the conclusion that meat in preserved form is not exempt. Meat on hoofs is also preserved meat, the preservation being in the natural carton consisting of the skin of the animal. I, therefore, hold that "meat on hoofs" is not exempt from the levy of sales tax under entry No. 18 in Schedule 'B' to the Act.

(11) No other point has been argued before me.

(12) For the reasons given above, all the three writ petitions are dismissed but without any order as to costs as the points of law canvassed were not free from difficulty.

R. N. M.

REVISIONAL CRIMINAL

Before Gurdev Singh, J.

CHHINDA AND ANOTHER,—*Petitioners.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 1012 of 1968.

January 23, 1970.

Punjab Excise Act (I of 1914)—Section 61(1)(c)—Probation of Offenders Act (XX of 1958)—Sections 3, 4 and 6—Offenders punishable with minimum sentence of imprisonment under the Excise Act—Whether entitled to the benefits of provisions of Probation of Offenders Act.

Held, that sections 3 and 4 of the Probation of Offenders Act empower a Court to release an offender on probation of good conduct or after due admonition where he is found guilty of certain offences specified in those provisions. Section 6 of the Act is mandatory and if the Court convicts a person under 21 years of age for an offence which is punishable with imprisonment, but not with imprisonment for life, it is only in exceptional cases, having regard to the nature of the offence and the character of the offender, that it will decline to give him the benefit of sections 3 and 4 of the Act, and that too after recording reasons for such refusal. By reading section 18 of the Act, it is obvious that the Legislature did not, in its wisdom consider it necessary to exclude the offences under the Punjab Excise Act, which include the offences of illicit distillation of liquor etc. for which minimum sentence is prescribed under section 61(1)(c) of the Punjab Excise Act, from the operation of the Act. The Court, therefore, has to extend to the offenders under the Punjab Excise Act the benefit of sections 3 and 4 of Probation of Offenders Act unless it is satisfied that having regard to the circumstances of the case including the nature of the

offence and the character of the offenders, it would not be desirable to deal with them under sections 3 and 4 of the Act. If there is no allegation that the accused were concerned previously with any offence, much less an offence of illicit distillation particularly if they are young boys of 15 or 16 years and nothing is urged against their character, there is no justification for not affording them the benefit of section 6 of the Act.

(Paras 8, 14, 15 and 16)

Petition under Section 439 of Cr. P. C. for revision of the order of Shri Jagwant Singh, Additional Sessions Judge, Jullundur, dated 21st September, 1968, affirming that of Shrimati Harmohinder Kaur, Judicial Magistrate Ist Class, Phillaur, dated 26th June, 1968 convicting the petitioners.

KARAMPAL SINGH SANDHU, ADVOCATE, for the petitioner.

IQBAL SINGH TIWANA, ASSISTANT ADVOCATE-GENERAL, PUNJAB, for the respondent.

JUDGMENT.

GURDEV SINGH, J.—The petitioners before me, Chhinda and Kundu, are boys of mere 15 and 16 years of age, respectively. They stand convicted under section 61 (1) (c) of the Punjab Excise Act for which each of them has been sentenced for six months and a fine of Rs. 200. In default of payment of fine they have been directed to undergo further rigorous imprisonment for three months each. Their conviction and sentence having been confirmed by the Additional Sessions Judge, Jullundur, they have come up in revision.

(2) According to the prosecution allegations, about 1-30 p.m. on 9th January, 1968, when Assistant Sub-Inspector Hazara Singh was on patrol duty at the bus stand Phillaur, he received some secret information about the distillation of illicit liquor. Thereupon he proceeded to the place of the alleged distillation. He claims that in the way he came across Excise Inspector, Madan Gopal and Bawa Singh of village Nagar. The party proceeded to the well of Chhinda petitioner and there they found both the petitioners engaged in working a still for the distillation of illicit liquor. It is alleged that at that time Chhinda was changing water in the cooler while Kundu was feeding the fire. Both of them were apprehended at the spot and after dismantling the still its component parts were taken into possession.

(3) The petitioners on being charged under section 61(1)(c) of the Punjab Excise Act, completely denied the prosecution allegations

and complained of false implication. Chhinda took the plea that some component parts of the working still were recovered from the fields and he was not at all concerned with them, while his co-accused Kundu complained that after having been summoned from the tube-well of Chanan Singh, with whom he was then working he had been falsely involved in the case. Jagtar Singh, D.W. 1 and Chanan Singh, D.W. 3, were examined in defence besides tendering Harjit Singh, D.W. 2, for cross-examination. The former deposed that as he was returning from his farm he found the Assistant Sub-Inspector and 2 or 3 constables sitting at the tubewell of Gurdev Singh and on going to the tube-well he saw component parts of the working still lying there. Jagtar Singh asserted that the Excise Inspector and Bawa Singh P.W., were not there. He said that Chanan Singh and Ujagar Singh were present there but nothing was sealed at the spot in their presence. In his cross-examination he admitted that though a couple of days later, he learnt that the petitioners had been arrested for illicit distillation he did not approach the higher authorities to disclose to them what he had seen.

