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concerned an opportunity of being heard. Thus, even where there is no consolidation and the land-owner has failed to exercise his right of selection and the selection is made by the Collector himself, the Collector is bound to give an opportunity to the land-owner to be heard before he makes such a selection. *Afortiori*, therefore, if such a selection is to be made after the consolidation, the rules of natural justice demand that the same procedure should be followed. As already indicated, this is also obvious from the fact that while detailed procedure is prescribed in sub-section (1) of section 24-A, the procedure is not detailed in sub-section (2) of section 24-A, and obviously the intention of the legislature is that the same procedure, as is prescribed in sub-section (1), should also be followed in a case covered by sub-section (2). There being no suggestion on behalf of the department that any notice was given, the carving out of a block by the authorities concerned out of the consolidation block or blocks allotted to the petitioner after consolidation is *ultra vires*.

In view of the above, therefore, this petition is accepted, the rule is made absolute and the impugned order is quashed. It would be open to the authorities concerned to follow the procedure laid down in section 24-A and then carve out a block of the surplus area. The petitioner will have his costs which are assessed at Rs. 100.

R.S.

REVISIONAL CRIMINAL

Before Shamsher Bahadur, J.

OM PARKASH AND OTHERS,—*Petitioners.*

versus

THE STATE,—*Respondent.*

Criminal Revision No: 1284 of 1963:

1963

Nov., 12th.

Code of Criminal Procedure (Act V of 1898)—S. 173—Police report submitted under—Whether final—Further investigation by police and report—Whether cannot be

made—Such supplementary report—Whether cannot be taken note of—S. 337—Stage at which approver can be tendered pardon indicated—S.207-A(6)— Scope of.

Held, that there is nothing in the language of section 173 of the Code of Criminal Procedure, 1898, which may lead to the conclusion that the investigation on which the Magistrate takes cognizance is full and complete and that no further investigation can be held by the police nor supplement any report submitted. Indeed, the number of investigations into a crime that can be made by the police is not limited by law and when one investigation has been completed another can be made.

Held, that the provisions of section 337 of the Code leave no manner of doubt that an accomplice may be tendered pardon at any time of the enquiry, investigation or the trial of the offence and it is imperative that his statement is to be recorded and if believed in a commitment must follow. The provisions of section 173 are to be read in consonance with and not in derogation of the requirements of section 337 and it is obvious that a harmonious construction is to be given to the two provisions of the Code. Section 173 cannot, therefore, be regarded as exhaustive.

Held, that sub-section (6) of section 207-A of the Code cannot be taken to mean that the Magistrate has to restrict himself at the time of enquiry to material and documents which form the subject matter of the report under section 173. A supplementary report can be submitted at any stage and an enquiry can be made into this additional material as well. The prosecution cannot be cribbed, cabined and confined within the four corners of the report under section 173 when the legislature has placed no restriction on the reception of subsequent material before the conclusion of the enquiry or trial.

Petition under Section 439, Cr. P. C., for revision of the order of Shri Murari Lal Puri, Sessions Judge, Patiala, dated 4th October, 1963, reversing that of Shri B. L. Mago, Magistrate, 1st Class, Patiala 'A', dated 19th September, 1963, accepting the petition and setting aside the order of the Magistrate 1st Class, Patiala.

B. R. AGGARWAL AND SANTOSH KUMAR AGGARWAL, ADVOCATES, *for the Petitioner.*

D. S. KANG, ADVOCATE, for the ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—This judgment will dispose of Criminal Revision No. 1284 of 1963 directed against the order of the learned Sessions Judge, Patiala, declining to make a reference to this Court for revensing the order of the Magistrate summoning Kuldip Singh approver after having recorded the entire prosecution evidence and Criminal Miscellaneous Application No. 1131 of 1963 made under section 561-A of the Code of Criminal Procedure for quashing the criminal proceedings before the Committing Magistrate. In both petitions, the accused Om Parkash, Yash Pal, Brij Kishore and Roshan Lal are the petitioners.

The petitioners have been prosecuted under sections 366/376 of the Indian Penal Code. Kuldip Singh, another accused person had been absconding and was arrested on 25th of August, 1963. Although the name of Kuldip Singh had been included in the police report under section 173 of the Code of Criminal Procedure, it was not mentioned that he was to be made an approver. It is common ground that the case for the prosecution was closed on 29th of August, 1963 when the statements of the petitioners were recorded under secion 342 of the Code of Criminal Procedure. The arguments were heard and the case was fixed for pronouncement of orders on 31st of August, 1963. What happened on 31st of August, 1963, has been made the subject-matter of the petition for revision. On that day, an application was filed on behalf of the prosecution that Kuldip Singh who was

to be tendered pardon by the District Magistrate and this was actually done on 2nd of September, 1963, was prepared to make a statement as an approver. His statement under section 164 of the Code of Criminal Procedure was recorded by a Magistrate on 3rd of September, 1963. As a result of the subsequent developments, the police submitted a supplementary report under section 173 of the Code and it was prayed that Kuldip Singh's statement should be recorded under sub-section (2) of section 337 of the Code. The learned Magistrate acceded to the request made by the police and directed that Kuldip Singh should be summoned as an approver and his statement under section 337(2) of the Code recorded. From this order passed by the Magistrate on 19th of September, 1963, a petition for revision was preferred to the Sessions Judge, Patiala, who having declinde to make a recommendation to the High Court for its interference by his order of 24th of October, 1963, a petition for revision (Cr. R. 1284 of 1963) has been preferred.

