section 440 leaves no doubt that discretion cannot be exercised counter to the statutory obligation cast upon the High Court in hearing an accused person to whose prejudice an order has been made by a Court subordinate to the High Court whose order is sought to be revised or recommendation has been made under section 438, Criminal Procedure Code to the prejudice of an accused person in respect of cases covered by sub-section (2) of section 439, Criminal Procedure Code. The power to exercise discretion in hearing or in not hearing a party has been taken away in cases in which the order of the subordinate court sought to be revised is prejudicial to an accused person. Thus, Section 440, Criminal Procedure Code, cannot stand as bar against interference with the order of the learned Single Judge.

(8) In the face of Rule 8, the petitioner must have been expecting further notice as contemplated by that rule. The reference made by the Sessions Judge to the prejudice of the petitioner could not be heard on January 14, 1969 without notice having been issued to the petitioner for that date. Both under Rule 8 of the Rules and under section 439(2) of the Criminal Procedure Code, service of notice upon the petitioner for the date of hearing is an indispensable necessity. Without the petitioner being so served, he had no opportunity of being heard in the case.

(9) As the petitioner was entitled to be heard in the revision petition and he had not been served with the date of actual hearing, on which the case was heard and disposed of, the order passed by the learned Single Judge is counter to the aforesaid Rule 8 and hence inoperative against the petitioner. Section 369, Criminal Procedure Code cannot be a bar for setting aside such an order and for the case being reheard.

(10) In the result, I allow the petition and direct that the case be reheard. The revision petition to come up for hearing next week.

K.S.K.

FULL BENCH

*Before Prem Chand Pandit, R. S. Narula, Bal Raj Tuli, S. S. Sandhawalia  
and C. G. Suri, JJ.*

KARTA RAM AND ANOTHER,—*Appellants.*

*versus*

OM PARKASH,—*Respondent.*

**Letters Patent Appeal No. 377 of 1966.**

October 26, 1970.

*Punjab Pre-emption Act (I of 1913)—Section 15(2) (a)—Hindu Succession Act (XXX of 1956)—Sections 15 and 16—Hindu widow dying intestate leaving no son or daughter—Property inherited by sisters of her husband—Such sisters selling the property—Son of one of the vendors filing suits for pre-emption—Section 15(2) (a), Pre-emption Act—Whether applicable—Inheritance by the sisters—Whether ‘through’ their brother—Son of either of the sisters—Whether has no right to pre-empt—Sales falling under section 15(2) (a), Pre-emption Act—Applicability of section 15(1) to such sales—Whether excluded.*

*Held*, that in section 15(2) (a) of the Punjab Pre-emption Act, 1913, the word used is “through”, which is of wide amplitude. By the use of this word in the section, succession from brother, both direct and indirect, has been included by the legislature. The purpose of introducing sub-section (2) (a) of section 15 in the Pre-emption Act is that if female sells property to which she has succeeded through her brother, then the right of pre-emption should vest in her brother or brother’s son, so that the property may remain in the same family from where it has come and not go to strangers. Even such female’s own son does not have a right to pre-emption,