case, there is no argument that is available to the applicant firm. The question then is does this section apply to the present case? No doubt in express terms there is no notification of either the previous Punjab State or the present Haryana State which applies section 50 to the town of Rewari but the underlying principles as a provision like section 50 of the Transfer of Property Act has always been applied in Punjab on considerations of justice, equity and good conscience. A right has never been permitted to have been defeated because of the technical non-application of a particular provision for want of issue of a notification in that behalf. No doubt when on such consideration provisions of a statute like Transfer of Property Act have been applied, the technicalities have been ignored, and it is the substance which has been applied; not the technicalities of the statute but the principle underlying the provision has been applied. In my opinion, the authorities below were right in applying the principle underlying section 50 of Transfer of Property Act to the present case. The tenant held the property from Piare Lal the previous owner and not having knowledge of the transfer of the demised premises from him to the applicant firm till November, 1962, he made payment of the arrears of rent down to November, 1962, to the previous owner. There is nothing on the record to show that he did not act in good faith. The finding of the authorities below, one of fact, is rather to the contrary that he acted in good faith. So on the principle underlying section 50 of the Transfer of Property Act, the tenant has complied with the terms of clause (i) of sub-section (2) of section 13 of East Punjab Act No. III of 1949 and the argument on the side of the applicant firm cannot be accepted.

(6) This application is, therefore, dismissed with costs. counsel's fee being Rs. 60.

R.N.M.

REVISIONAL CRIMINAL.

Before Shamsher Bahadur and S. S. Sandhawalia, JJ.

JANAK RAJ,—*Petitioner.*

versus

DHARAM SINGH,—*Respondent.*

Criminal Revision No. 241 of 1967.

October 15, 1968.

Code of Criminal Procedure (Act V of 1898)—Section 155(2)—Case registered for Commission of a Cognizable Offence—During its investigation,

some non-cognizable Offences also investigated—Complaint filed for non-Cognizable Offences only—Section 155(2)—Whether violated—Cognizance of the complaint taken by the Magistrate—Whether vitiated.

Delhi Police Establishment Act (XXV of 1946)—Sections 3 and 5—Customs Act (L II of 1962)—Sections 132 to 136—Special Police Establishment—Whether entitled to investigate offences under the Customs Act.

Held, that when a case is registered for the Commission of a Cognizable offence and during the course of the investigation of this offence, certain non-Cognizable Offences are also investigated, the Police authorities are not at all debarred from investigating the non-Cognizable Offences also. Such an investigation is within the ambit of law and there is no violation of Section 155(2) of the Code of Criminal Procedure. A complaint filed on the basis of this investigation and the Cognizance taken by the Magistrate is not vitiated.

Held, that the statutory power to investigate granted by Section 5(2) of the Code can only be excluded by the clear or categorical terms of a special law or at least by a necessary implication flowing from the provisions thereof. On construing, the provision of Customs Act, 1962, as a whole there is not a whisper in it which would suggest an exclusion of the power of an Officer-in-Charge of a Police Station to investigate into the offences covered by the provision of Customs Act. If in pursuance of Sections 3 and 5 of Delhi Special Police Establishment Act, 1946, a valid notification is issued empowering the Delhi Special Police Establishment to investigate into offences under Section 132 to 136 of the Customs Act, it is clear that in compliance with all these provisions of law, the Special Police Establishment is entitled to investigate into offences under the Customs Act.

Case referred by the Hon'ble Mr. Justice Jindra Lal, to a larger Bench on 29th November, 1967, for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur, and the Hon'ble Mr. Justice S. S. Sandhawalia on 15th October, 1968.

Petition under Section 435/439 Criminal Procedure Code for revision of the order of Shri J. S. Chatha, Additional Sessions Judge, Amritsar, dated the 10th March, 1967.

BHAGIRATH DASS, SENIOR ADVOCATE, K. K. LUTHRA, AND B. K. JHINJAN, ADVOCATES, WITH HIM, for the Petitioner.

