APPELLATE CIVIL

Before Mehar Singh, C.J., and R. S. Narula, J.

M/S. PREM CHAND RAM LAL,—*Appellants*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents*

Letters Patent Appeal No. 177 of 1969

March 25, 1970

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 2(a) and 23—Punjab Agricultural Produce Markets (General) Rules (1962)—Rules 24 and 29—Agricultural produce of outside markets sold in a notified market area—Market fee—Whether leviable on such produce—Transaction of sale of agricultural produce by private contract and not by open auction—Whether attracts the levy of market fee—Definition of "Agricultural produce" in section 2(a)—Whether covers 'gur', 'Shakkar' and 'Khandsari'.

Held, that market fee is leviable according to section 23 of the Punjab Agricultural Produce Markets Act, 1961, "on the agricultural produce bought or sold by licensees in the notified market area", and it follows immediately that if one of the two things happens within the market area, that is, the commodities or the goods are either bought or sold within that area, the provisions of this section become operative and market fee is leviable The provisions of section 23 are couched in clearest language and admit of no room for interpretation. Under this section fee is leviable on agricultural produce bought or sold by licensees in notified market area irrespective of where it is produced and who has produced it. There is nothing in this section to narrow down the scope of the expression 'agricultural produce' to such commodities produced in a particular market area.

Held, that rule 24 of Punjab Agricultural Produce Markets (General) Rules, 1962, deals with agricultural produce that is brought into the principal market yard or the sub-market yard, where it is sold by open auction. On the other hand rule 29(1) and (2) which has been made under section 23 of the Act clearly provides for a levy of fee on agricultural produce bought or sold by a licensee in the market area. It is this rule which deals with all other buyings and sellings than those covered by open auction in rule 24. It is rule 29 which applies to the transaction by private contract and this rule read with section 23 brings in the liability for and attracts the levy of market fee.

Held, that in the definition of "agricultural produce" as given in section 2(a) of the Act, it has been stated that agricultural produce means produce as specified in the schedule to the Act. Instead of stating all the commodities listed in the schedule in the definition and making it run into page or two, the schedule is made integral part of the definition. It is open to

the legislature to describe the making of a particular commodity or article as a process even though in the ordinary dictionary meaning it may be considered as a manufacture. According to the dictionary meaning some of the commodities mentioned in the schedule may be manufactured commodities, but as the legislature has described them as processed ones, the word of the legislature on this is final and a Court is not permitted to read more into the definition than what is in it. In the schedule to the Act, items 75 to 77 are 'gur', 'shakkar', and 'khandsari' and hence these commodities are covered by the definition of "agricultural produce" as given in section 2(a) of the Act.

Letters Patent Appeal under Clause 10 *of the Letters Patent against the order of Hon'ble Mr. Justice Bal Raj Tuli passed in C.W. No.* 3324 *of* 1968 *on* 11*th February,* 1969.

D. S. NEHRA, AND K. S. NEHRA, ADVOCATES, for the petitioner.

B. S. JAWANDA, ADVOCATE-GENERAL, (PUNJAB), for respondent No. 2.

G. C. GARG, ADVOCATE, for respondent No. 3.

JUDGMENT

MEHAR SINGH, C.J.—The appellant in this appeal under clause 10 of the Letters Patent, from the judgment and order, dated February 11, 1969, of a learned Single Judge, is firm, Prem Chand Ram Lal, with the State of Punjab, the State Agricultural Marketing Board, Punjab, and the Market Committee of Sangrur, as respondents 1 to 3.

(2) The appellant is a shopkeeper within the market area of respondent 3 at Sangrur, and deals in Gur, Shakkar, and Khandsari, among other commodities, which other commodities are not relevant for the purposes of this appeal. In section 2(1) of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act 23 of 1961), 'notified market area' is defined to mean 'any area notified under section 6', and in sub-section (1) of section 6, there is power to make declaration, by notification, of notified market area, and then, leaving out the proviso, sub-section (3) of this section provides—"After the date of issue of such notification or from such later date as may be specified therein, no person, unless exempted by rules made under this Act, shall, either for himself or on behalf of another person, or of the State Government within the notified market area, set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce so notified, or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the

