collection nor any attempt at providing for future collection at the rate of Rs 3 per 100. All that Section 23-A does is to prevent unjust enrichment by those dealers who have already passed on the burden of the fee to the next purchaser and so reimbursed themselves by also claiming a refund from the Market Committees. We have already explained the true purpose of Section 23-A. It gives to the public through the market committee what it has taken from the public and is due to it. It renders unto Caesar what is Caesar's. We do not see any justification for characterising a provision like Section 23-A as one aimed at validating an illegal levy."

(18) The reasoning adopted by the Supreme Court in upholding the validity of Section 23-A of the Punjab Agricultural Produce Market Act, 1961, squarely applies for upholding Section 11 of the 1986 Act in the present case. The ratio of the aforesaid judgment, therefore, fully covers the stand taken by the learned Advocate-General and there is no difficulty in holding that section 11 of the 1986 Act is constitutionally valid and is not open to attack on the ground that it seeks to validate the retention of cess/fee recovered/recoverable under the 1983 Act.

(19) No other point has been urged before us.

(20) In the result, all these thirty-nine writ petitions are dismissed and it is held that the Haryana Rural Development Act, 1986 is constitutionally valid. There is no order as to costs.

R. N. R.

Before I. S. Tiwana, J.

KARAM SINGH,—*Appellant.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Appeal No. 557/SB of 1986.

March 20, 1987.

Code of Criminal Procedure (II of 1974)—Sections 4 and 41—Narcotic Drugs and Psychotropic Substances Act (LXI of 1985)—Sections 37, 41, 42, 43, 50 and 55—Offence under Narcotic Drugs

Act—Offence under the Act cognizable—Arrest and search by a Head Constable—Such officer not authorised under the Act—Investigation by such Officer—Validity of such investigation—Provisions of Code of Criminal Procedure giving powers to police to investigate cognizable offences—Effect of such provisions on arrest and investigation made by officer not authorised under the Act.

Held, that a bare reading of sub-section (2) of Section 4 of the Code of Criminal Procedure, 1974 shows that a special law creating offences may also create a special procedure dealing with them. It is only when the special or local law creating an offence does not prescribe any procedure for dealing with that offence, the procedure laid down in the Code is to be followed. When a complete procedure is provided in an enactment for investigation, inquiry or trial of such offences, i.e., the offences created by a special or a local law then it is that procedure which forms part of the enactment that is to be followed, and not the one prescribed by the Code. The procedure laid down under the Narcotic Drugs and Psychotropic Substances Act, 1985 obviously has a purpose behind. Whereas the Act on the one hand exhibits the Government's and the Society's concern to clamp down heavily on the misuse and abuse of all types of man made drugs, it at the same time provides certain safeguards for the persons who are to be dealt with under the Act. The procedure pertaining to arrests, searches and seizures of offending drugs as laid down in Chapter V of the Act cannot be ignored in view of the fact that the offences under the Act are cognizable and, therefore, the police has under the Code *suo moto* powers to investigate these offences. The provisions of the Code shall apply in so far as they are not inconsistent with the provisions of the Act to all the warrants issued and arrests, searches and seizures made under the Act. Merely because under the Act only an authorised police officer can arrest, search or seize the offending drug does not mean that these offences under the Act would not be cognizable. Even though under the Act a class or category of police officers has been made entitled to arrest the offenders under the Act yet the offences under Chapter IV do not cease to be cognizable.

(Para 5)

Appeal from the order of the Court of Shri B. Rai Additional Sessions Judge, Hoshiarpur dated 7th August, 1986, convicting and sentencing the appellant.

P. S. Mann, Senior Advocate with T.P.S. Mann, Advocate, *for the Appellant.*

D. S. Keer, Advocate, *for the Respondent.*

JUDGMENT

I. S. Tiwana, J.

(1) Illogical, as it may look, the appellant who has been held guilty under section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the Act) for having been found in possession of 50 gms. of opium on 17th December, 1985, has been awarded a sentence of 10 years' rigorous imprisonment and a fine of Rs. 1,00,000. But that, as has been observed by the trial court, is the dictate of law, the validity of which is not under challenge before me. The facts found to have been established against him are as follows.

