

Guru Amarjit Singh v. State of Punjab and another  
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the landlord in possession of the land concerned. This apart, the landlord has got his remedies under the Punjab Tenancy Act, 1987, of filing a suit against the tenant for the recovery of the rent and for his ejection under sections 42 and 45 of that Act.

From the above, it would be clear that the landlord in the present case can get the rent enhanced up to one-third of the crop or the value thereof. The learned counsel, as already mentioned above, had conceded that if, in the present case, the rent could be enhanced to the limit prescribed in section 12(1) of Punjab Act No. 10 of 1953, then the impugned provisions were valid.

In view of what I have said about, this petition fails and is dismissed. In the circumstances of the case, however, I will leave the parties to bear their own costs in this Court.

S.S. Daulat J.

S. S. DULAT, J.—I agree.

B.R.T.

APPELLATE CRIMINAL

*Before D. Falshaw, C. J. and Inder Dev Dua, J.*

THE STATE.—Appellant

*versus*

AMAR SINGH.—Respondent.

**Criminal Appeal No. 697 of 1961.**

1962  
 May, 28th

*Punjab Excise Act (I of 1914)—Ss. 61, 71 and 75—Offence under S. 61—Whether can be taken cognizance of on the report of an Excise Officer—Code of Criminal Procedure (V of 1898)—S. 173 (1)—Separate report under—Whether necessary.*

*Held*, that under section 75 of the Punjab Excise Act, 1914, cognizance of an offence under section 61 of the Act can be taken by the magistrate, *inter alia*, on the report of an excise officer. Hence a report under section 71 made by a Police Officer who is invested with the powers of an excise officer falls within the purview of section 75 of the Act. No separate report under section 173(1) Code of Criminal Procedure is necessary.

State appeal against the order of Shri H. D. Loomba, Additional Sessions Judge, Hoshiarpur, dated the 15th April, 1961 reversing that of Shri K. D. Gupta, Magistrate 1st Class, Hoshiarpur, dated the 21st December, 1960 [convicting the respondent under section 61(1)(a) of the Punjab Excise Act and sentencing him to nine months R.I. and to pay a fine of Rs. 200 or in default of payment of fine to undergo further R.I. for four months] and acquitting the accused.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL AND K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL, for the Appellant.

S.L. GUPTA, ADVOCATE, for the Respondent.

#### JUDGMENT

DUA, J.—The State has preferred this appeal from the order of acquittal passed by the learned Additional Sessions Judge, Hoshiarpur, setting aside the conviction of Amar Singh by a Magistrate 1st Class, Hoshiarpur, under section 61(1)(c) of the Punjab Excise Act, 1914.

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The facts giving rise to this case are that on 14th August, 1960, Sardara Singh, Sub-Inspector organised a raiding party on receipt of information and he proceeded to village Sadhamajra from where Charan Singh and Ishar Singh also joined him. The party then raided the *haveli* of Amar Singh, (respondent in this Court) and found him working a still and distilling illicit liquor in his *kotha*. The trial Magistrate convicted him under section 61(1)(c) of the Punjab Excise Act and imposed a sentence of rigorous imprisonment for nine months and also a fine of Rs. 200 in default of payment of which he was ordered to undergo rigorous imprisonment for a further period of four months. On appeal the learned Additional Sessions Judge did not go into the merits of the appeal but allowed it on the ground that the Magistrate had no jurisdiction to try the case. The reason for holding the trial Magistrate to have acted without jurisdiction is that under section 75 of the Punjab Excise Act, no Magistrate can take cognizance of an offence punishable under section 61 except on his own knowledge or suspicion or on the

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complaint or report of an excise officer and that the report of an excise officer as contemplated by section 75 must be a report different from a report forwarded under section 173(1) of the Code of Criminal Procedure. Reliance for his view was placed by the learned Additional Sessions Judge on *A. P. Misra v. The State* (1), *Prem Chand Khetry v. The State* (2), *State v. Bhagwana* (3) and *Ghisia and others v. State* (4).

It is this view of law which calls for determination in the present case. As a matter of fact connected with this case are quite a number of other cases in which the Court below seems to have taken the same view and the decision of this case (Criminal Appeal No. 697-61) would cover all those cases.

In my view the question is very simple and raises no serious difficulty. The learned Additional Sessions Judge seems to me to have failed to consider the language of section 71 of the Punjab Excise Act in its proper perspective. This section is in the following terms :—

“71. If on an investigation by an excise officer, empowered under section 46, sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer, unless he submits the case for the orders of the Collector under section 80, shall submit a report (which shall for the purpose of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a police report) to a magistrate having jurisdiction to enquire into or try the case and empowered to take cognizance of offences on police reports.”

Under section 75 cognizance of an offence under section 61 of the Punjab Excise Act can be taken by the Magistrate *inter alia* on the report of an excise officer. It is common ground and is not disputed at the Bar that every police officer in the State is an excise

(1) A.I.R. 1958 Cal. 612.

(2) A.I.R. 1958 Cal. 213.

(3) A.I.R. 1959 Raj. 248.