rules and bylaws made thereunder and the conditions specified in the licence." Section 9 gives power to the Chairman of the Board, or any other officer authorised by him in writing in this behalf, to grant licences under section 6, and the provisions with regard to applications for such licences, the fees for the same, and for the cancellation or suspension of the same are to be found in section 10. The expression 'Board' is defined in section 2(b) to mean 'the State Agricultural Marketing Board constituted under section 3'. Rule 17 of the Punjab Agricultural Produce Markets (General) Rules, 1962, made under sections 10 and 43(2)(ix) of the Act, and hereinafter referred to as 'the 1962 Rules', then makes detailed provisions for applications for licences by dealers. The appellant is a firm which holds a licence under those provisions of the Act for its shop within the market area of Sangrur.

(3) In section 2(a) is defined the expression 'agricultural produce' to mean "all produce, whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to this Act', and in the Schedule items 75 to 77 are Gur, Shakkar, and Khandsari. Then section 23 of the Act provides—"A Committee may, subject to such rules as may be made by the State Government in this behalf, levy on *ad valorem* basis fees on the agricultural produce bought or sold by licensees in the notified market area at a rate not exceeding fifty Naye Paise for every one hundred rupees: Provided that—(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and (b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made", and the relevant rule under this section in the 1962 Rules is rule 29, of which sub-rules (1) and (2) are material in this appeal which read—"29(1) Under section 23 a Committee shall levy fees on the agricultural produce bought or sold by licensees in the notified maket area at a uniform rate to be fixed by the Board from time to time: Provided that no such fees shall be levied on the same agricultural produce more than once in the same notified market area. A list of such fees shall be exhibited in some conspicuous place at the office of the Committee concerned : (2) the responsibility of paying the fees prescribed under sub-rule (1) shall be of the buyer and if he is not a licensee then of the seller who may realise the same from the buyer. Such fees shall be leviable as soon as an agricultural produce is bought or sold by a licensee."

(4) The appellant has a commission agency and is a pucca Arhtia. It brought into the Sangrur market area Gur, Shakkar and Khandsari from outside that area, which has been stated in the petition to be the markets of Haryana, Uttar Pradesh, and other States. The commodities were brought into the Sangrur market area in a packed condition and were sold to the customers at the appellant's shop in that market area in the same condition. The appellant admittedly sold 'agricultural produce' at its shop in the market area, other than Gur, Shakkar and Khandsari as had been obtained from the markets outside the Sangrur market area. For the year 1967-68 the appellant, according to the rules, made a return of market fee payable by it as commission agent on transactions, which it considered attracted that fee, in the amount of Rs. 2,781. Sometime in November, 1967, the Secretary of respondent 3, the Market Committee of Sangrur, called upon the appellant to produce its books of account, obviously with the object of ascertaining the market fee payable by the appellant, but the appellant said that entries in its account-books in regard to goods or commodities bought and sold in the market yard of the Sangrur market area had already been furnished and fee on the transactions paid. Apparently it did not proceed to produce its books and on that the Secretary of respondent 3 issued another notice on December 8, 1967, to it for production of the account-books. It was then that on December 13, 1967, the appellant informed the Secretary of respondent 3, that no market fee could legally be levied on the goods or commodities which the appellant imported from outside markets in the course of its trade and that the attempt of respondent 3 to levy the market fee on such goods or commodities was not within the Act and the rules and amounted to levying a tax in the garb of fee. On September 27, 1968, the Administrator of respondent 3 gave an assessment notice under rule 31(4) of the 1962 Rules for assessment of the market fee so far as the appellant's shop was concerned, but the appellant not having met the demand in the notice in time, the Administrator of respondent 3 on September 30, 1968, made an order in the nature of best judgment assessment levying market fee in the sum of Rs. 5,014, with an equal amount of penalty, and thus created a total demand of Rs. 10,028 against the appellant requiring it to make a deposit of it on or before October 31, 1968. This assessment was made in relation to such of the goods or commodities brought into the Sangrur market area by the appellant, having purchased the same from other markets outside that area. Although there is a remedy provided under the Act against such an assessment, but the appellant came in a writ petition to this Court under Articles 226 and

227 of the Constitution on the ground that the remedy under the Act was not efficacious, and questioned the legality and validity of respondent 3's order and notice, copies Annexures 'L' and 'K' of September 30, and October 3, 1968. The respondents obviously urged that the levy was in accordance with the statute and the rules thereunder.