Mr. Babu Ram Aggarwal, the learned counsel for the petitioners, contends that section 173 of the Code envisages only one report which is the essential basis for investigation. It is submitted by him that the Magistrate having taken cognizance on a report under section 173 is precluded from taking note of any supplementary report. Sub-section (1) of section 173 provides that:—

> "Every investigation under this Chapter shall be completed withou unnecessary delay, and, as soon as it is completed, the officer-in-charge of the police station shall—
>
> (a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report setting forth the

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names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case. . . ., and

(b) * * * * *"

There is nothing in the language of this section to support the contention of the learned counsel for the petitioners that the investigation on which a Magistrate takes cognizance is full and complete. Indeed, there is authority for the proposition that the number of investigations into a crime that can be made by the police is not limited by law and that when one has been completed another can be made. In a Division Bench of the Madras High Court of Phillips and Krishnan JJ. in *Divakar Singh* v. *A. Ramamurthi Naidu* (1), it was observed thus:—

> "Another contention is put forward that when a report of investigation has been sent in under section 173 of the Criminal Procedure Code the police has no further powers of investigation, but this argument may be briefly met by the remark that the number of investigations into a crime is not limited by law and that when one has been completed another may be begun on further information received."

To the same effect is the judgment of the Lahore High Court in *Mohinder Singh* v. *Emperor* (2), in which Coldstream and Jai Lal JJ. held that even if it is assumed that an enquiry had commenced there was nothing in law against holding a fresh investigation, and the procedure adopted was not in any case illegal.

(1) 19 Cr. L J. 991.
(2) 33 Cr. L.J. 97.

Indeed, if we advert to the provisions of section 337 of the Code of Criminal Procedure, it becomes clear that the tender of pardon to an accomplice may be given at any time during the course of an enquiry or trial. Sub-section (1) of section 337 says that:—

> "In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to seven years....any Magistrate of the first class may, at any stage of the investigation or enquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure."

Sub-section (2) of section 337 further provides that:—

> "Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any."

Sub-section (2A) further says that:—

> "In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court, as the case may be."

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The provisions of section 337 thus leave no manner of doubt that an accomplice may be tendered pardon at any time of the enquiry, investigation or the trial of the offence and it is imperative that his statement is to be recorded and if believed in, a commitment must follow. The provisions of section 173 are to be read in consonance with and not in derogation of the requirements of section 337 and it is obvious that a harmonious construction is to be given to the two provisions of the Code. Section 173 cannot, therefore, be regarded as exhaustive in the sense in which Mr. Aggarwal has invited this Court to hold.

My attention has next been invited to section 207-A of the Code in which the detailed procedure of the enquiry into cases triable by a Court of Session is set out. For one thing, it is clear that this section deals with an enquiry to which reference has been made so explicity in section 337. Now, all that subsection (6) of section 207-A, on which reliance has been placed by Mr. Aggarwal, says is that:—

> "When the evidence has been taken and the Magistrate has considered all the documents referred to in section 173 and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him....such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly."

This sub-section cannot be taken to mean that the Magistrate has to restrict himself at the time of enquiry to the material and documents which form the subject-matter of the report under section 173. A supplementary report can be submitted at any stage and an enquiry can be made into this additional material. The only authority on which Mr. Babu Ram could lay his hands for supporting his proposition is *Kirpa and another* v. *The State* (3) a decision of Shri Chowdhry as Judicial Commissioner of Himachal Pradesh. What was discountenanced by the Judicial Commissioner in this case was the practice of submitting "a number of incomplete chalans before a complete chalan is forwarded to the Magistrate concerned and the Magistrate commencing the enquiry or trial on foot of the incomplete chalans". This, in my opinion, does not advance the proposition that the prosecution must be cribbed, cabined and confined within the four corners of the report under section 173. There is no restriction placed by the Legislature on the reception of subsequent material before the conclusion of the enquiry or trial and in whatever perspective this matter is looked at the order passed by the Magistrate on 19th of September, 1963, has to be upheld. The petition for revision is, therefore, dismissed.

The application under section 561-A of the Code of Criminal Procedure is without any merit. When the evidence of the approver is yet to be recorded, it cannot conceivably be urged that a decision for quashingg the proceedings should be given on the material so far existing on the record. The record is not complete inasmuch as the statement of the approver is yet to be recorded. The Magistrate after recording the evidence of the approver has to be satisfied that there are reasonable grounds for believing

(3) A.I.R. 1952 H.P. 68.

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that the accused is guilty of the offence before committing him for trial to the Court of Session. The application under section 561-A of the Code of Criminal Procedure is clearly misconceived and has to be dismissed.

In the result, both petitions would stand dismissed. The records should be forwarded to the committing Magistrate forthwith.

R.S.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J. and S. S. Dulat, J.

M/s. UTTAR BHARAT EXCHANGE LTD.,—*Applicants.*

versus

THE COMMISSIONER OF INCOME-TAX, DELHI,—*Respondent.*

Income Tax Reference No: 1 of 1959:

1963

Nov., 13th.

Income-tax Act (XI of 1922)—S. 66(1)—Assessee taking premises on lease for his business—Lease for two years with option to renew—Assessee constructing structures on the premises in terms of the lease—Amount spent—Whether capital expenditure.

Held, that money spent on structures by an assessee on the leased premises under the terms of the lease is capital expenditure and not a revenue expenditure. The fact that the lease is initially for a short period of two years, though renewable at the option of the assessee and the assessee might enjoy the benefit for a limited period does not alter the nature of the expenditure. The structures form an enduring asset which would be enjoyed by the landlord or some subsequent tenant if the lease was not renewed at the end of the initial period.

Reference under section 66 (1) of the Indian Income-Tax Act, 1922 by the Income-Tax Appellate Tribunal, Bombay,