(4) Chanan Singh, D.W. 3, claimed that Kundu petitioner was his servant. He, however, stated that on the day of occurrence when the police visited the tube-well of Chhinda, Kundu was with him and nothing was recovered from the *kotha* at the tubewell of Chhinda in his presence. In fact, he asserted that the various component parts of still were collected from a nearby field and planted on the petitioners. He, however, did not approach any authority to protest against this false implication. Both the courts below have rejected these pleas as untenable and accepted the prosecution allegation that the petitioners were caught red-handed while distilling illicit liquor.

(5) In assailing the conviction of the petitioners Mr. Karampal Singh Sandhu, learned counsel for the petitioners, complains that the evidence regarding the capture of the working still for distillation of illicit liquor consists of the statements of two official witnesses and a stock witness of the police, and contends that there being no independent corroboration of their testimony it would be unsafe to act upon the same. There is no denying the fact that out of the three witnesses who deposed to the allegation that the petitioners were apprehended while engaged in distillation of illicit liquor, Madan Gopal (P.W. 1) is an Excise Inspector while

Hazara Singh (P.W.) is Assistant Sub-Inspector of Police, who organised the raid. It is also true that the only non-official witness associated with the raid and the recovery of the working still Bawa Singh (P.W. 2), is a stock police witness who on his own admission, has appeared as witness in no less than 21 cases. The evidence of such a person does not inspire confidence. The question that, however, remains to be considered is whether the courts below were justified in acting upon the testimony of the two official witnesses who claim to have conducted the raid.

(6) It is well-settled that the testimony of members of the Police or Excise force cannot be ruled out merely because they are officials of those departments. Their evidence has to be adjudged on merits like the testimony of any other witness. In dealing with this matter it has to be considered whether they acted *bona fide* or had any reason to falsely implicate the accused. In the case before me there is no allegation that Excise Inspector Madan Gopal or Hazara Singh, Assistant Sub-Inspector, had any ill-will against any of the petitioners. What is urged by the learned counsel for the petitioners is that it is a frequent and common experience that subordinate officials connected with the police and Excise Departments sometime fabricate false cases in order to earn approbation of the authorities and to show that they are not inactive. There is no denying the fact that such cases have sometime come to light and the Excise and Police officials by joining hands with their stooges or stock police witnesses do cook up false cases. The circumstances of the case now before me however, do not go to show that it is one of such cases. Even according to the prosecution evidence working still was found in the *kotha* of Chhinda, one of the petitioners, while the other petitioner was assisting him in feeding the fire. The petitioners' plea that these implements of working still were collected from the fields around Chhinda's well, does not receive any support from the prosecution evidence or from the defence evidence itself. On the other hand the defence evidence itself goes to support the prosecution allegation that the implements of working still were found at the well of Chhinda. Jagtar Singh (D.W. 1) as observed earlier, stated that the various implements of working still were found by him at the well of Gurdev Singh. This Gurdev Singh is none other than the father of Chhinda. Though in the statement of Chhinda recorded on 7th June, 1968, his parentage is given as Baldev Singh yet it is

obviously incorrect as is apparent from the corresponding vernacular record where his father's name is entered as Gurdev Singh. The same parentage of Chhinda is given in the bail bond furnished by Chhinda. Even the evidence of Chanan Singh (D.W. 3) confirms that the working still was found at the well of Chhinda's father as he specifically stated that when he went to the well of Chhinda's father, he found various implements of working still lying there. In view of these circumstances it cannot be doubted that the working still was found by Assistant Sub-Inspector, Hazara Singh at the well of Chhinda's father. If the Assistant Sub-Inspector was maliciously inclined or wanted to fabricate a false case, the obvious course for him would have been to attribute the working of the still to Chhinda's father and Chhinda himself. There could have been no occasion for him to involve Kundu who was neither related to Chhinda nor employed by him but was the servant of Chanan Singh (D.W. 3). All these circumstances lend weight to the testimony of the two official witnesses, Excise Inspector Madan Gopal and Assistant Sub-Inspector Hazara Singh and, accordingly, the courts below were justified in placing reliance on them.

