Courts for the purposes of sections 195(1)(b), 476 and 479-A of the Old Code. So, in view of this authoritative pronouncement of the Full Bench, the Appellate Authority was a Civil Court as defined in sub-section (3) of section 195. In view of this weighty pronouncement in clearest terms by the Full Bench, the Court below had fallen into an error in holding that the Appellate Authority was not a Court in view of the definition provided by sub-section 195(1)(b). There is no change in section 195(1)(b) in the New Code. The change in sub-sections (2) and (3), does not in any way affect the merits of this case. Since the Appellate Authority is a Civil Court, so it will squarely fall within the meaning of word "Court" as given in sub-section (3) of section 195. The changes in section 195 do not in any way affect the decision of the Full Bench in so far as it has held that the Rent Controller and the Appellate Authority are Civil Courts as envisaged by section 195(1)(b). The Appellate Authority was a Court. So, the application filed by the appellant before the Appellate Authority in this case is clearly maintainable. I set aside the order of the learned Appellate Authority and send back the case to him to decide the application under section 340, Criminal Procedure Code, afresh in accordance with law and in the light of the observations made in this judgment.

(7) Parties have been directed through their counsel to appear before the Appellate Authority, Barnala, on 22nd May, 1979.

N.K.S.

Before Kulwant Singh Tiwana, J.

GURDIAL SINGH—*Petitioner.*

Versus

KARTAR SINGH ETC.—*Respondents.*

Criminal Miscellaneous No. 494-M of 1979

May 10, 1979

Code of Criminal Procedure (II of 1974) — Section 398 — Term "further enquiry" — Meaning and scope of — Order for further enquiry — Whether wipes off evidence already recorded.

Held, that the term "further enquiry" as used in section 398 of the Code of Criminal Procedure, 1973 has come to acquire a technical meaning. It does not mean 'fresh preliminary enquiry'. In revisions, orders are set aside if those are manifestly unjust or patently wrong. By setting aside the order in exercise of the revisional jurisdiction under section 398 of the Code, the superior Court exhibits its disapproval of the manner in which the inferior Court has approached the evidence in appraising it. The case is sent back to the inferior Court again to re-assess that evidence which exists on the record in view of the observation of the superior Court. A Magistrate, when directed to hold further enquiry under section 398 of the Code by a superior Court is not bound to hold further enquiry under section 202 of the Code. The matter goes back to that Court for reconsideration. He can hold an enquiry or get an enquiry held under section 202 of the Code. If he considers proper, he can issue process under section 204 of the Code without any enquiry at all. In holding further enquiry, the Magistrate will be at liberty to conduct enquiry in his own way, provided he conforms to the provisions of the Code. A Magistrate cannot ask the complainant to bring fresh evidence every time the case is remanded.

(Para 2)

Held, that on ordering a further enquiry under section 398 of the Code, the entire evidence already recorded is not wiped off. When 'further enquiry' is ordered in a case by the superior Court. the Magistrate has to reappraise that very evidence which was examined prior to the passing of that order which was set aside in revision or any other evidence cited in the complaint but not examined earlier, but examined after the remand. If the inferior Court does not reassess the evidence already examined and dismisses the complaint again on the ground that no fresh evidence is examined, then it violates the directions of the superior Court.

(Para 3)

Petition under Section 482 Cr. P.C. praying that the order of the Magistrate be quashed and he may be directed to frame a charge against the respondents and pass an order on merits.

Harbans Singh, Advocate, *for the Petitioner.*

Mr. Pawan Kumar Bansal, Advocate, *for the Respondent.*

JUDGMENT

K. S. Tiwana, J.

(1) The facts leading to this petition under section 482 of the Code of Criminal Procedure, 1973, are that Gurdial Singh, petitioner had filed a complaint against the respondents in the court of the

Judicial Magistrate, Ist Class, Barnala, alleging theft of his crops by them. The Judicial Magistrate, Ist Class, after enquiry dismissed the complaint. Gurdial Singh took the matter in revision and the learned Additional Sessions Judge, Barnala,—*vide* his order dated 26th of May, 1978, set aside the order of dismissal of the complaint and remanded the case back to the subordinate court for further enquiry. The petitioner tendered a report of the Roznamcha before the Magistrate and closed his evidence. The learned Magistrate again dismissed the complaint without discussing the evidence. The observations of the learned Magistrate are:—

> "As a matter of fact, the complainant should have examined all the witnesses examined by him before the discharge order passed by my learned predecessor. The non examination of the witnesses and tendering in evidence the report of Roznamcha Exhibit P.F. cannot in any manner advance the case of the complainant on the analogy that the evidence on record cannot be looked into after revision having been allowed and further enquiry ordered. The complainant, therefore, was required to examine all the witnesses in order to justify his case to frame a charge. This course having not been adopted by the complainant obliged this court not to look into the evidence already recorded prior to the filing of revision petition. In that view of the matter my views stand reinforced by referring to the ratio laid down in *Gian Dass etc.* v. *Des Raj Dass etc.* (1).