M. L. NANDA, ADVOCATE, for the Respondent.

JUDGMENT

SANDHAWALIA, J.—This criminal revision has been placed before us in pursuance of the referring order of Jindra Lal, J., wherein the learned Single Judge has noticed the conflict of judicial opinion in this Court pertaining to the effect on a criminal trial, where there has

been a non-compliance with the provisions of sectoin 155(2) of the Criminal Procedure Code during the course of the investigation of the offence.

(2) The facts which give rise to this criminal revision may now be surveyed. On the 3rd of December, 1963, a case under section 420/120-B, Indian Penal Code, was registered against the petitioner Janak Raj and five others. After the investigation a challan under the above-said sections against the petitioner was put in but by his order dated the 12th of February, 1965, the learned Special Magistrate held that no offence under section 420, read with section 120-B, Indian Penal Code, was made out against the petitioner and his co-accused. However, by the same order the learned Magistrate observed as follows:—

> "As provided under section 137 of the Customs Act as well as under the Imports and Exports Control Amendment Act, no Court can take cognizance of any offence under section 132 or section 136 of the Customs Act until there is a previous sanction from the competent authority prescribed under the Act. I cannot take cognizance of these offences without proper sanction of the competent authority."

In view of the above order the Prosecution Agency sought and secured the sanction of the Collector of Customs under section 137 of the Customs Act, 1962, and thereafter filed separate complaints against the petitioner and his other co-accused on the 8th of September, 1965. This complaint is moved under sections 132 and 136 of the Customs Act by Shri Dharam Singh, Superintendent of Police, of the Delhi Special Police Establishment. The petitioner then moved an application before the learned trial Magistrate praying *inter alia* that as the complaint was based on an investigation which was illegal due to non-compliance with section 155(2), Criminal Procedure Code, the same could not proceed and should be dismissed. By his order dated the 11th of October, 1966, Shri R. K. Taneja, Judicial Magistrate, 1st Class, Amritsar, dismissed the application above-said moved on behalf of the petitioner. Against the said order a revision was moved in the Court of Session at Amritsar but the same was also dismissed by the order of Shri J. S. Chatha, Additional Sessions Judge, Amritsar, dated the 10th of March, 1967, The petitioner has now come up in revision to this Court.

(3) Mr. Bhagirath Das, the learned counsel for the petitioner has raised a number of contentions in support of this revision petition. It was first strenuously contended that the offences under sections 132 and 136 of the Customs Act are admittedly non-cognizance offences. As such the investigation of the same could only be proceeded with after securing the order of a Magistrate under the provisions of section 155(2) of the Code of Criminal Procedure Code. Admittedly in the present case on such order under the provisions above-mentioned has been secured from the competent authority. The contention of Mr. Bhagirath Das, therefore, is that a clear violation of the provisions of section 155(2), Criminal Procedure Code would make the investigation conducted by the police agency against law and thus wholly illegal. Arguing therefrom he contends that a complaint filed on the basis of such an investigation; a cognizance taken by the Magistrate; and the trial proceeding pursuant to an illegal investigation would itself be vitiated. It is, therefore, contended that the complaint is incompetent and cannot proceed. The learned counsel contends that it is particularly so because the petitioner has at the very inception of the trial taken objection to the legality thereof. Particular reliance was placed on *Lal Chand and others* v. *The State* (1). In that case a police officer had started investigation of non-cognizable cases for offences under sections 467, 468 and 471 of the Indian Penal Code and section 82 of the Indian Registration Act without the sanction or order of the Magistrate as required by sub-section (2) of section 151, Criminal Procedure Code, and the accused persons had been convicted under section 467, Indian Penal Code. Shamsher Bahadur, J., after a discussion of the case law had observed therein as follows:—

> "In my opinion, the contention of the learned counsel is well-founded and the entire trial suffers from an inherent blemish the investigation having been conducted by the Sub-Inspector without statutory authority, and indeed in contravention of it."

