

work of dyeing, printing, singeing or otherwise finishing or processing of fabrics would not fall within Entry 23 of the First Schedule nor would it be entitled to claim advantage of the provisions of Section 280-ZB. The question posed for our decision is answered accordingly.

(14) Before parting with the judgment it may be observed that various judgments, to which reference has been made in the referring order, were also cited before us, but I am not referring to any one of them as the same have no bearing, in the light of my discussion, on the issue. It would be wrong and dangerous to import into the consideration of the entries in the First Schedule of the Industries Act, things which are germane to the consideration of an entry under entirely a different statute, especially when the purpose and object of the Legislature are also different. Further the necessity of making reference arose as a doubt was expressed by the referring Bench on the correctness of the judgment of this Court in *East India Cotton Manufacturing Company Pvt. Ltd. vs. The Assessing Authority-Cum-Excise and Taxation Officer, Gurgaon and another*, (supra). But that question again does not arise as the judgment in *East India Cotton Manufacturing Company Pvt. Ltd.* case (supra) was under the Sales-tax Act, which has no bearing so far as the case in hand is concerned.

(15) For the reasons recorded above, this petition fails and is dismissed, but in the circumstances of the case, we make no order as to costs.

N. K. S.

FULL BENCH

Before D. S. Tewatia, J.M. Tandon & K. P. S. Sandhu, JJ.

BHARPOOR SINGH AND ANOTHER,—Petitioners.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 4399-M of 1983.

December 6, 1984.

Opium Act (I of 1878)—Section 9(a)—Code of Criminal Procedure (II of 1974)—Section 156—Recovery of opium—Sample sent for chemical analysis by the Investigating officer—Such sample

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not found to be opium—Another sample sent for analysis—Investigating agency—Whether competent to send the second sample for chemical analysis and base prosecution on the result thereof.

Held, that when the case is still at the stage of investigation, the investigating agency is fully competent to investigate freely and collect any evidence it thinks proper. The investigating agency has an unhampered and unqualified right to investigate and collect evidence in a case and the Courts would be reluctant to interfere with this valuable right of the investigating agency. The investigating agency is competent to send a second sample to the Public Analyst for analysis during the investigation and the result of a second sample can be formed a basis for framing a charge. The investigating agency can certainly collect any evidence which it may deem proper to bring home the charge to the accused and no riders can be put on this right. The accused may challenge the correctness of the second report in the court and it is for the Court to decide about the evidentiary value of any piece of evidence collected by the investigating agency.

(Paras 4 & 5)

Application Under Section 482 Cr. P. C. praying that the charge framed against the petitioner Annexure P—3 may be quashed.

It is further prayed that during the pendency of the petition, the proceedings before the Judicial Magistrate Ist Class, Dhuri may be stayed.

Harbans Singh, Sr. Advocate, M. P. Gupta, Advocate with him for the Peittioner.

H. S. Riar, D.A.G. (Pb.) for the Respondent.

JUDGMENT

K. P. S. Sandhu, J.

(1) The precise question of law which necessitated this reference to a larger Bench is as to whether the investigating agency is competent to send a second sample of opium for analysis to the Chemical Examiner when one has been sent earlier and a report on the same has been received and whether on the basis of the report on the second sample a charge can be framed against the accused.

(2) The facts which gave rise to this reference are as under. The petitioners were apprehended by the police on 15th August, 1981, and opium was recovered from their possession. A sample was taken out of the opium alleged to have been recovered from the petitioners in the presence of the witnesses at the time of their arrest and sent to the Chemical Examiner for analysis and was analysed by him. According to the report of the Chemical Examiner dated 14th January, 1982, a copy of which is Annexure P1 to the present petition, the contents of the sample were not opium. The investigating agency then sent another sample for analysis. The Chemical Examiner,—*vide* his report dated 16th March, 1983, Annexure P2, opined that the substance sent to him as sample was opium. On the basis of the second report, the learned trial Magistrate,—*vide* his order dated 6th June, 1983, framed a charge under section 9 (a) of the Opium Act against the petitioner. A copy of the same is annexed to this petition as Annexure P3. Aggrieved by the aforesaid order of the Magistrate the petitioners came up in this Court under section 432 of the Code of Criminal Procedure for quashing the charge and the prosecution launched against the petitioners in case F.I.R. No. 145, dated 15th August, 1981, of Police Station, Dhuri, under section 9 of the Opium Act.

(3) The aforesaid petition under section 432 of the Code of Criminal Procedure came up for hearing before me. Mr. Harbans Singh Senior Advocate appearing for the petitioners contended before me that the investigating agency was not competent to send the second sample for analysis and that the charge framed on the basis of the report on the second sample was bad in law. He relied on a Division Bench authority of this Court reported as *Joginder Kaur's v. The State of Punjab*, (1). Since this important law point was involved in the case which was likely to crop up frequently the matter was referred by me to a larger Bench. This matter then came up before a Division Bench consisting of brother D. S. Tewatia, J., and myself. We were of the view that since the correctness of *Joginder Kaur's* case (*supra*) was challenged it was appropriate that the case be decided by a Full Bench. Hence this reference.

(4) Mr. H. S. Riar, learned Deputy Advocate-General, Punjab, has at the outset contended that *Joginder Kaur's* case (*supra*) has no applicability to the facts of the case in hand. According to the

(1) 1979 C. L. R. (Punjab and Haryana) 101

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ratio of the aforesaid Division Bench authority, then once a representative sample of the substance recovered from a person has been found to be opium by the Public Analyst, during a trial for an offence under section 9 of the Opium Act the accused in his defence cannot ask the Court to send another representative sample to the same or another Public Analyst and his only right was to rebut the said report by calling the expert for cross-examination. In the present case, the prosecution has not sought any direction from the Court for sending the second sample to the Chemical Examiner. The case being still at the investigation stage, the investigating agency was fully competent to investigate freely and collect any evidence it thought proper. It is settled law that the investigating agency has an unhampered and unqualified right to investigate and collect evidence in a case and that the Courts would be reluctant to interfere with this valuable right of the investigating agency. Therefore, we agree with Mr. H. S. Riar that in this situation the correctness of the view enunciated in *Joginder Kaur's* case (supra) is not at issue at all and that the only question which survives for adjudication is whether the investigating agency is competent to send a second sample to the Public Analyst for analysis during the investigation and whether the result of a second sample can be formed a basis for framing a charge. This question, we feel, has to be answered in the affirmative.

(5) The investigating agency can certainly collect any evidence which it may deem proper to bring home the charge to the accused and no riders can be put on this right of the investigating agency. The petitioners may challenge the correctness of the second report in the Court and it is for the Court to decide about the evidentiary value of any piece of evidence collected by the investigating agency. This petition consequently fails and is hereby dismissed.
D. S. Tewatia, J—I agree

J. M. Tandon, J—I also agree

N. K. S.