issued against it for quashing the order. It cannot be said in the instant case that the period of limitation was extended on extraneous grounds The appellant had explained that the impugned order had been passed in his absence which explanation was accepted as sufficient by the Additional Director. We, therefore, hold that the learned Single Judge was in error in accepting the writ petition on the ground that the Additional Director had erroneously extended the period of limitation on extraneous grounds and had heard a time-barred application.

(10) For the reasons given above, we accept this appeal set aside the order of the learned Single Judge and remand the case to the learned Single Judge, for decision on merits. We, however, leave the parties to bear their own costs of this appeal.

B. S. G.

ORIGINAL CRIMINAL

Before H: R: Sodhi, J:

STATE OF PUNJAB,—*Appellant.*

versus.

DR. NIRANJAN SINGH DHILLON,—*Respondent.*

Criminal Original No. 54 of 1972.

August 1, 1972.

Prevention of Corruption Act (II of 1947)—Section 6—Constitution of India (1950)—Article 166—Punjab Government Rules of Business (1969)—Rules 18 and 28—According of a sanction for prosecution of a Government servant for misconduct—Whether an executive act of the State Government—Such act—Whether open for adjudication by the Courts—Secretary to the Government, Punjab—Whether has an authority to accord sanction for prosecution of a Government servant of his Department without reference to the Minister-in-charge of the department—Omission of laying down the papers of sanction before the Chief Minister under rule 28—Whether makes the sanction invalid—Business of Punjab Government (Allocation) Rules (1969)—Schedule—Item 34—Sanction of prosecution of an officer of the Health Department—Whether can be given by the Health Minister.

Held, that according of a sanction as required by section 6(1)(b) of Prevention of Corruption Act, 1947 is an executive act of the State

Government. The executive power of a State vests in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 166 of the Constitution gives the manner in which the business of the State is to be conducted and regulated in accordance with the Rules made by the Governor for the convenient transaction of such business and for the allocation thereof amongst Ministers. The Rules made under this Article to transact the business of the Government are statutory rules, and it is within the competence of the Court to take notice of them to find out whether an order of the State Government has been made in accordance with law. Hence the order of the Government according sanction for prosecution under section 6 of the Act is open for adjudication by the Courts. (Para 5).

Held, that rule 18 of the Punjab Government Rules of Business, 1969 empowers the Minister in-charge of a particular department to delegate his powers or give such directions as he thinks fit, by means of standing orders, for the disposal of cases in his department. According to Standing Order under this Rule, the Secretary to Government, Punjab, is clothed with an authority to finally dispose of the case of any officer, if a question arises whether criminal proceedings be instituted or withdrawn against such an officer and no reference to Minister is necessary. The word 'institution' as used in this Order is comprehensive enough to include the grant of sanction in cases where a Court is barred from taking cognizance of an offence except with the previous sanction of the competent authority as stated in section 6 of the Act. (Para 6).

Held, that rule 28 gives more or less supervisory powers to the Chief Minister but this rule cannot be interpreted as an exception to rule 18. Even though before the grant of sanction the case has to be submitted to the Chief Minister, it does not follow that in the event of an omission to do so, the original order passed by the Minister or the Secretary in the exercise of delegated power under rule 18, becomes without jurisdiction or authority. Rule 28 deals with a matter of mutual domestic arrangement regarding transaction of business of the State Government and it does not affect the validity of the order as originally passed by the Minister concerned or the Secretary to the Government who is possessed of properly delegated authority. Since the Council of Ministers is collectively responsible for all orders issued in the name of the Governor, rule 28 has been advisably made to keep the Chief Minister informed as to what is happening in different departments in regard to certain matters referred to therein, but this does not mean that whenever an order has been passed by a Minister-in-charge in exercise of the authority duly given to him under the rules of business, that order becomes cold or inoperative simply because the papers were not laid before the Chief Minister under rule 28. This irregularity in not complying with rule 28 is not fatal to the validity of the sanction. (Para 6).