(2) On 17th December, 1985, when a police party consisting of Head Constable Sumel Singh PW3, Constable Tarsem Lal PW1 and two more Constables was returning from patrol duty, and was within the revenue limits of Village Jhandi at about 5.30 p.m., it saw the appellant coming from the side of that village. A quick turning back by the appellant on seeing the party, aroused its suspicion, and Head Constable Sumel Singh apprehended him for purposes of interrogation and search. As a result of that, the police party recovered 50 gms. of opium, wrapped in a glazed paper, from the right side pocket of his pants. Out of this bulk, a sample of 5 gms. was taken. The two parts of the opium were made into two different parcels which were properly sealed, bearing the impression "SS." of HC Sumel Singh and were taken into possession,—*vide* memo Exhibit PA, attested by Constable Tarsem Lal PW1 and Constable Yudhbir Singh. The seal was handed over to PW1. *Ruqa* Exhibit P8 was sent to Police Station Hariana through Constable Tirath Singh for the registration of a case. Formal F.I.R. Exhibit P8/1 was recorded by ASI Rattan Singh PW2. Besides preparing the rough site plan Exhibit PC and recording the statements of the witnesses, Sumel Singh PW3 on reaching the police station deposited the two sealed packets of opium with Moharrir Head Constable Arun Kumar on the same day. On receipt of the report Exhibit PD from the Chemical Examiner, Punjab, a report under section 173 was submitted against the appellant and as a result of the trial that followed, he has been convicted and sentenced as indicated above.

(3) His defence under section 313, Code of Criminal Proeedure, was that of total innocence and false implication. The trial court,

however, rejected this defence in the light of the statements of Constable Tarsem Lal PW1 and Head Constable Sumel Singh PW3 besides the other supporting evidence, such as the report of the Chemical Examiner Exhibit PD.

(4) The primary submission of Mr. P. S. Mann, learned Senior Advocate for the appellant, now is that Sumel Singh head Constable (P.W. 3) was neither a police officer who was empowered through a general or special order of the State Government to effect the arrest or conduct the search of the appellant under the Act, nor was he an officer authorised by any such officer of the State Government and in view of that he could not validly investigate the offences under the Act. What is highlighted by the learned counsel is that the provisions of Chapter V of the Act governing the procedure which is to be followed in such cases has been given a complete go-bye by the trial court and the conviction of the appellant has been recorded as if these provisions were not at all applicable to the case. As against this, the learned counsel for the State forthrightly puts that a combined reading of sections 37 and 51 of the Act which lay down that notwithstanding anything contained in the Code of Criminal Procedure, every offence punishable under the Act shall be cognizable and the provisions of the Code, so far as they are not inconsistent with the provisions of the Act, shall apply to all arrests, searches and seizures under the Act, the investigation and trial of the case has rightly been conducted in accordance with the procedural law laid down in the Code. In a nutshell, the controversy that has been raised by the learned counsel for the parties is as to whether the provisions of Chapter V of the Act are attracted to the facts of this case or not.

(5) Let us first examine the stand of the learned counsel for the State. No doubt sections 37 and 51 of the Act lay down that notwithstanding anything contained in the Code of Criminal Procedure, every offence under the Act is cognizable and the provisions of the Criminal Procedure Code, 1973, are to apply in so far as the same are not inconsistent with the provisions of the Act to all warrants issued and arrests, searches and seizures made under this Act but does that mean that the procedure as prescribed in Chapter V of the Act has nothing to do with the case in hand. The answer to this question, to my mind, is provided by section 4 of the Code of

Criminal Procedure itself and, more particularly, sub-section (2) thereof. This section reads as follows:—

> "4. *Trial of offences under the Indian Penal Code and other laws.*—All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
>
> (2) All offences under any other laws shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." ,

It is manifest from a bare reading of sub-section (2) of this section that under this provision, a special law creating offences may also create a special procedure for dealing with them. It is only when the special or local law creating an offence does not prescribe any procedure for dealing with that offence, the procedure laid down in the Code is to be followed. In other words, when a complete procedure is provided in an enactment for investigation, inquiry or trial of such offences, i.e., the offences created by a special or a local law then it is that procedure which forms part of the enactment that is to be followed, and not the one prescribed by the Code of Criminal Procedure. Now, all that has to be found out is as to whether there are provisions in the Act which provide for the investigation, inquiries or trial of the various offences under the Act. For this purpose, it is essential to analyse the various provisions contained in Chapter V of the Act so far as these are relevant to the facts of this case. Section 41 of the Act besides specifying as to which of the Magistrates is to issue warrants for the arrest or search, etc., lays down that any officer of the revenue, drugs control, excise, *police* or any other department of the State Government as is empowered in this behalf by general or special order by that Government may arrest a person or search a building, conveyance or place whether by day or night, whom he has reason to believe to have committed an offence punishable under Chapter IV of the Act. In a nutshell, sub-secion (2) of this section indicates clearly that only a police officer empowered in this behalf by the State Government through a general or a special order or an officer subordinate to him but superior in rank to a sepoy or constable duly authorised by such an officer may arrest or search a person

on having reason to believe that that person has committed an offence under Chapter IV of the Act. Then section 42 empowers any such officer—who has been so empowered in this behalf by a general or special order of the State Government or is duly authorised by such officer to enter, search, seize and arrest without warrant or authorisation any person from any building, conveyance or place in the manner provided for in this section. Similarly section 43 provides that any officer of the departments mentioned in section 42 of the Act would have the power to arrest, search and seize from a public place. Then section 50 of the Act lays down as follows :—

> "50. *Conditions under which search of persons shall be conducted:*—
>
> (1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, *if such person so requires,* take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.
>
> (2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).
>
> (3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made."