(5) There were before the learned Single Judge four matters for consideration—(a) whether the goods or commodities purchased by the appellant as pucca Arhtia from markets outside the Sangrur market area, not being agricultural produce of that market area, and the transactions of purchase not having been made with any producer of that market area, the same attracted the levy of market fee, (b) whether the goods or commodities brought into the Sangrur market area by the appellant, not having been sold by it by public auction in that area, but by private contracts, rule 24 did not come into consideration, because there was no public auction and no other rule was attracted, and, therefore, there was no occasion for the levy of market fee on such transactions from the appellant, (c) whether the levy is a tax in the garb of fee and (d) whether the assessment order made by the Administrator of respondent 3 was arbitrary and not in accordance with the rules ? It was emphasised before the learned Judge that on what was brought into the Sangrur market area by the appellant as packed Gur, Shakkar and Khandsari not being the produce of the market area, no fee was attracted under the provisions of the statute and the rules thereunder so far as those goods and commodities were concerned. The learned Single Judge repelled the first three arguments on the side of the appellant but accepted the last and quashed the assessment order levying the market fee, on the ground that the order was arbitrary not having proceeded on any material, directing that the same may be done on the basis of the material available. The petition of the appellant was accepted to the extent as above. The respondents have not filed any appeal against the judgment and order of the learned Single Judge, but it is the appellant, a successful party, who has filed this appeal, and the reason given is that the appellant was only partially successful before the learned Single Judge in the writ petition, in that it obtained an order quashing the best judgment assessment order made by the Administrator of respondent 3, but it failed on its main claim in the petition that no market fee was leviable under the provisions

of the statute and the rules thereunder on goods and commodities not the produce of the producers of the Sangrur market area and having been brought by it within that market area from outside markets.

(6) Of the remaining three arguments on the side of the appellant on which the learned Judge gave a decision against it, the argument that the levy of the market fee by respondent 3 is a tax is not available to it because of a Division Bench decision of this Court in *Ram Sarup and Brothers* v. *The Punjab State* (1), the learned Judges having answered the question against the contention on the side of the appellant. This is not a matter of controversy between the parties at this stage in the appeal. Market fee is leviable according to section 23 'on the agricultural produce bought or sold by licensees in the notified market area', and it follows immediately that if one of the two things happens within the market area, that is, the commodities or the goods are either bought or sold within that area, the provisions of this section become operative and market fee is leviable. So apparently even if Gur, Shakkar and Khandsari in packages were bought by the appellant from markets outside the Sangrur market area, but as, admittedly, the same were sold within this market area, levy of market fee is attracted in express terms of section 23. In the wake of this clear provision in that section it has not been possible for the learned counsel for the appellant to urge the first ground on the side of the appellant that Gur, Shakkar and Khandsari brought into the Sangrur market area by it from outside that market area did not attract the levy of market fee because it was not the produce of the market area. If agricultural produce is sold within the market area, that is within the scope of section 23, and that is what the appellant did, ignoring from where it brought the commodities or the goods. The learned counsel for the appellant has urged that actually although the statute in section 23 uses the expression 'bought or sold', it refers to the same transaction when agricultural produce is brought by a producer in the market area and is sold by public auction under rule 24, so that he sells it and somebody else buys the same. If this is what the Legislature intended, the expression used would have been 'bought and sold', and not 'bought or sold', but it cannot be head as 'bought and sold'. So that this argument on the side of the appellant cannot prevail. With regard to the remaining argument, the learned counsel has referred to rule 24 of the 1962 Rules, which deals with

(1) I.L.R. (1969) 1 Pb. 756.