Held, that item 34 of the Schedule to the Business of the Punjab Government (Allocation) Rules, 1969 provides for withdrawal of

prosecution cases pending trial from the Courts of competent jurisdiction. The circumstance for such withdrawal being related to the department of the Home Secretary, does not make the grant of sanction for prosecution within the sphere of the Home Department in spite of rule 18 of the Business Rules. Moreover, it is not correct that merely because the administration of justice, including criminal justice, under the Allocation Rules is with the Home Department of the State Government, the matter of sanction of prosecution is to be decided by that department alone and no other Minister can deal with such a case even when the officer who is sought to be prosecuted belongs to another department. Item 34 in the Schedule relating to administration of justice covers only withdrawal of prosecution cases pending trial from the Courts of competent jurisdiction. The very fact that a specific provision is made for withdrawal of prosecution cases and no mention is made whatsoever of institution of criminal proceedings leaves no room for doubt that it is only the matter of withdrawal of cases that is intended to be dealt with by the Home Department through the Home Secretary and the question of institution of criminal proceedings which includes the grant of sanction for prosecution where so required by law has been left to be decided under other relevant rules. Hence a sanction for the prosecution of a Government servant belonging to the Health Department can be validly given by the Health Minister or his delegate and not by the Home Minister. (Para 7).

Case withdrawn from the Court of Special Judge, Gurdaspur and tried by the High Court in the exercise of its extraordinary jurisdiction.

I. S. Tewana, Assistant Advocate-General (Punjab), *for the appellant.*

Kartar Singh Raipuri and M. S. Beri, Advocates, *for the respondents.*

JUDGMENT

SODHI, J.—Dr. Niranjan Singh Dhillon of the State Medical Service Class I, is being prosecuted for criminal misconduct alleged to have been committed by him in the discharge of his official duties while posted as Senior Medical Officer, Incharge Civil Hospital, Batala. It is not necessary to state what misconduct is alleged against him as the sole question that I am deciding at this stage is as to whether the sanction of the State Government for his posecution has been validly given, since section 6 of the Prevention of Corruption Act, 1947, as amended up to date (hereinafter called the Act) enjoins that no Court is to take cognizance of an offence of the type alleged against the accused unless there is a previous sanction

of the State Government in this regard. The accused admittedly is a public servant not removable from his office, save with the sanction of the State Government. The impugned sanction appears in the document, Exhibit P.A., which purports to be an order of the Governor of Punjab made on 17th September, 1970. It reads as under: —

> "Whereas from the investigation conducted by the police in case F.I.R. 132, dated the 12th August, 1970, under sub-section (2) of section 5 of the Prevention of Corruption Act, 1947, and section 161 of the Indian Penal Code, registered at the Police Station City Batala, District Gurdaspur, the Governor of Punjab is satisfied that Dr. Niranjan Singh Dhillon, P.C.M.S.-I, Senior Medical Officer, Civil Hospital, Batala, District Gurdaspur (now under suspension), being a public servant, has accepted Rs. 100 in a currency note from Shri Vijay Kumar, son of Bihari Lal Arora, resident of Achli Gate, City Batala, district Gurdaspur, on the 12th August, 1970, at Batala as illegal gratification (other than legal remuneration) for declaring skull injury which was stated to be under observation for X-ray as grievous in respect of Shri Baldev Raj, son of Bihari Lal Arora, resident of City Batala, district Gurdaspur, and that the same currency note was recovered from the person of the said Dr. Niranjan Singh Dhillon by Shri Sukhdarshan Likhi, Deputy Superintendent of Police, Headquarters Gurdaspur, who had noted the number of the said currency note on the complaint made by Shri Vijay Kumar, earlier on 12th August, 1970, in the presence of Sarvshri Jagjit Singh, son of Wadhawa Singh Jat, resident of City Batala and Jagir Singh, Sarpanch Panchayat, resident of Chatha P. S. Fatehgarh Chuhrian, district Gurdaspur;
>
> AND WHEREAS from the circumstances, stated above, it appears that the said Doctor Niranjan Singh Dhillon has committed an offence of criminal misconduct in the discharge of his official duty as defined by sub-section (1) of section 5 of the Prevention of Corruption Act, 1947;
>
> NOW, THEREFORE, in pursuance of the provisions of Clause (c) of Sub-section (1) of section 6 of the Prevention of Corruption Act, 1947, the Governor of Punjab, is pleased to give