Then section 52 of the Act lays down as to how the persons arrested and the articles seized have to be dealt with. It reads as follows :—

> "52. (1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.
>
> (2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to—

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article."

Section 55 then casts a duty on an officer-in-charge of a police station to take charge and keep in safe custody all articles which may be seized under the Act within the local area of that police station. While doing so, the officer who brought the seized articles to the police station has a right to affix his own seal on the sample and the articles seized. The sample also has to have the seal of the Officer Incharge of the police station. Then section 57 casts a duty on the officer who makes the arrest or seizure under the Act to report all the particulars of such arrest or seizure to his immediate superior official within 48 hours after the same has been made. The procedure laid down in these sections obviously has a purpose behind. Whereas the Act on the one hand exhibits the Government's and the society's concern to clamp down heavily on the misuse and abuse of all types of man-made drugs, it at the same time provides certain safeguards for the persons who are to be dealt with under the Act. Now, can this procedure pertaining to arrests, searches and seizures of offending drugs as laid down in Chapter V of the Act be ignored in view of the fact, as is sought to be urged by the learned counsel for the State, that the offences under the Act are cognizable and, therefore, the police has under the Code of Criminal Procedure *suo moto* powers to investigate these offences ? He reinforces his submission, as pointed out earlier, with a reference to section 51 of the Act which says that the provisions of the Code of Criminal Procedure, 1973, shall apply in so far as they are not inconsistent with the provisions of this Act to all the warrants issued and arrests, searches and seizures made under the Act. Undoubtedly, in the absence of any definition of 'cognizable offence' in the Act, the definition provided for the same in section 2(c) of the Criminal Procedure Code would mean an offence for which a police officer may arrest without warrant,

But would it mean that sections 41 to 43 of the Act as per which only a specially empowered or an authorised police officer can arrest a person or search and seize the offending article, are not consistent with the provisions of section 41 of the Code of Criminal Procedure which entitles a police officer to arrest any person without any warrant from a Magistrate ? In other words, can the mere specification of a class or category of police officers who only is made entitled or authorised to arrest, search or seize or investigate certain types of offences under a particular Act make those offences non-cognizable in any manner ? The answer to this controversial question has finally been given by their Lordships of the Supreme Court in *State of Gujrat* v. *Lal Singh Kishansingh,* (1), while approving the ratio of their earlier decision in *I. C. Lala's* case, (2), in this manner :—

> "This conflict appears to have been set at rest by the decision of this Court in *I. C. Lala's case* (A.I.R. 1973 S.C. 2204) (*ibid*), which has expressly overruled the view taken by the Assam and Madhya Bharat High Courts. We will notice *Lala's* case later. It will suffice to say here that the view which has received the imprimatur of this Court, is that the expression 'police officer' in section 4(1)(f) of the Code [now clause (c) of section 2 of the new Code] does not necessarily mean 'any and every' police officer, and an offence will still be a 'cognizable offence' within this definition even if the power to arrest without warrant, for that offence is given by the statute to police officers of a particular rank or class, only."

It is, therefore, plain that the words 'the police officer' in the definition of cognizable offence in clause (c) of sub-section (1) of section 2 of the Code of Criminal Procedure cannot and does not mean 'any and every' police officer. The offence would remain nonetheless cognizable if the Legislature has limited the power of arrest to any particular class of police officers. So, merely because under the Act only an authorised police officer can arrest, search or seize the offending drug does not mean that those offences under the Act would not be cognizable, and, therefore, there would be any violation of section 37 of the Act. To me it looks plain that even

(1) A.I.R. 1981 S.C. 368.

(2) A.I.R. 1973 S.C. 2204.

though under the Act a class or category of police officers has been made entitled to arrest the offenders under the Act yet the offences under Chapter IV do not cease to be cognizable. This providing of, if one may say so, a special investigation agency or machinery, is nothing very peculiar to the Act. Such situations are envisaged by sections 13 to 16 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 and Section 5-A of the Prevention of Corruption Act, 1947. Instances can be multiplied further.