This authority was followed in another Single Bench judgment of this Court reported as *Om Parkash* v. *The State* (2). In both these judgments, reliance has been placed on *Podan and others* v. *State of*

(1) 1964 P.L.R. 68.
(2) 1964 P.L.R. 580.

Kerala (3); *Labhshankar Keshavji and another* v. *The State* (4), and *Abdul Halim and another* v. *State of West Bengal* (1), Mr. Bhagirath Das has also placed reliance on the authorities above-said and has particularly commended the ratio of the decision of the two Punjab cases referred to above.

(4) Mr. M. L. Nanda the learned counsel appearing on behalf of the State has in reply particularly pointed out that in the present case the first information report originally lodged disclosed cognizable offences and the police were thus authorised to investigate the same. In such an investigation they were not debarred from investigating into any non-cognizable offences also which may have been disclosed during the course of such an investigation. Reliance was placed by Mr. Nanda particularly on a Single Bench decision of this Court reported as *Joginder Singh* v. *The State* (6). Therein R. P. Khosla, J., has categorically observed as follows:—

> "In cases registered for the offence or offences of cognizable nature or mixed cognizable and non-cognizable in character and resulting in the police report for a non-cognizable offence, no such order would be required because it would be wholly unnecessary for the police had already investigated into the matter and the report filed was the result of that investigation. Not only such an order would be superfluous but it would lead to absurdity, for it would entail going over the ground already covered."

R. P. Khosla, J., had placed reliance in the above judgment on *Ram Krishan Dalmia* v. *State* (7), *Parshottam Jethanand* v. *The State* (8), *Public Prosecutor* v. *Ratnavelu Chetty* (9); and *Emperor* v. *Shivaswami Guruswami* (10).

(5) It is this conflict of judicial opinion as expressed in *Lal Chand* v. *The State* (1) and *Om Parkash* v. *The State* (2), on one side and *Joginder Singh* v. *The State* (6), on the other which has necessitated the reference of the case to a larger Bench.

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(3) (1962) 1 Cr. L.J. 339.
(4) A.I.R. 1955 Saurashtra 42.
(5) A.I.R. 1961 Cal. 257.
(6) 1966 P.L.R. 432.
(7) A.I.R. 1958 Pb. 172.
(8) A.I.R. 1952 Kutch 54.
(9) A.I.R. 1926 Mad. 865.
(10) A.I.R. 1957 Bom. 440.

(6) We have for ourselves closely examined the above-said decision of this Court as well as the authorities relied upon in the said judgments. However, in view of the judgment of the Supreme Court in *Pravin Chandra Mody* v. *State of Andhra Pradesh* (11), we are of the opinion that it would now be an exercise in futility to examine in detail the reasoning and the numerous authorities cited at the bar in support of the points of view canvassed by either side. The controversy is now set at rest by the authoritative pronouncement in the above-said case where the point was directly in issue and the learned Judges of the Supreme Court have observed as follows:—

> "Where the information discloses a cognizable as well as a non-cognizable offence the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can include that non-cognizable offence in the charge-sheet which he presents for a cognizable offence. We entirely agree. Both the offences if cognizable could be investigated together under Chapter XIV of the Code and also if one of them was a non-cognizable offence."

In the said case their Lordships of the Supreme Court have accorded particular approval to the earlier enunciation of the law on the subject by Falshaw, J., as he then was, in *Ram Krishna Dalmia* v. *The State* (7). There the learned Judge had after an exhaustive discussion of the case law observed as follows:—

> "In the circumstances I am of the opinion that a Police Officer who is empowered to investiagte a cognizable offence must be deemed to be authorised to investigate and mention in his report any incidental offences which arise out of the facts relating to the main offence, even where such offences are non-cognizable and would fall under section 155 if reported separately and simple as non-cognizable offence and so would require the authority of a Magistrate to investigate that offence, and I am not prepared to hold in the present case that the case as a whole is not instituted on a report of the Police presented to the Magistrate under section 173 of the Code."