sanction to the prosecution of the aforesaid Dr. Niranjan Singh Dhillon, P.C.M.S.-I, Senior Medical Officer, Civil Hospital, Batala, District Gurdaspur (now under suspension) under sub-section (2) of section 5 of the Prevention of Corruption Act, 1947, and section 161 of the Indian Penal Code.

By Order of the Governor, Punjab.

Dated, Chandigarh, the 17th September, 1970.

(Sd.) . . .,

Secretary to Government, Punjab,

Health and Family Planning Departments".

(2) The sanction as required by section 6(1)(b) is to be of the State Government. This provision of law is in the following terms:—

"6(1) No Court shall take cognizance of an offence punishable under section 161 or section 164 or section 165 of the Indian Penal Code or under sub-section (2) of section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction—

(a) * * * * *

* * * * *

(b) In the case of a person, who is employed in connection with the affairs of a State and is not removable from the office save with the sanction of the State Government or some higher authority of the State Government;"

(3) According of a sanction is beyond dispute an executive act of the State Government. Article 154 of the Constitution provides that the executive power of a State shall vest in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 166 gives the manner in which the business of the Government of a State is to be conducted. It will be useful to reproduce this Article *in extenso* for facility of reference:—

"166 (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order of instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

This Article has been the subject-matter of interpretation by the Supreme Court and also by the State High Courts. It is not necessary to refer to the various authorities in detail and suffice to mention as observed by their Lordships of the Supreme Court in *State of U. P.* v. *Om Parkash Gupta* (1), that it has been "repeatedly held that the provisions of Article 166(1)(2) [similar to sub-sections (1) and (2) of section 59 of the Government of India Act, 1953], are directory and substantial compliance with those provisions is sufficient". The business of the Government is to be conducted and regulated in accordance with the rules made by the Governor for the convenient transaction of such business and for the allocation amongst Ministers of the said business unles the Governor is by or under the Constitution required to act in his own discretion which is not the case here. An order made by the State Government has to be expressed in the name of the Governor and authenticated in the prescribed manner. When an order purports to be that of the Governor and the authentication is in order, it is conclusive evidence of the fact that the order has been made by the Governor. There yet remains another question to be resolved, namely whether in making the order the Governor acted in accordance with law and it has been held by their Lordships in *M/s. Bijoya Lakshmi Cotton Mills Ltd.* v. *State of West Bengal and others* (2), following an earliest decision reported as *R. Chitralekha and another* v. *State of Mysore and others* (3), that such a question remains open for adjudication. In this view of the matter, it has got to be ascertained whether the impugned sanction, Exhibit P.A., was

(1) A.I.R. 1970 S.C. 679.
(2) A.I.R, 1967 S.C. 1145.
(3) A.I.R. 1964 S.C. 1823.

given by an authority competent to do so under the rules of business framed under Article 166(3) of the Constitution. Article 166(3) contemplates two types of rules, one for the convenient transaction— of business of the Government, and the other for allocation of business amongst the Ministers. The rules relating to the conduct of business are marked as Exhibit D. L. and those for allocation of business as Exhibit D.M. My attention has been invited by the counsel for the parties to rules 4, 18, 19, 20, 25 and 28, in Exihibit D. L. Before examining the import of the aforesaid rules, it is necessary to know in what circumstances the sanction for the prosecution of the accused was granted.