(7) It is true that no independent person had joined in the raid but the circumstances in which this omission took place were explained in the statements of the prosecution witnesses and this omission alone does not justify the rejection of the prosecution evidence. I thus find there is cogent and reliable evidence to support the petitioners' conviction and the plea put forward by them in defence is false and untenable. In this view of the matter conviction of both the petitioners under section 61(1)(c) of the Punjab Excise Act is affirmed.

(8) The sentence awarded to the petitioners is the bare minimum prescribed by law. Mr. Karampal Singh has, however, urged that since the petitioners are only 15 and 16 years of age, they could not be sentenced to imprisonment and had to be dealt with in accordance with the provisions of section 6 of the Probation of Offenders Act (XX of 1958) which is mandatory in character and was extended to the district of Jullundur by the Punjab Government notification No. S.O. 127/C.A.20/58/S.1/66, dated 28th April, 1966 issued by the Home (Jails) Department and published in the Punjab Government Gazette, dated 29th April, 1966. Section 6 of the Probation of Offenders Act 20 of 1958 the benefit of which is claimed, runs as follows:—

> "6. (1) When any person under twenty-one years of age is found guilty of having committed an offence punishable

with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1), the Court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender."

It is obvious that where a person under 21 years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court is not to sentence him to imprisonment unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offender it would not be desirable to deal with him under sections 3 and 4 of the Act. The provision is mandatory. Sections 3 and 4 of the Probation of Offenders Act empower a Court to release the offender on probation of good conduct or after due admonition where he is found guilty of certain offences specified in those provisions. If the Court convicts a person under 21 years of age for an offence which is punishable with imprisonment, but not with imprisonment for life, it is only in exceptional cases, having regard to the nature of the offence and the character of the offender, that it will decline to give him the benefit of sections 3 and 4 of the Act, and that too after recording reasons for such refusal. Mr. Tiwana, appearing for the State has urged that since the offence of which the petitioners have been found guilty is of illicit distillation of liquor, and such offences are on the increase, the Court will not be justified in affording them the benefit of section 6 of the Probation of Offenders Act, especially when such offences are committed after a good deal of preparation and result not only in the loss of revenue to the State but also promote drunkenness. Accordinng to his submission, this provision under section 6 of the Probation of

Offenders Act was not intended to apply to offences of this type, and particularly to those for which the legislature in its wisdom has prescribed a minimum sentence of imprisonment, implying thereby that the law takes a serious view of such offences and they are not to be dealt with lightly but put down with a firm hand by not permitting the offender to escape punishment of imprisonment.

(9) A similar provision for release of persons found guilty of various offences on probation of good conduct is found in section 562 of Criminal Procedure Code. The question whether the benefit of that provision should be afforded to persons convicted under the Excise Act came up before the Lahore High Court in various cases. The powers vesting in the court under section 562 of Criminal Procedure Code to release the offender on probation of good conduct instead of sentencing him to imprisonment is, however, discretionary. Even then Shadi Lal, C.J., (as he then was) in *Emperor* v. *Piara Singh*, (1), held that benefit of section 562 of Criminal Procedure Code should not be afforded to a person convicted for distillation of illicit liquor. In taking this view the learned Chief Justice observed as follows :—

> "In view of the large profits derived from illicit distillation and the fact that the crime is not always detected, I do not think that the sentence of a mere fine can have any deterrent effect. Nor do I consider that the principle embodied in section 562, Criminal Procedure Code, which, as amended by Act 18 of 1923, applies, not only to persons who are convicted of an offence punishable under the Indian Penal Code, but also to those who are found guilty of an offence punishable under a special or a local Act, can be reasonably invoked by a person convicted of an offence like the present which, as I have already observed, not only implies previous preparation but often escapes detection. It cannot be urged on behalf of such a convict that he had succumbed to a sudden temptation and that the Court should therefore exercise its discretion under the aforesaid section in his favour and give him another chance."

(1) A.I.R. 1926 Lah. 166.

Earlier in his judgment, the learned Chief Justice has said :—

> "Judicial experience also shows that the offence often escapes detection, and, as laid down in *Crown* v. *Sujan Singh,* (2), it is necessary to impose a sentence which would have a deterrent effect. That this was the intention of the Legislature is clear from the fact that the maximum term of imprisonment for manufacturing illicit liquor was raised in 1914 from four months to one year, and has recently been further enhanced to two years : *vide* section 2 of the Punjab Excise (Amendment) Act II of 1925."