the subject of 'sale of agricultural produce', and so with all agricultural produce brought into the market area for sale, and provides for its sale by open auction in the principal or sub-market yard. The learned counsel for the appellant presses that there is no other rule in the 1962 Rules which deals with the sale of goods and commodities of the kind of agricultural produce except this rule 24, and according to this rule sale must be by open auction, but the appellant never sold any Gur, Shakkar and Khandsari by open auction, and so rule 24 is not attracted, and thus there is no occasion for levy of market fee on any of the transactions of sale by the appellant by private contracts. In this connection the learned counsel has also pointed out that the objects and the scheme of the Act are to be kept in view, and the substantial object and the scheme of the Act have been to provide protection to producers and to save them from questionable levies and deductions by intermediaries and all kinds of labourers and other workers connected with the intermediaries. In other words, the object and the scheme of the Act have been for the benefit of the producers of the market area and their produce; the appellant having brought into the Sangrur market area Gur, Shakkar and Khandsari from outside the market area, no question of protection of any producer or the produce of any producer of this market area arises, and the whole transaction is outside the scope of the statute. The argument is obviously misconceived and was rightly discarded by the learned Single Judge. Rule 24 has no application to the sale transactions of Gur, Shakkar and Khandsari within the market area by the appellant. The rule deals with agricultural produce that is brought into the principal market yard or the sub-market yard, where it is sold by open auction, and this is what the appellant has not done. In fact at the hearing it has been accepted that the shop is not situate in the market yard. So the argument with reference to this rule has no meaning. The provisions of section 23 are couched in clearest language and admit of no room for interpretation that whatever is bought or sold in the nature of agricultural produce within the market area attracts the levy of market fee. Into a clear and plain provision of this type nothing more can be introduced to read that the words 'bought or sold' in this section refer to agricultural produce bought or sold as produced in the market area or as produced by a producer of that area. On the side of the respondents reference has been made to sub-rules (1) and (2) of rule 29, already reproduced above, which have been made under section 23 of the Act, and which clearly provide for a levy of fee on agricultural produce bought or

sold by a licensee in the market area. It is this rule which deals with all other buyings and sellings than those covered by open auction in rule 24. It is rule 29 which applies to the transactions of the appellant, and it is this rule when read with section 23 which brings in the liability of the appellant to pay the market fee. It is also urged on the side of the appellant that section 2(q) of the Act defines 'retail sale' to mean 'sale of agricultural produce not exceeding such quantity as may be prescribed', and in rule 18 of the 1962 Rules are given persons who are exempt from taking out licence under section 6, and the exemption includes, in clause (c) of sub-rule (1), 'hawkers and petty retail shopkeepers who do not engage in any dealing in agricultural produce other than such hawking or retail purchases; *Explanation.*—For the purposes of this clause and clause (b) of sub-rule (2), a person whose turnover of sales and purchases of agricultural produce does not exceed twenty thousand rupees during a year shall be treated as a petty retail shopkeeper'. Now, the explanation practically gives definition of 'a petty retail shopkeeper' for the purposes of clause (c) of sub-rule (1) of rule 18. The object of the learned counsel in referring to these provisions of the 1962 Rules in that this is the only type of retail sale to which the statute and the rules apply, and the sales made by the appellant have nothing to do with the same. Here again the reference to this rule is really irrelevant, because it deals with the question of exemptions, it does not deal with the question of sales by a dealer who is required under the statute to take out a licence. This matter is dealt with in section 23. So that the first two arguments on the side of the appellant, as referred to above, have not really been a matter of controversy in this appeal, and there is no substance in the third as well.

(7) In this appeal a new argument has been urged by the learned counsel for the appellant, which is an argument that was not urged before the learned Single Judge, and that argument is that Gur, Shakkar, and Khandsari as bought by the appellant from outside markets and imported into the Sangrur market area is not 'agricultural produce' as that expression is defined in section 2(a) of the Act. The first aspect of this argument is that the objects of the scheme and of the statute clearly refer to agricultural produce as produced by producers in a particular market area, and that Gur, Shakkar and Khandsari imported by the appellant into the Sangrur market area were not the produce of any producer in that area. This is only another aspect of the same argument which has already been considered above and so far as the question of levy of fee under section