(4) Shri Banwari Lal Kakar, I.A.S., appeared as C.W. 1 and deposed that he, was Secretary to Government, Punjab, Health and Family Planning Department and granted the sanction (Exhibit P.A.) in his capacity as such. He did so, according to his statement, after satisfying himself that *prima facie* a case was made out against the accused. It was then that an order in the name of the Governor was issued. He also deposed that in terms of the rules of business, standing order was issued by the Minister for Health on 27th June, 1970, and according to the standing order, all papers pertaining to the institution of criminal cases against P.C.M.S. Officers, Class I or Class II, could be disposed of by him at his own level without reference to the Minister. The standing order is Exhibit C.W. 1/A, and to the following effect:—

> "In pursuance of Rules 18 and 19 of the Rules of Business of the Punjab Government, 1968, and in supersession of all the previous orders, I hereby direct that the classes of cases enumerated in the Annexures relating to the Health and Family Planning Department under the administrative control of the Secretary to Government, Punjab, Health Department, shall be disposed of as mentioned therein."

There is Annexure "V" attached to the notification relating to the standing order and cases to be disposed of at the level of the Secretary, Health and Family Planning, are enumerated therein. At serial No. 3, reference is to the "institutions or withdrawal of civil or criminal proceedings against P.C.M.S. I and II Gazetted Officers and payment from the State revenues of the damages in suits brought by or against gazetted officers."

(5) Rule 18 of the Punjab Government Rules of Business, 1969 (Exhibit D. L.), empowers the Minister-in-charge to delegate his

powers or give such directions as he thinks fit, by means of standing orders, for the disposal of cases in his department. This is permissible only if there is no specific rule providing to the contrary. Under rule 19, the Minister can, by means of standing orders, arrange with the Secretary what cases or classes of cases are to be brought to his personal notice. If there are no standing orders, then, as enjoined in rule 20, every case has to be submitted by the Secretary to the Minister-in-charge. Rule 25 has no relevance inasmuch as it relates to settlement of a dispute that may arise with regard to the competency of a department to deal with a particular case, Rule 28 provides that the classes of cases mentioned therein shall be submitted to the Chief Minister before the issue of any orders, and one of them at serial No. 7 is about "proposals for the prosecution, dismissal, removal or compulsory retirement of any gazetted officer". I feel that in this context rule 4 also should not go unnoticed since a reference was made to it by the State counsel. It deals only with the collective responsibility of the Council of Ministers for all executive orders issued in the name of the Governor in accordance with the rules of business, no matter whether such orders are authorised by an individual Minister on a matter pertaining to his portfolio or as a result of discussion at a meeting of the Council, or howsoever otherwise. Beyond dispute, the rules are made under the rule making power conferred on the Governor under Article 166(3) of the Constitution, to transact the business of the Government and being statutory rules, it is within the competence of a Court to take notice of them whenever a question arises whether an order of the State Government has been made in accordance with law.

(6) According to the standing order (Exhibit C.W. 1/A), Shri Banwari Lal Kakar, as the then Secretary to Government, Punjab, Health and Family Planning Department, was clothed with an authority to finally dispose of the case of any P.C.M.S. Officer, Class I, like the accused, if a question arose whether criminal proceedings be instituted or withdrawn against such an officer and no reference to the Minister was necessary. No rule to the contrary which could or did suspend the operation of the standing order has been pointed out by the counsel for the accused. He has, however, contended that institution of a criminal case does not include the grant of a sanction and that without the approval of the Chief Minister as envisaged in rule 28 (in Exhibit D. L.), no sanction could be granted. To put it differently, the argument of the counsel for the accused is that the word "institution" as used in the standing order means only institution in the manner provided in the Code of Criminal Procedure. Criminal