(10) These observations, if I may say so with respect, have gained added force by this time when the Legislature has prescribed the minimum sentence of six months' rigorous imprisonment and a fine of Rs. 200 for an offence of being found in possession of a working still, under section 61(1)(c) of the Punjab Excise Act. This amendment clearly implies that the Legislature found that the offences of illicit distillation were not being adequately punished and the offender must undergo the minimum imprisonment of six months and fine of Rs. 200. It may further be pointed out that since Shadi Lal, C.J.. decided that case (*Emperor* v. *Piara Singh* (1) *supra*) sentence of imprisonment for offences falling under section 61(1)(c) of the Punjab Excise Act has been raised from 2 to 3 years by the Punjab Excise (Amendment) Act, 1956, enhancing the fine as well to Rs. 2,000. This is further indication of the fact that since illicit distillation or trafficking in liquor had not abated, the Legislature thought it necessary and expedient to make the provision more stringent by laying down the minimum sentence so as to serve as a deterrent and to guard against the possibility of an offender escaping lightly.

(11) Thus if the question were of affording the benefit of section 562 of Criminal Procedure Code, I personally would be inclined to follow the dictum of Shadi Lal, Chief Justice in *Emperor* v. *Piara Singh,* (1) (*supra*) which is consistent with the view taken by the same court in *Emperor* v. *Faiz Talib,* (3). In the later case Campbell, J., said :—"Although after the amendment of the Code in 1923, section 562 is no longer confined to offences under the Indian

(2) 19 P.R. 1916 (Cr.)
(3) A.I.R. 1926 Lah. 317.

Penal Code but extends to all offences, still in an offence under section 61 of the Punjab Excise Act, section 562 should not be resorted, as such an offence is not usually the 'first offence' as contemplated by section 562."

(12) The question of affording the benefit of section 562 Criminal Procedure Code to a person convicted under section 61(1)(c) of the Punjab Excise Act has also come up for consideration before this Court in some cases. In *Darshan Singh* v. *The State* (4), Dulat, J., gave the benefit of section 562 Criminal Procedure Code to a boy of 16 years who was convicted under section 61(1)(c) of the Punjab Excise Act. That decision does not contain any discussion of the circumstances in which the minimum sentence prescribed by law was not considered necessary to be awarded. Subsequently in *Mst. Semittran* v. *The State* (5), Falshaw Chief Justice, adopted a similar course and extended the benefit of section 562 to a person convicted of an offence under section 61(1)(c) of the Punjab Excise Act by observing :

> "There seems to be no doubt that this section could apply to person convicted in excise cases."

(13) These decisions were subsequently considered by a Division Bench of this Court (S.B. Capoor and Bedi, JJ.) in *Prita* v. *State* (6). Capoor J., with whom Bedi, J., concurred, discussed the various aspects of the matter, including those that have been now canvassed before me by the counsel for the petitioners and the State, and summed up his conclusions thus :

> "There is no legal bar to the application of section 562 of the Code to a case in which conviction has been registered under section 61(1)(c) of the Punjab Excise Act. This is not, however, to say that such a recourse should be had without the most careful consideration of the circumstances of each case, and it is necessary to keep in mind the salutary observations made by Campbell, J., in the case already referred (*Emperor* v. *Faiz Talib* (3), and by Shadi Lal, C.J., in *Emperor* v. *Piara Singh* (1). Offences under the Excise Act usually imply a good deal of preparation

(4) Cr. R. 182 of 1958 decided on 14th April, 1958.
(5) Cr. R. 386 of 1962 decided on 3rd October, 1962.
(6) Cr. R. 754 of 1962 decided on 23rd October, 1963.

and often escape detection so that it is necessary to impose sentences which would have a deterrent effect and resort to section 562 should be taken only in exceptional cases where, for instance, the convict has been obviously acting under the influence of somebody older than himself as, was the case in *Darshan Singh* v. *The State* (4), or is a woman acting under the influence of her husband as in *Mst. Samittran* v. *The State* (5)."

The question referred to the Division Bench was whether the benefit of section 562 Criminal Procedure Code should be afforded to a person convicted under section 61(1)(c) of the Excise Act. After the Division Bench had recorded its opinion, set out above, the case went back to the learned Single Bench, Shamsher Bahadur, J., who, setting aside the imprisonment imposed upon Prita, who had been convicted under section 61(1)(c) of the Punjab Excise Act and was ordered to undergo the bare minimum sentence prescribed by law, directed that he be bound down for a period of six months on one surety in the sum of Rs. 2,000 under section 562 of the Code of Criminal Procedure. Though the point which was being considered by the Division Bench was merely of the applicability of section 562 of the Criminal Procedure Code to offences under section 61(1)(c) of the Punjab Excise Act, S. B. Capoor, J., in his elaborate judgment referred to the provisions of Probation of Offenders Act as well and observed as follows :—

"With regard to offences under the Punjab Excise Act committed in those districts to which the Probation of Offenders Act has been extended by the State, it seems to be fairly clear that the Courts will have to keep in view the relevant provisions of the Probation of Offenders Act (which was enacted subsequent to the amending Act No. 35 of 1956) while dealing with offenders convicted by them under the Punjab Excise Act including those convicted under section 61(1)(c) and, in fact, Mr. K. L. Jagga, on behalf of the State, was unable to urge to the contrary."