(4) A.I.R. 1959 Raj. 266.

officer. Now if that be the position then it is not understood how a report made by a police officer who is also invested with the powers of an excise officer under section 71 can be considered not to fall within the purview of section 75. This precise point was raised and decided in favour of State by a Division Bench of the Punjab Chief Court as far back as 1900 in *Queen Empress v. Sundar Singh and others*, (5). The head note of this decision reads thus :—

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“Held, that a Magistrate can take cognizance of the offence of working an illicit still on the report or chalan of a Deputy Inspector of Police, who is an Excise Officer under Punjab Government notification No. 735½, dated 26th March, 1885, which notification under section 2(2) of the Excise Act of 1896 is still in force, the police chalan being under section 190(6) of the Code of Criminal Procedure a police report of facts constituting an offence.”

The court there relied on three earlier decisions in *Queen-Empress v. Chet Singh* (6), *Chatra v. Queen-Empress* (7), and *Dewa Singh v. Queen-Empress* (8). Recently in this Court also Dulat J. in *Mukhtiar Singh v. State* (Criminal Revision No. 1163 of 1961 decided on 25th January, 1962) repelled a similar contention raised on behalf of the accused petitioner there. On 7th May, 1962, again the same learned Judge in *Jagga Singh v. State* (Criminal Revision No. 1500 of 1961) upheld the conviction of the petitioner after repelling similar contention raised on behalf of the accused.

I may here dispose of the decided cases on which the learned Additional Sessions Judge appears to have placed reliance. *Prem Chand Khetry v. State*, (2), deals with the provisions of Opium Act and not with the Punjab Excise Act. It appears that the Act with which the Court was concerned in the reported case did not contain any provision similar to section 71 of

(5) 8 P.R. 1901.

(6) 22 P.R. 1900 Cr.

(7) 15 P.R. 1887 Cr.

(8) 4 P.R. 1893 Cr.

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the Punjab Excise Act, according to which the report by the investigating officer has to be treated a police report for the purposes of section 190 of the Code of Criminal Procedure. The Court in *A. P. Misra v. State* (1), was concerned with the Essential Commodities Act and that case is also distinguishable for the same reason. The Rajasthan case in *State v. Bhagwana* (3), dealt with the Rajasthan Excise Act and it appears that in that Act too there was no provision like section 71 of the Punjab Excise Act. This aspect has been made clear in *Ghisia and others, v. State* (4), in which later amendments in the relevant statutes of Rajasthan State have been noticed and it is observed that prior to those amendments the report of the Excise Inspector under the Excise Act and Opium Act did not amount to police report.

On behalf of the respondent an attempt has been made to show that since under section 75 of the Punjab Excise Act cognizance of an offence under section 71 can also be taken by Magistrate on his own knowledge or suspicion, it would create some amount of discrimination between the trials in cases initiated on the report of an excise officer and cases initiated on the Magistrate's own knowledge or suspicion. It is pointed out that in a case on a police report the trial would be covered by section 251-A, Criminal Procedure Code, and in the other cases it would be covered by section 252, Criminal Procedure Code, and the next following sections. In order to avoid this difference between the two contingencies it is argued that we should hold the police reports mentioned in section 75 to be different from the report contemplated under section 71. I am unable to sustain this contention. The language of section 71 is clear and unambiguous and I do not see why a strained construction should be placed on this section merely because on a police report the trial is to be held following the procedure specified in section 251-A and in other cases the procedure specified in other provisions of Chapter XXI of Criminal Procedure Code.

After devoting my earnest attention to the arguments addressed at the Bar I think the learned Additional Sessions Judge was wrong in holding that the

Magistrate had no jurisdiction to hold the trial on the basis of the report under section 71 of the Punjab Excise Act. The impugned order is thus set aside and the case is sent back to the lower appellate Court to decide it on the merits in accordance with law and in the light of the observations made above.

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D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

K.S.K.

## APPELLATE CIVIL

*Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.*ARYA PRITINIDHI SABHA, PUNJAB,—*Appellant.**versus*DEV RAJ AND ANOTHER,—*Respondents.*

Regular Second Appeal No, 183 of 1959.

*Punjab Courts Act (VI of 1918)—Section 24—Plaint presented to the District Court—Whether valid—Date of institution of suit for purposes of limitation—Whether the date on which plaint presented to the District Court or the date on which it was received by the trial Court—Will—Revocation of—Whether can be presumed from the fact that it is not forthcoming—Evidence Act (I of 1872)—Sections 63 and 65—Original will not forthcoming—Secondary evidence—Whether can be given—Registration Act (XVI of 1908)—Section 57(5)—Certified copy of a registered will—Whether proves the execution of the original will.*

1962

June, 1st

*Held*, that according to section 24 of the Punjab Courts Act, 1918, the Court of the District Judge is the principal Court of Civil jurisdiction in the district and is competent to try all suits of any value. If a plaint is presented to that Court, the suit must be deemed to have been filed in the Court of proper jurisdiction for purposes of limitation. The rule in section 15 of the Code of Civil Procedure that every suit should be instituted in the Court of the lowest grade competent to try it is merely intended for the protection of the Courts of the higher grade, but it does not otherwise affect the jurisdiction of Courts and the filing of