proceedings under the Code are instituted either on police report or on a complaint, and the institution as used in the standing order, according to the counsel, is to be confined to those cases where a complaint is to be made by the State Government, and that it does not cover the grant of sanction which more appropriately falls within the expression "proposal for prosecution". To my mind, this contention is without merit. Rule 18 gives full powers to the Minister-in-charge to dispose of himself all cases pertaining to his department or to delegate his authority to do so by means of standing orders in this behalf. It cannot be seriously urged that the question of grant of sanction for the prosecution of a doctor in his department is not a case relating to that department. The only exception is when there is a rule providing otherwise and rule 28 which gives more or less supervisory powers to the Chief Minister cannot be interpreted as an exception to rule 18. Rule 28(vii) deals with those classes of cases where there is some proposal for the prosecution of a gazetted officer or his dismissal or removal or compulsory retirement. The word "institution" as used in this order is, in my opinion, comprehensive enough to include the grant of sanction in cases where a Court is barred from taking cognizance of an offence except with the previous sanction of the competent authority as stated in section 6 of the Act. Any other interpretation will almost make this power given to the Secretary to the Government nugatory and meaningless inasmuch as there is hardly an offence for which a complaint has to be instituted by the State Government against a gazetted officer. Moreover, even if it be assumed that when the sanction was granted, before the issue of the orders to that effect, the case should have been submitted to the Chief Minister, it does not follow that in the event of an omission to do so the original order passed by the Minister or the Secretary in the exercise of delegated power under rule 18 *ibid* became without jurisdiction or authority. Rule 28 deals with a matter of mutual domestic arrangement regarding transaction of business of the State Government and it does not affect the validity of the order as originally passed by the Minister concerned or the Secretary to the Government who is possessed of properly delegated authority. Since the Council of Ministers is collectively responsible for all orders issued in the name of the Governor, rule 28 has been advisably made to keep the Chief Minister as to what is happening in different departments in regard to certain matters referred to therein, but it does not follow that whenever an order has been passed by a Minister-in-Charge in exercise of the authority duly given to him under the rules of business, that order becomes void or inoperative simply because the papers were not laid before the Chief Minister under rule 28. This

irregularity in not complying with rule 28 is not, in my opinion, fatal to the validity of the sanction.

(7) The next contention of the counsel for the accused is that under the Business of the Punjab Government (Allocation) Rules, 1969 (Exhibit D.M.) cases about administration of justice have to be routed through the Home Secretary and that the matter of granting sanction falls within the powers of the Home Minister and not that of the Health Minister. He has drawn my attention to item No. 34 of the Schedule which provides for withdrawal of prosecution cases pending trial from the Courts of competent jurisdiction. I fail to see how from the circumstance that withdrawal of prosecution of criminal cases relates to the department of the Home Secretary, it follows that the grant of sanction is within the sphere of the Home Department and that in spite of rule 18 in Ex. D.L. and the standing order made thereunder, the Health Minister had no power to sanction prosecution. I am equally unable to accept the contention that since adminstration of justice, including criminal justice, under the said Allocation Rules is with the Home Department of the State Government, the matter of sanction of prosecution is to be decided by that department alone and no other Minister can deal with such a case even when the officer who is sought to be prosecuted belongs to the department of that Minister. In these Rules, the matters enumerated in the Schedule and required to be routed through the Home Secretary, fall within the portfolio of the Home Minister and administration of justice, which expression includes criminal justice, is one of them. Item No. 34 in the Schedule relating to administration of justice covers only withdrawal of prosecution cases pending trial from the Courts of competent jurisdiction. The very fact that a specific provision is made for withdrawal of prosecution cases and no mention is made whatsoever of institution of criminal proceedings leaves no room for doubt that it is only the matter of withdrawal of cases that is intended to be dealt with by the Home Department through the Home Secretary and the question of institution of criminal proceedings which, as already observed, includes the grant of sanction for prosecution where so required by law, has been left to be decided under other relevant rules.