The learned Additional Sessions Judge placing reliance on 1978 P.L.R. 518, dismissed the revision petition on the same grounds on which the Magistrate had passed the orders. These orders are sought to be quashed in these proceedings.

(2) The scope of further enquiry under section 398 of the Code of Criminal Procedure, 1973, has been completely misunderstood by both the subordinate courts. The term 'further enquiry' as used in section 436 in the Code of Criminal Procedure, 1898 and now in section 398 of the Code of Criminal Procedure, 1973, has come to acquire a technical meaning. It does not mean 'fresh preliminary enquiry', as it seems to have been understood by the Judicial

(1) 1978 P.L.R. 518.

Magistrate, Ist Class, Barnala, and the Additional Sessions Judge, Barnala. In revisions, orders are set aside if those are manifestly unjust or patently wrong. By setting aside the order in exercise of the revisional jurisdiction under section 398 of the Code, the superior Court exhibits its disapproval of the manner in which the inferior Court has approached the evidence in appraising it. The case is sent back to the inferior court again to re-assess that evidence, which exists on the record, in view of the observations of the superior Court. A Magistrate, when directed to hold further enquiry under section 398 of the Code by a superior Court is not bound to hold further enquiry under section 202 of the Code. The matter goes back to that court for reconsideration. He can hold an enquiry or get an enquiry held under section 202 of the Code. If he considers proper, he can issue process under section 204 of the Code without any enquiry at all. The guidelines defining the scope of 'further enquiry' have been given in *Baijnath Sahai* v. *Babu Lal and others* (2) as under :—

> "The order by a superior Court to an inferior Court to hold a further enquiry into a complaint which has been dismissed under S. 203, Code of Criminal Procedure, has acquired what may be called a technical meaning, it means a reconsideration of the complaint which has been dismissed. The nature of the reconsideration will depend on the circumstances of each case. In a case where the complaint has been summarily dismissed under S. 203, Code of Criminal Procedure, without an enquiry the direction of a further enquiry may well mean that a judicial enquiry should be held before the complaint is dismissed. Where however, a judicial enquiry was held and then the complaint was dismissed under S. 203, and the superior Court held that the order of dismissal was wrong and that the accused persons should be put on trial the direction for a further enquiry can only be complied with by putting the accused persons on trial. Otherwise, the result may be an absurd and impossible position. Suppose an order of dismissal is passed after a judicial enquiry, and the superior Court directs a further enquiry, the Sub-Divisional Magistrate again holds a second judicial enquiry and again dismisses the complaint under S. 203, again the Sessions Judge directs a further enquiry and

(2) 1957 Cr. L.J. 290.

> the Sub-Divisional Magistrate holds a third judicial enquiry. If the process goes on in this way, the result will be an impasse. Obviously, that cannot be the meaning of a further enquiry directed by a superior Court."

In holding further enquiry, the Magistrate will be at liberty to conduct enquiry in his own way, provided he conforms to the provisions of the Code. For example, he can examine persons and take further evidence or other steps for the purpose of ascertaining whether or not process should be issued or a charge should be framed as permitted by law and as he deems to be admissible, or he may determine the matter upon reconsideration of the same material as was available when the earlier order of dismissal or discharge was passed in the light of the observations of the superior Court and at the conclusion of the enquiry the Magistrate will decide according to law, whether or not the process shall issue.

A Magistrate cannot ask the complainant to bring fresh evidence every time the case is remanded. If this is accepted in principle, it will be not only very risky but hazardous for the accused. This would mean giving the complainant a chance to improve upon his evidence and the case against the accused. The remand of the case for further enquiry means decision of the case on the existing material and not fresh examination of the witnesses, who had been examined earlier. 1978 P.L.R. 518 (supra) is a case decided on its own merits. In this case, both the counsel had agreed that the order was illegal. The concession made by both the counsel was in these terms:—

> "According to the learned counsel, the order of the Additional Chief Judicial Magistrate is *prima-facie* illegal and liable to be set aside. Mr Puran Chand, learned counsel for the respondents has fairly conceded that the learned Additional Chief Judicial Magistrate should have passed the order after holding further enquiry and that his order summoning the petitioners on the basis of the evidence recorded by the Magistrate prior to the dismissal of the complaint was illegal."