The learned counsel for the State appearing before me contends that these observations are mere *obiter dicta* and as such cannot be taken as authority for the proposition that under section 6 of the Probation of Offenders Act, the Court is bound to afford benefit of sections 3

and 4 of the Probation of Offenders Act to a person convicted under section 61(1)(c) of the Punjab Excise Act. He argues that as even under section 6 of the Probation of Offenders Act, the benefit of which is now sought by the petitioner's counsel, the Court has to consider the nature of the offence along with the character and antecedents of the offender the fact that the offences of illicit distillation require a good deal of preparation and are on the increase, will be a sufficient and cogent reason for not withholding the minimum sentence of imprisonment and fine which the law prescribes for such offences. The observations of S. B. Capoor, J., in the Division Bench case, referred to above, are no doubt in the nature of *obiter dicta;* but the reasons given by his Lordship for the view that the benefit of section 562 of Criminal Procedure Code which is of a similar nature, can be extended to deserving cases of persons convicted for distillation of illicit liquor are pertinent.

(14) In fact, on perusal of various provisions of the Probation of Offenders Act, I find that the Legislature did not intend that the offences under the Punjab Excise Act; including those of illicit distillation punishable with a minimum sentence of imprisonment and fine should not be dealt with in accordance with provisions of sections 3, 4 and 6 of that Act. This is apparent from the fact that under section 18 of the Act it has been specifically laid down :—

> "Nothing in this Act shall affect the provisions of section 31 of the Reformatory School Act, 1897 (8 of 1897), or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (2 of 1947), or the Supression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956), or of any law in force in any State relating to juvenile offenders or Borstal schools."

(15) It is obvious that the Legislature did not, in its wisdom, consider it necessary to exclude the offences under the Punjab Excise Act, which include the offences of illicit distillation of liquor, etc., for which minimum sentence is prescribed under section 61(1)(c) of the Punjab Excise Act, from the operation of Probation of Offenders Act. This clearly points to the fact that the Legislature did not intend to deprive persons convicted under section 61(1)(c) of the Punjab Excise Act of the benefit of the provisions of Probation of Offenders Act.

(16) As has been observed earlier, section 6 of Probation of Offenders Act, on which reliance is placed, is mandatory. Since the petitioners have been found to be only 15 and 16 years of age, the Court has to extend to them the benefit of sections 3 and 4 of the Act, unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offenders, it would not be desirable to deal with them under sections 3 and 4 of the Act. There is no allegation that the petitioners were concerned previously with any offence, muchless an offence of this type. There is nothing urged against their character to deprive them of the benefit of section 6. They are young boys of 15 and 16 years of age. Illicit distillation of liquor was being carried on at the tube-well of Chhinda's father, who admittedly is alive. The circumstances indicate that they could not have been engaged in illicit distillation without the knowledge or the connivance of their elders. In fact, it appears to me that having set up the still and started distillation, these two persons were left by Chhinda's father or some other member of the family to keep the still working. In these circumstances there is no justification for not affording them the benefit of section 6 of the Act. I, accordingly, while maintaining the conviction of the petitioners, in substitution of the sentence imposed upon them by the trial court, direct that each of them shall enter into a bond in the sum of Rs. 2,000 with one surety for the like amount for a period of one year to appear and receive sentence when called upon during such period and in the mean time to keep peace and be of good behaviour.

(17) Before parting, I would like to observe that since the offence of illicit distillation of liquor is not one of the offences specified in section 18 of the Probation of Offenders Act, and it is not saved from the operation of that Act, the likelihood of persons engaged in illicit distillation putting up minors to carry on such nefarious activities is bound to increase. Such a course would save the real offenders from punishment of imprisonment and fine and not much harm would come to them as the minors would always claim benefit of section 6 of the provisions of Probation of Offenders Act and thus escape even the minimum punishment of imprisonment and fine prescribed for the offence. This is, however, a matter which needs the attention of the Legislature, especially when enforcement of prohibition is one of the directive principles of our Constitution.

R. N. M.