(6) So far as the submission of the learned State counsel in the light of section 51 of the Act is concerned, it may be pointed out that the provisions of the Code of Criminal Procedure pertaining to arrest, searches and seizures, apply only to the extent in so far as these are not inconsistent with the provisions of the Act. This section only indicates that the Act is not a complete Code in itself. This, as already pointed out, is also well indicated by sub-section (2) of section 4 of the Code which lays down that all offences under any law other than the Indian Penal Code shall be investigated, enquired into, tried and otherwise dealt with according to the provisions contained in the Code of Criminal Procedure but subject to any enactment for the time being in force—the Act, undoubtedly, is such an enactment—regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. For this expression of opinion, I even seek support from the judgment of their Lordships of the Supreme Court in *Nilratan Sarcar* v. *Lakshmi Narayan Ram Niwas,* (3), wherein their Lordships, while dealing with section 19 of the Foreign Exchange Regulation Act (1947), which too specified that a Magistrate who considers that for purposes of any investigation or proceeding under that Act a general search or inspection was necessary, may issue a search warrant and the person to whom such warrant is directed may search or inspect in accordance therewith and seize any book or other document, and the provisions of the Code of Criminal Procedure, 1898 (now the new Code) shall so far as the same are applicable, apply to searches under that sub-section, observed as follows :—

> "The provisions of the Code relating to searches apply to search warrants issued under sub-section (3) of section 19 but only in so far as they be applicable. The provisions

(3) A.I.R. 1965 S.C. 1.

dealing with the circumstances in which, and the authorities by which, search warrants can be issued cannot apply, in view of the specific provision for the issue of a search warrant under the Act in sub-section (3) of section 19. It is, therefore, the provisions which deal with what is done after the issue of a search warrant which have been made applicable to searches under the Act and such provisions therefore would be the provisions relating to the mode of conducting searches. The object of the aforesaid provision in sub-section (3) of section 19 is to provide how the searches are to be conducted as it deals with the issue of search warrant in sub-section (3) of section 19. It is only with respect to the intervening stage, that is the stage of actual search that no specific provision is made in the Act. We are therefore, of opinion that the provisions relating to searches under the Code which apply to searches under sub-section (3) of section 19 are the provisions relating to the conduct of searches and that these provisions are sections 101, 102 and 103 of the Code."

I am, therefore, satisfied that merely because certain provisions of the Code would apply in certain situations for which nothing has been provided for in the Act does not mean that even those provisions of the Act which specifically provide for certain situations would also be ineffective and would not be adhered to. In the instant, case, none of the provisions of Chapter V of the Act has been complied with. As a matter of fact, these provisions have been followed, if one may say so, more in breach than in compliance. It is, thus, patent that neither the officer arresting, i.e., Head Constable Sumel Singh, P.W. 3, was entitled to arrest the appellant nor could he conduct the search in violation of the relevant provisions contained in this chapter nor has the article, i.e., the opium recovered, been seized or secured in the manner provided for in this chapter. In the face of these violations of the mandatory provisions of this chapter, the conviction of the petitioner can obviously not stand. It hardly need be emphasised that if the power of the special or authorised police officer to deal with the offences under the Act and, therefore, to investigate—which essentially includes the power to arrest the suspected offender—into the offences, be not held exclusive to the officers specified in sections 41 to 43 of the Act, there can be two investigations carried

on by two different agencies, one under the Act and the other by the ordinary police. It is easy to imagine the difficulties which such duplication of proceedings can lead to. There is nothing in the Act to co-ordinate the activities of the regular police with respect to cognizable offences under the Act and those of the specially empowered or authorised police officers.

(7) In order to be fair to Mr. Mann, the learned counsel for the appellant it may be stated here that at one stage he sought to urge that even the report Exhibit PO of the Chemical Examiner could not be treated as evidence in the case as it did not emanate from the Chemical Examiner as specified in rule 2(c) of the Narcotic Drugs and Psychotropic Substances Rules, 1985. This rule defines Chemical Examiner to mean the Chemical Examiner, Government Opium and Alkaloid Works, Neemuch or, as the case may be, Ghazipur. This submission of Mr. Mann, however, does not impress me at all. The report of the Chemical Examiner is concededly treated as evidence in view of the provisions of section 293 of the Code of Criminal Procedure. This section only contains a special rule of evidence and makes any document purporting to be a report under the hand of a Government Scientific Expert to whom this section applies. upon any matter or thing duly submitted to him for examination as admissible in evidence without calling such expert as a witness. The attraction of this rule to the facts of this case is not excluded by any provision of the Act. As has been discussed earlier in the light of sub-section (2) of section 4 of the Code, it is only the procedure provided for through an enactment, as against a rule, which can exclude the applicability of the various provisions of the Code of Criminal Procedure to an investigation enquiry or a trial. An enactment essentially means an Act passed by the Legislature and not a rule framed by the Government. All that, to my mind, appears to have been achieved by virtue of rule 2(c) referred to above, is that the Chemical Examiners specified therein may be taken to have been added to the list of Scientific Experts specified in sub-section (4) of this section. I, therefore repel this submission of Mr. Mann.

(8) For all the reasons recorded above, this appeal succeeds. While setting aside the impugned judgments of the lower Courts I acquit the appellant.

S. C. K.