(11) A.I.R. 1965 S.C. 1185.

(7) The facts of the present case, therefore, fall wholly within the ratio of the above-said decision of the Supreme Court. The present case was originally registered under section 420/120-B, Indian Penal Code. Undoubtedly both these offences are cognizable and the police authorities were not only legally competent but have a statutory authority to investigate into such offences. In the course of the investigation along with these two cognizable offences certain non-cognizable offences under the Customs Act were also investigated and gone into. On the ratio of the above-said decisions the police authorities were not at all debarred from investigating the non-cognizable offences also. It follows, therefore, that far from illegality even an irregularity in the investigation cannot be suggested in the present case. Once it is so held that the investigation was within the four corners of the law, the petitioner can make no grievance whatsoever in regard thereto. This contention of Mr. Bhagirath Dass must thus necessarily fail.

(8) In this very vein Mr. Bhagirath Das had argued that the objection on behalf of the petitioner has been taken at the very earliest before the trial Court. Therefore it was contended that in so far as it pertains to non-cognizable offences, the Court should take cognizance only after ordering the rechecking at least of the investigation and after complying with the provisions of section 155(2) of the Code of Criminal Procedure. Reliance was place on the last paragraph of the judgment in *Ram Krishan Dalmia's case* (7), wherein it has been observed :—

> "This practice has been, where the objection by the accused to the jurisdiction of the Court on account of the fact that the Police Officer who investigated the case was not authorised to do so, had been taken at an early stage, to order the necessary authortiy to be supplied in writing by a Magistrate followed by a formal rechecking of the investigation proceedings, and if I thought it necessary I should have passed an order of that kind in the present case. I have said, however, I do not consider it to be necessary and I accordingly dismiss the revision petition."

Support for this argument was also sought from *H. N. Rishbud* v. *State of Delhi* (12) This contention of Mr. Bhagirath Das is in fact a mere corollary of, and is ancillary to, his main contention which

(12) A.I.R. 1955 S.C. 196.

has already been noticed above. In view of the fact that we have already held that the investigation of the non-cognizable offences by the police along with cognizable offences was within the ambit of the law and no taint attaches thereto, therefore no question of any rechecking or reinvestigation can possibly arise. Even otherwise we are entirely in agreement with the observations of Falshaw, J. *in Ram Krishan Dalmia's case supra* (7) wherein the following has been laid down:—

> "I may add, however, that even if I had been of the opinion that formal permission from the Magistrate was necessary in the present case to investigate the case so far as it relates to offence under section 477-A, Indian Penal Code, I should have had no hesitation whatever in adopting the principle which has been adopted by Courts in a number of cases, under the Prevention of Corruption Act, offences under which can only be investigated without written permission from the Magistrate by the police officer above a certain rank."

This subsidiary argument of Mr. Bhagirath Das, therefore, must fail along with his main contention noticed earlier.

(9) Mr. Bhagirath Das has then argued that the Delhi Special Police Establishment has no jurisdiction whatsoever to investigate into the offences under the Customs Act, 1962. Pursuing this line it is contended that the investigation by the Special Police Establishment being wholly void, the Court is precluded from taking cognizance of a complaint based upon such illegal investigation. Reliance for this submission was placed on certain statutory provisions of the Customs Act, 1962. It was pointed out that section 104 empowers the Customs Officer to arrest in certain contingencies. Similarly a duly-authorised officer of the Customs can under section 105 of the Act exercise the powers to search premises whilst section 196 gives a similar power to stop and search conveyances. Particular reliance was placed on section 107 which gives the authority to a customs officer in an appropriate case to examine persons in the course of an enquiry in connection with smuggling and the provisions of section 108 which gives them the power to summon persons to give evidence and produce documents. Reference in this context is also made to section 110 empowering the seizing of goods and documents and section 123 relating to the burden of proof. Arguing