This case is not binding for a precedent, as it was based on the statement of the counsel for the parties, who agreed to get the order set aside, describing the order under question as illegal.

(3) The learned counsel for the respondent has cited *Karuppiah Ambalam* v. *Andiappan Servai* (3), in which in a case exclusively triable by a Court of Session, the accused was discharged under section 209 of the Code of Criminal Procedure, 1898. The Additional Sessions Judge had set aside the order of discharge and directed the Magistrate to charge the accused under section 477, Indian Penal Code. While setting aside the order of the Additional Sessions Judge the High Court observed:—

> "Reading sections 436 and 437 together, it is seen that only two courses are open to the Sessions Judge, namely, either to straightaway order the committal of the accused or direct the Magistrate to enquire into the matter afresh, the result of adopting the latter course being that all the previous proceedings and the examination of witnesses and the other evidence let in would be wiped off the record."

On this basis, the learned counsel for the respondent argued that the entire evidence recorded prior to the setting aside of the order of discharge by the Additional Sessions Judge would be wiped off. With respect to the learned Judge deciding this Madras case, I cannot agree with this proposition as stated in this case. The ratio of this case goes against the Full Bench judgment of the Madras High Court reported in *Queen-Empress* v. *Balasinnatambi and others* (4). Even otherwise, it cannot be accepted that on ordering a further enquiry under section 398, Criminal Procedure Code, the entire evidence already recorded is wiped off. This is the settled view of almost all the High Courts in the country that when 'further enquiry' is ordered in the case by the superior Court, the Magistrate has to reappraise that very evidence, which was examined prior to the passing of the order, which was set aside in revision or any other evidence cited in the complaint but not examined earlier, but examined after the remand. If the inferior Court does not re-assess the evidence already examined and dismisses the complaint again on the ground that no fresh evidence is examined, then it violates the directions of the superior Court, which all the time stare him in the face.

(4) As a result of what has been discussed above, the Judicial Magistrate, Ist Class, Barnala, went wrong in dismissing the complaint on the ground noticed above. Similarly, the learned Additional Sessions Judge was also in error to insist on the recording of

(3) AIR 1950 Madras 462.

(4) I.L.R. 14 Madras 334.

the fresh evidence. The impugned orders being against the express provisions of law, cannot be sustained and are hereby quashed. The case should go back to the same Magistrate who decided the case to decide it in accordance with the directions of further enquiry given by the learned Additional Sessions Judge, Barnala, in his order dated 11th of April, 1977 and the observations made in this order.

(5) The parties through their counsel have been directed to put in appearance before that court on May 25, 1979.

N.K.S.

Before S. S. Sidhu and Harbans Lal, JJ.

STATE OF HARYANA,—*Petitioner.*

Versus

JAGTAR SINGH,—*Respondent.*

Criminal Appeal No. 602 of 1978

May 15, 1979.

Prevention of Food Adulteration Act (XXXVII of 1954) — Sections 13(2) & (5) and 16(1)(a)(i) — Prevention of Food Adulteration Rules 1955 — Rules 7, 9 (j), 17 and 18 — Rules 17 and 18 requiring the sample and impression of the seal to be sent to Public Analyst in separate packets — Whether mandatory — Proof of separate despatch — Report of the Analyst disclosing separate receipt — Such report without any other evidence — Whether sufficient proof of separate despatch — Rule 9(j) — Whether independent of section 13(2) — Non-supply of a copy of the report of the Public Analyst to the accused or delay in such supply — Prejudice to the accused — Extent of.

Held, that the intent and purpose of the specific direction in rule 18 of the Prevention of Food Adulteration Rules, 1955, that the impression of the seal is to be sent separately from the sealed packet containing the sample as envisaged in rule 17, is to eliminate the possibility of tampering with the sample in transit before the receipt of the same by the Public Analyst for the purpose of analysis. If the sample and the impression of the seal are sent to the Public Analyst in the same packet, possibility cannot be ruled out that the packet may be re-opened and after changing the sample new packet may be sealed with a new seal and the impression of the seal may