(8) I shall now briefly refer to some of the authorities cited on behalf of the accused though none of them is directly in point and of any assistance to him. Great emphasis has been laid by the learned counsel on *Shyamaghana Ray and others* v. *State* (4), but the

(4) A.I.R. 1952 Orissa 200.

facts of that case are clearly distinguishable. It was a case of detention under the Preventive Detention Act, 1950. *Habeas Corpus* applications were filed in the High Court and one of the contentions raised was that the cases of the detenus were not put up to the Home Minister for consideration and were dealt with by the Home Secretary only. A copy of the Rules of Business was produced before the High Court and the schedule to the rules showed that the preventive detention of persons fell within the authority of the Home Department. It was common ground that the Home portfolio was with the Chief Minister who was not shown the papers and had thus no opportunity to satisfy himself about the validity of the detention order. No business rule could be pointed out under which the Home Secretary exercised any delegated authority on behalf of the Chief Minister and in fact an argument was raised by the Advocate-General that presumption be drawn that the Home Secretary had such an authority. In these circumstances, the learned Judges of the Orissa High Court refused to raise any such presumption and observed as under:—

> "In a matter so fundamental and important as the liberty of a subject, which can be deprived of only by strict compliance with the statutory requirements of section 3 of the Preventive Detention Act, we are not prepared to uphold the validity of the orders in question by reliance on any such presumption. We specifically put it to the Advocate-General, whether he was in a position to substantiate that the Home Secretary had the requisite authority either generally, or directed to these specific cases and we were prepared to consider if necessary, a request for short time for production of any such material, if available. But the learned Advocate-General frankly pleaded his inability. It must, therefore, be taken as a fact that the Home Secretary had no such authority which would enable him to pass the orders now under challenge in purported reliance on Rule 2 of the subsidiary rules of business."

I fail to see how this authority can be of any assistance in the present case where it is conclusively established that the Secretary to the Government had been delegated an authority to finally dispose of matters relating to institution of criminal proceedings against gazetted officers of the department.

(9) Reliance was also placed on behalf of the accused on a single Bench judgment of this Court reported as *Manmohan Singh Johal* v. *State* (5), where sanction for prosecution given by the State Government under sub-section (2) of section 196-A, Criminal Procedure Code, was held to be invalid. There could be no quarrel with the proposition which is now well-settled that immunity from attack against an order of the Governor authenticated in the prescribed manner is only to the effect that the order has been made by the Governor but the authority of the person who made the order on behalf of the Governor is open to challenge on the ground that under the rules of business or any other law, the person who took the decision was not competent to do so. The facts in the said case are again distinguishable and no useful help can be had from the judgment in that case. Forty-four persons were committed for trial under section 120-B read with sections 465, 466 and 471, Indian Penal Code, for the alleged forgery of passports and documents relating thereto in conspiracy in that regard. Under section 196-A, Code of Criminal Procedure, no court could take cognizance of the offence of the type of criminal conspiracy with which the accused were charged unless the State Government or the District Magistrate empowered in this behalf by the State Government has by an order in writing consented to the initiation of the proceedings. The contention put forward on behalf of the convict-appellant before the High Court was that though the order appeared in the name of the Governor, it was not passed in accordance with the rules of business of the Punjab Government but by a Secretary not authorised by the Government. No standing orders of directions issued by the Minister-in-charge, that is, Home Minister, authorising the Home Secretary to accord sanction or consent for prosecution had been shown to exist. The order of according sanction was also not complete inasmuch as two pages in which the names of criminal accused were enumerated were found missing. The learned Judge on a consideration of the various aspects came to the conclusion that the consent was not in order.

(10) The learned counsel laid great stress on the observations of their Lordships of the Supreme Court in *Bachhittar Singh* v. *State of Punjab and another* (6), wherein rule 28 of the Punjab Rules of Business, came up for consideration. Bachhittar Singh was an employee of the erstwhile State of Pepsu belonging to the Consolidation Department which fell within the portfolio of the Revenue Minister.

(5) A.I.R. 1969 Pb. & Hr. 225.
(6) A.I.R. 1963, S.C. 395.