23 of the Act is concerned, it is leviable on agricultural produce bought or sold by licensees in a notified market area irrespective of where it is produced and who has produced it. There is nothing in this section or in the Act which narrows down the scope of this provision in the manner in which the learned counsel for the appellant has contended. The second aspect of this argument is that the goods or commodities in question are outside the definition of the expression 'agricultural produce' as in section 2(a) of the Act. For the purposes of this argument the definition may be stated again here; and 'agricultural produce' in that provision is defined to mean "all produce, whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to this Act' and in the Schedule items 75 to 77 are Gur, Shakkar and Khandsari. What the learned counsel for the appellant urges is that in this definition only produce of agriculture, horticulture, animal husbandry or forest that is processed is agricultural produce, but Gur, Shakkar and Khandsari are new and manfactured commodities and consequently not processed. The learned counsel first refers to *Raghbir Chand Somchand* v. *Excise and Taxation Officer, Bhatinda* (2), which was a case under the East Punjab General Sales Tax Act of 1948 and in which the question was whether ginned cotton was a separate commodity from unginned cotton, and the learned Judges had considered the question whether or not ginned cotton was a manufactured product. A number of cases were considered on the matter by the learned Judges and some American cases are referred to at page 186 and 187 of the report, the substance of the conclusion of the same being that if an article suffers a species of transformation and a new and a different article emerges, it is a manufactured article though at some point processing and manufacturing will merge: but where the commodity retains a continuing substantial identity through the processing stage, it could not be said that it has been manufactured. So the learned counsel has pointed out that it is only when transformation leads to emergence of a new and a different article that it is a case of manufacture, but, where the substantial identity continues, it is a processed article. In this case, according to the learned counsel. Gur, Shakkar and Khandsari are new products and do not come within the meaning of the term 'processed'. The next case referred to in this respect is *Union of India* v. *Delhi Cloth and General Mills Co. Ltd.* (3), which was a case under the Central Excise and Salt

(2) 1960 P.L.R. 175.
(3) A.I.R. 1963 S.C. 791.

Act of 1944 and dealt with the question of refining of oil, and in it at page 794 their Lordships observed that "According to the learned counsel 'manufacture' is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate 'processing' to 'manufacture' and for this we can find no warrant in law. The word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance' and does not mean merely 'to produce some change in a substance', however minor in consequence the change may be." The last case in this respect on the side of the appellant is *State of Punjab* v. *Chandu Lal-Kishori Lal* (4), again a case under the Punjab Sales Tax Act, 1948, and concerning the question of ginned and unginned cotton, and in it at page 1076, their Lordships observed that "It is true that cotton in its unginned state contains cotton-seeds. But it is by a manufacturing process that the cotton and the seed are separated and it is not correct to say that the seed so separated is cotton itself or part of the cotton. They are two distinct commercial goods though before the manufacturing process the seeds might have been a part of the cotton itself. There is hence no warrant for the contention that cotton-seed is not different from cotton." It will be seen that their Lordships held that a new commodity emerged because of the separation of the cotton seed from the cotton after ginning and, therefore, cotton seed was the result of process of manufacture. On the side of the respondents reference is made first to the meaning of the word 'process' as given in 72 Corpus Juris Secundum, pages 975 and 976, in which this statement appears—"The word 'process' has a great variety of meanings, and denotes a progressive action or series of acts or steps especially in the regular course of performing, producing, or making something, and in general it may be said that process is an act or series of acts or a mode of acting . . . . . As a verb, the word 'process' is defined as meaning to subject to or treat by a special process, to prepare by an artificial or special process. It is further defined as meaning to subject, especially raw materials, to a process of manufacture, development, preparation for the market, etc.; to convert into marketable form. as livestock by slaughtering, milk by pasteurizing, fruits and vegetables by sorting and repacking, and the courts have generally accepted this definition." And then reference is to 55 Corpus Juris Secundum, pages 669 and 670, where the statement is—"As a noun—The word 'manufacture' as signifying production, a process, or operation, has been variously defined as the production of articles for use from raw or prepared materials by giving these

(4) A.I.R. 1969 S.C. 1073.