collectively on the inference to be drawn from the provisions above-said, the gravaman of Mr. Bhagirath Das's submission was that the Customs Act, 1962, is a complete code in itself and it provides machinery for dealing with the contraventions of its provisions. It was, therefore, submitted that the offences under the Customs Act can be investigated only by the Customs Officer, the police generally and the Delhi Special Police Establishment in particular are wholly barred from investigating any offences against the said Act. Support was drawn from certain provisions of the Suppression of Immoral Traffic in Women and Girls Act, 1956, and reliance was placed on the observations of Shamsher Bahadur, J., in *State v. Mehro*, (13), wherein it has been held that in view of the provisions of sections 13, 14, 15 and 16 of the Suppression of Immoral Traffic in Women and Girls Act, an offence under section 8 of the said Act could only be investigated by a Special Police Officer as provided under the said Act and not by any other authority. The ratio of *Mehro's case* was considered and approved by the Supreme Court in *Delhi Administration* v. *Ram Singh* (14). It is pertinent to note, however, that the above said two decisions are based on the particular language and the specific provision of the Suppression of Immoral Traffic in Women and Girls Act. Particularly so is the language of sections 13(1) and (2) of the Act which is in the following terms :—

> "13(1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area;
>
> (2) The special police officer shall not be below the rank of—
>
> (a) an Assistant Commissioner of Police in the Presidency towns of Madras and Calcutta;
>
> (b) a Superintendent of Police in the Presidency town of Bombay; and
>
> (c) a Deputy Superintendent of Police elsewhere."

This provision makes it clear that a particular agency, namely, a Special Police Officer duly appointed by the Government in this behalf is created "for dealing with the offences" under the Act.

(13) A.I.R. 1962 Pb. 91.
(14) A.I.R. 1962 S.C. 63.

Similarly the provisions of section 14(1) expressly limit the power of arrest without a warrant for offences against the Act only to the Special Police Officer or under his direction or guidance, or subject to his prior approval. The provisions of section 15 pointedly empower the Special Police Officer only to search the premises without warrant. Section 16 also gives the power of rescuing girls from a brothal on the direction of a Magistrate to the Special Police Officer.

(10) Significantly the legislature has not thought fit to employ any such language or incorporate any analogous provisions in the Customs Act, 1962. No Special Police Officer or Agency is created under the Customs Act at all for the investigation of offences under the said Act. We invited Mr. Bhagirath Das to point out to us any provision in the Customs Act which was in *pari materia* with the provisions of section 13(1) of the Suppression of Immoral Traffic in Women and Girls Act in particular, or even with sections 14, 15 and 16 of the said Act in general. He was wholly unable to do so. It is also noticeable in this context that in section 2(i) of the Suppression of Immoral Traffic in Women and Girls Act, a precise definition of the Special Police Officer has been laid out. No such analogous provision is even remotely on the statute in the Customs Act, 1962.

(11) The power to investigate into offences against the Indian Penal Code and any other laws is laid out in section 5 of the Criminal Procedure Code. As regards the offences other than those of the Indian Penal Code, the relevant provisions is sub-section (2) of section 5 which is in the following terms :—

> "5(2) All offences under any other law 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."

This statutory power to investigate granted by the above-said provision can only be excluded by the clear or categorical terms of a special law or at least by a necessary implication flowing from the provisions thereof. On construing the provisions of the Customs Act, 1962 as a whole we do not even find a whisper in the said Act

which would suggest an exclusion of the powers of an officer in charge of a police station to investigate into the offences created by the provisions of the Customs Act, 1962.

(12) In the particular context of this case, the provisions of section 3 of the Delhi Police Establishment Act, 1946, deserve notice and are in the following terms :—

> *"Offences to be investigated by special police establishment* : The Central Government may, by notification in the official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment."