As a result of an inquiry into his conduct, the Revenue Secretary dismised him finding him unfit to remain in service. He preferred an appeal before the State Government. There then came the merger of Pepsu with the erstwhile State of Punjab in the year 1956 and the file was put up before the Revenue Minister of the composite Punjab. The Revenue Minister in view of the serious allegations against Bachhittar Singh sought advice of the Chief Minister. The Chief Minister directed that the order of dismissal as passed against Bachhittar Singh should stand and it was the validity of this order that was challenged on various grounds. One of the contentions was that the Chief Minister had no jurisdiction to decide the appeal when the matter fell within the porfolio of the Revenue Minister. Rule 28 came up for interpretation in this context and their Lordships took the view that the order passed by the Chief Minister, though on a matter pertaining to the portfolio of the Revenue Minister, will be deemed to be an order of the Council of Ministers and that rule 28 gave the power to the Chief Minister to pass an order on cases laid before him by a Minister. The argument advanced on behalf of the accused is that since the Supreme Court has observed that the Chief Minister could pass an order under rule 28, no order of the Minister-in-charge of another department or a Secretary thereof, in exercise of a delegated authority, could be valid if it related to a matter covered by rule 28 and the papers were not laid before the Chief Minister. I do not think that any such corrollary follows as a matter of course from the decision in *Bachhittar Singh's case* (6). The short question before their Lordships was whether the Chief Minister could pass an order when papers had been sent to him by the Revenue Minister and it has been held that he could do so.

(11) Another authority cited by the learned counsel on behalf of the accused is *Pancham Singh* v. *The State* (7). The learned counsel sought to draw a distinction between taking cognizance of an offence by the Court and investigation by police or submission of the final report by it under section 173, Code of Criminal Procedure. It is true that section 6 of the Act enjoins that no Court shall take cognizance of an offence punishable under section 161 or section 164 or section 165 of the Indian Penal Code or sub-section (2) of section 5 of the Act alleged to have been committed by a public servant, except with the previous sanction of the specified authorities, and the bar relates to the taking of cognizance and not of investigation by the police

(7) A.I.R. 1967 Patna 416.

of submission of the final report, but it is not understood how this authority possibly helps the accused.

(12) For the foregoing reasons, I am of the considered view that the sanction (Exhibit P.A.) accorded by the Secretary to the Government, Punjab, Health and Family Planning Department, has been given by the State Government in accordance with law and that it cannot be held to be invalid so as to bar the Court from taking cognizance of the offences for which the accused is being tried.

B. S. G.

INCOME TAX REFERENCE

Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.

THE COMMISSIONER OF INCOME-TAX, HARYANA, HIMACHAL PRADESH & DELHI-III, NEW DELHI,—*Applicant*

versus

THE SARASWATI INDUSTRIAL SYNDICATE LTD.,—*Respondent*

Income Tax Reference No. 24 of 1971.

August 2, 1972.

Punjab General Sales Tax Act (XLVI of 1948)—Sections 2, 4 and 5—Income-tax Act (XLIII of 1961)—Section 28—Sale-tax on an article sold—Whether component part of the price of the article—Receipt of the sale-tax by a dealer not liable to pay such tax to the Government—Whether trading receipt for the purpose of section 28 of Income-tax Act—Right of the purchaser of the article to claim the tax from the dealer—Whether affects the character of the receipt.

Held, that the incidence of taxation is provided under section 4 of the Punjab General Sales Tax Act, 1948 wherein it is provided that every dealer, whose gross turnover exceeds taxable quantum, is liable to pay sales-tax under the Act. It is the dealer selling goods who is liable to pay the tax as prescribed under the Act. The valuable consideration for the transfer of the property in goods is the total amount received by the dealer from the purchaser. The dealer is liable to pay the sales-tax irrespective of the fact whether he chooses to charge the sales-tax along with the price of the goods as consideration for passing the goods on to the purchaser or not. It is, therefore, evident that the sales tax is an integral component of the sale price. Since the incidence of tax is on the assessee and the purchaser is not responsible for the payment of the sales tax to the authorities, therefore, the true content of the sale price is the total