materials new forms, qualities, properties or combinations, whether by hand labour by machinery; the process of making anything by art or reducing materials into a form fit for use, by the hand or by machinery; the fashioning of raw materials into a change of form for use; . . . . . As a verb — 'The natural import of the word 'manufacture', as a verb, is to produce an article. Broadly, it means to make; to fabricate; to invent; to process; to compose, to produce or create." It appears apparent that the meaning and scope of the word 'process' has within it the meaning and scope of the word 'manufacture', the former being of a much wider connotation. The learned Advocate-General, appearing for the respondents, has, therefore, urged that as there might have been some difficulty in the description of Gur, Shakkar and Khandsari as manufactured commodities or there might have been some difficulty in describing all the stages which led to the making of the same as stages of manufacture, the Legislature has advisedly used the word 'processed in the definition to cover the making of those goods or commodities. There is substance in this approach. However, to my mind, the argument on the side of the appellants is entirely misconceived. In the earlier Act, the Punjab Agricultural Produce Markets Act, 1939 (Punjab Act 5 of 1939), the expression 'agricultural produce' was defined in section 2(a) to mean 'harvested cotton, wheat, barley, rice, oil seeds, maize, gram, sugarcane (Gur and Shakkar) or any other crop which may hereafter be declared by notification to be agricultural produce for the purpose of this Act." It will be seen that an attempt was here made to list as many of the produces as practical within the definition, thus leaving the rest to be provided for in a declaration by a notification. Broadly, Gur and Shakkar were included within the meaning and scope of the word 'sugarcane'. When this Act was repealed and replaced by the present Act, the definition of the expression 'agricultural produce' has been as already given above. Now, instead of making this definition to run into a page or two, it has been stated in this definition that agricultural produce is as specified in the Schedule to the Act. So that the Schedule to the Act is a part and parcel of this definition itself. The learned counsel for the appellant has referred to *Sanwaldas Gobindram* v. *State of Bombay* (5), and *Muneshwara Nand* v. *State* (6), to contend that though a schedule may form part of a statute and must be read together with it for all purposes of construction, but

(5) A.I.R. 1953 Bom. 415.
(6) A.I.R. 1961 All. 24.

expressions in the schedule cannot control or prevail against the express enactment, and that if there is any appearance of inconsistency between the schedule and the enactment, the enactment shall prevail, and if the enacting part and the schedule cannot be made to correspond, the latter must yield to the former. The argument of the learned counsel for the appellant is that since the making of Gur, Shakkar and Khandsari means manufacturing of those commodities and in the definition of 'agricultural produce' in section 2(a) of the Act it is only the processed commodities that are defined as agricultural produce. so there is an inconsistency between the definition of this expression in section 3(a), and the Schedule to the Act. This is an untenable approach, because here, as already stated, the Schedule is in the definition itself and is an integral part of it. Instead of stating all the commodities, listed in the Schedule, in the definition and making it run into a page or two, it has been stated in the definition that agricultural produce means produce as specified in the Schedule to the Act. Whatever may be the position in a statute in which the schedule is not a part of definition of an expression, and those are the types of cases upon which the learned counsel for the appellant has relied, in the present case the Schedule is an integral part of the definition itself. It is open to the Legislature to describe the making of a particular commodity or article as a process even though in the ordinary dictionary meaning it may be considered as a manufacture. The Legislature in the case of the Act has described the commodities listed in the Schedule as processed produce of agriculture, horticulture, animal husbandry or forest, and the Court must accept its description and no artificial meaning can be read into the same. In the definition itself the Legislature has described those items in the Schedule as processed. such of them as have gone through a change by transformation, and. while, if the matter was left at large and considered according to the dictionary meaning, some of those commodities may be manufactured commodities, the Legislature having described them as processed ones, no more can be said against the manner in which the Legislature—has done this. The word of the Legislature on this is final and a Court is not permitted to read more into the definition than what is in it. So that this argument on the side of the appellant cannot be accepted that the Schedule to the Act is inconsistent with the definition of the expression 'agricultural produce' as in section 2(a), as there is no inconsistency because the Schedule is a part and parcel of the definition itself. It is the items in the Schedule itself that have been defined as agricultural produce and that is enough for the present purpose. The last aspect of the argument in this respect is a reference to section 38

of the Act which runs—"The State Government may, by notification, add to the Schedule to this Act any other item of agricultural produce or amend or omit any item of such produce specified therein", and what is contended is that while exercising this power under this provision the State Government cannot bring in the Schedule a commodity manufactured though it can do so in respect of a commodity processed. But no such question arises in the present case, and when any such addition is made to the Schedule and that is questioned then this question will, if it has substance need consideration. Nothing in section 38 of the Act whittles down the definition of the expression 'agricultural produce' as in section 2(a) which proceeds on the basis that the Schedule is an integral part of it. So this argument on the side of the appellant does not prevail.