Section 5 of the said Act empowers the extension of jurisdiction of the special police establishment to other areas. In pursuance of the above-said provisions of the Act a valid notification, dated the 6th of January, 1965, has been duly issued empowering the Delhi Special Police Establishment to investigate into offences under sections 132, 133, 134, 135 and 136 of the Customs Act. It is thus clear that in compliance with all these provisions of law, the Special Police Establishment was at the relevant time entitled to investigate into the offences which form the subject-matter of the present prosecution. We had particularly asked Mr. Bhagirath Das if he was challenging the vires of the notification authorising the investigation by the Special Police Establishment of the offences under the Customs Act. The learned counsel very fairly declined to do so. We are, therefore, of the opinion that the authorities relied upon by Mr. Bhagirath Das based on the particular provisions of the Suppression of Immoral Traffic in Women and Girls Act have no applicability to the offences under the Customs Act when the provisions of the two statute are not even remotely analogous. This contention of Mr. Bhagirath Das, therefore, also fails.

(13) The last submission raised on behalf of the petitioner, however, is patently tenable. It was argued that the alleged complaint which has been filed against the petitioner is by Mr. Dharam Singh Superintendent of Police under the Delhi Special Police Establishment Act. It is, therefore, contended that in this context such a prosecution cannot be deemed to be on a "compalint". The lower Courts would, therefore, be in error in holding that the prosecution

of the petitioner is on the basis of a complaint and the cognizance thereof is being taken under section 190(1)(a) of the Criminal Procedure Code. Relevant provisions of section 190(1) are in the following terms :—

> "190(1) Except as hereinafter provided any Chief Judicial Magistrate and any other Judicial Magistrate specially empowered in this behalf, may take cognizance of any offence—
>
> (a) upon receiving a complaint of facts which constitute such offence;
>
> (b) upon a report in writing of such facts made by any police officer;
>
> (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion that such offence has been committed."

Along with these the definition of the word 'complaint' in section 5(1)(h) of the Code of Criminal Procedure, deserves notice and is in the following terms :—

> " 'complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action, under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer."

(14) As to what constitutes a 'report of a police officer' and what is the precise meaning to be attributed thereto in the different sections of the Code of Criminal Procedure where this and the analogous expressions have been used has been a matter vexed with controversy. However, it is now no longer necessary for the purpose of this case to examine the numerous authorities pertaining to the interpretation to be placed on this term. The latest and the authoritative pronouncement in regard thereto is again contained in *Pravin Chandra Mody's case supra* (11) wherein the following has now been laid down :—

> "In our judgment the meaning which is sought to be given to a 'police report' is not correct. In Section 190, a distinction is made between the classes of persons who can start a criminal prosecution. Under the three clauses of section 190(1), to which we have already referred, criminal

prosecution can be initiated (i) by a police officer by a report in writing; (ii) upon information received from any person other than a police officer or upon the Magistrate's own knowledge or suspicion, and (iii) upon receiving a complaint of facts. If the report in this case falls within (i) above, then the procedure under Section 251-A, Criminal Procedure Code, must be followed. If it falls in (ii) or (iii) then the procedure under section 252, Criminal Procedure Code, must be followed. We are thus concerned to find out whether the report of the police officer in writing in this case can be described as a 'complaint of facts' or as 'information received from any person other than a police officer'. That it cannot be the latter is obvious enough because the information is from a police officer. The term 'complaint' in this connection has been defined by the Code of Criminal Procedure and it 'means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer'."

(15) In view of this enunciation of the law it is difficult to see how this prosecution initiated by a police officer of the Delhi Special Police Establishment and based upon an investigation conducted by them can be termed as a complaint for the purpose of section 190(1)(a), Criminal Procedure Code. This contention of Mr. Bhagirath Das, therefore, must prevail and the learned lower Courts were in error in holding that cognizance can be taken under section 190(1)(a), Criminal Procedure Code, regarding the case of the petitioner. No other contention has been raised before us.

(16) In view of our findings above, this petition fails but with the observations that on the facts of the present case the provisions of section 190(1)(b), Criminal Procedure Code, would be applicable and the learned trial Magistrate must proceed accordingly.

SHAMSHER BAHADUR, J.—I agree.

K. S. K.