(8) In the 1962 Rules, rule 18(1) (f) makes provision for exemption of certain persons from taking licence under section 6 of the Act when such persons were making purchases of agricultural produce otherwise than from a producer directly, and by the Punjab State Government Notification No. GSR 206/PA. 23/61/S. 43/Amd(8)/64, of September 3, 1964, published in the Government Gazette of September 18, 1964, rule 18(1)(f) was deleted. Some argument had been attempted on the side of the appellant that this deletion was not valid. but the argument is irrelevant so far as the present appeal is concerned, because the appellant is a licensee under section 6 of the Act, and rule 18 only deals with exemptions from taking a licence under that section.

(9) In the circumstances, this appeal (L.P.A. No. 177 of 1969) fails and is dismissed with costs, counsel's fee being Rs. 100.

(10) In Civil Writs, No. 325 of 1968, *Raunaq Ram-Tara Chand* v. *The State of Punjab, No.* 441 *of* 1968, *Ghudu Mal-Arun Kumar* v. *The State of Punjab, No.* 55 *of* 1969, *Tuhi Ram-Kishori Lal* v. *The State of Haryana, No.* 97 *of* 1969. *Parkash Chand-Krishan Kumar* v. *The State of Punjab,* No. 1495 *of* 1969, *Nanak Chand-Gobind Ram* v. *The State of Punjab,* No. 1534 *of* 1969, *Banarsi Dass-Muni Lal* v. *The State of Punjab,* No. 1535 *of* 1969, *Basau Mal-Maharaj Dass* v. *The State of Punjab,* No. 1829 *of* 1969, *Hans Raj-Ramesh Chand* v. *The State of Punjab.* No. 2201 *of* 1969, *Prabh Dayal-Jawahar Lal* v. *The State of Punjab, and* No. 2228 *of* 1969, *Jai Lal-Nand Lal* v. *The State of Punjab,* the facts are for all practical purposes same or similar as in Letters Patent Appeal No. 177 of 1969, and the arguments have been exactly

the same. For the reasons given above in that appeal, all these petitions fail and are dismissed with costs, counsel's fee in each being Rs. 100.

March 25, 1970.

R. S. NARULA, J.—I agree.

N. K. S.

APPELLATE CIVIL

Before H. R. Sodhi, J.

LACHHMAN SINGH,—*Appellant.*

versus

SHRIMATI MOHINDER KAUR,—*Respondent.*

First Appeal from Order No. 73—M of 1966

April 3, 1970.

Hindu Marriage Act (XXV of 1955)—Sections 9 and 13(1A)(ii)—Husband obtaining decree for restitution of conjugal rights—Such decree modified by compromise in appeal whereby husband undertakes to go to wife to win her confidence—Such compromise—Whether affects the operation of the decree—No restitution of conjugal rights for two years after passing of the decree—Whether entitles the husband to the grant of decree for divorce.

Held, that where a decree for restitution of conjugal rights is passed in favour of a husband and the decree is modified by compromise in appeal whereby the husband undertakes to go to wife to win her confidence such a compromise is more or less an undertaking on the part of the husband to appease his wife. A vague condition like this cannot legally affect the operation of the decree. Once a decree for restitution is passed, a duty is cast on the wife that she should return home and live with her husband and such a decree cannot be rendered ineffective or futile by a compromise. No conditions can be attached to the decree which are in their very nature contrary to the spirit of the decree and the fulfilment of which is incapable of being supervised or controlled by a Court of law. The spouse against whom a decree for restitution is passed is in a position of a judgment-debtor and no duty can be cast on the decree-holder that in order to get compliance with the decree he should be making further efforts to win the confidence of the judgment-debtor who is already proved to be a deserter from marital obligations. The only pre-requisite for passing a decree for divorce as required by section 13(1A)(ii) of the Hindu Marriage Act, 1955, is that factually for a period of two years or upward, after the passing of a decree