rate claimed by the landlord in the ejectment application, and if the rate is found subsequently, to be less, he can hope for adjustment of the excess payment. He can come forward with a straight statement of what is the true rate of rent and on that proceed to comply with the proviso, in which case he has the benefit of the proviso, if the finding is that the rate stated by him is the rate of rent for the tenancy. Lastly, he can enter into a dispute with the landlord, as in this case, and insist upon his lower rate of rent and then take the consequence if he is not able to prove that that is the actual rent. So, in the present case, the tenant was admittedly in arrears on the date of the application for his ejectment and he was, therefore, liable to ejectment under clause (i) of sub-section (2) of section 13 of the Act and he does not escape ejectment because he has not complied with the proviso to that clause. He did make payment of the arrears but at a rate less than the rate of rent that has been found by the authorities below. There has been thus no compliance with the proviso. He cannot have the benefit, of it, and the result has been that he has become liable to ejectment under clause (i) of sub-section (2) of section 13 of the Act. There is no reason for interference with the orders of the authorities below.

In consequence this revision application fails and is dismissed, but, in the circumstances of the case, there is no order in regard to costs. The tenant is given two months from today to vacate the premises.

---

*R.N.M.*

CRIMINAL REVISION

*Before Jindra Lal, J.*

BIRU RAM,—*Petitioner*

*versus*

ISHER SINGH AND OTHERS,—*Respondents*

**Criminal Revision No. 954 of 1965**

December 20, 1966

*Code of Criminal Procedure (Act V of 1898)—Ss. 202, 203 and 253—Scope of—Report obtained under section 202 and accused summoned—Such report—Whether can be taken into consideration at the trial of the accused.*

*Held,* that from the language of sections 202 and 203, Criminal Procedure Code, it is clear that the report called for by a Magistrate under section 202 can be considered by him together with other evidence mentioned in section 203 only for either dismissing the complaint or for issuing process under section 204. Once a magistrate has made up his mind either to summon the accused or to dismiss the complaint, the report under section 202 stands exhausted and thereafter the Magistrate can only look at the evidence as such produced before him. Section 253 provides that it is after taking into consideration the evidence referred to in section 252 and also making such examination, if any, of the accused as the Magistrate may think necessary, that the Magistrate can discharge an accused if he finds that no case has been made out which, if unrebutted, would warrant his conviction. It is true that a Magistrate may even at an earlier stage discharge an accused for reasons, which he must record, if he considers the charge to be groundless. He may, for instance, after examining the complaint himself, come to the conclusion that even if all that the complainant says is correct, no offence is made out against the accused. If at that stage only the evidence which a Magistrate can look at is the evidence referred to in section 252, then it is quite clear that a Magistrate at that stage can only hear the complainant and take such evidence as may be produced in support of the prosecution. It nowhere provides that a report made under section 202 is also evidence, which can be taken into consideration by a Magistrate when making up his mind, whether to frame a charge or to discharge the accused person.

*Petition under sections* 435/439, *Criminal Procedure Code, for revision of the order of Shri S. C. Mittal, Sessions Judge, Hissar, dated* 1*st July,* 1965, *affirming that of Shri O. P. Gupta, Magistrate,* 1*st Class (Judicial), Sirsa, dated* 1*st December,* 1964, *dismissing the application.*

S. S. SANDHAWALIA, ADVOCATE, for the Petitioner.

R. M. VINAYAK, ADVOCATE, for the Respondents.

JUDGMENT

JINDRA LAL, J.—This revision under section 435/439 of the Code of Criminal Procedure is directed against an order of the learned Sessions Judge, Hissar, dated the 1st of July, 1965, whereby he has dismissed a revision petition of the petitioner Biru Ram, assailing the discharge of one Ganga Ram completely and the discharge of Ishar Singh, Maghar Singh, Harwant Singh, Bahadur and Sheo Ram, the other accused persons, under sections 506 and 148 Indian Penal Code.

The facts are not in dispute. Biru Ram, the present petitioner, had filed a complaint against six accused, i.e., Ishar Singh, Maghar Singh, Harwant Singh, Ganga Ram, Bahadur and Sheo Ram, under sections 447, 148 and 506 of the Indian Penal Code on the allegation

that they armed with Lathis, Barchhas and guns had entered on his land and forcibly dispossessed him and intimidated him. The learned Magistrate called for a police report under section 202, Criminal Procedure Code, and on consideration of the report summoned all the accused. Thereafter the complainant and another eye witness were examined on oath and were cross-examined on behalf of the accused. Although he had, in his list of witnesses, mentioned other witnesses whom he wanted to produce at the trial on the 9th of November, 1964, the complainant made a statement that for the purpose of framing the charge, he did not wish to examine any other witness.

By his order, dated 11th of November, 1964, the learned Magistrate discharged Ganga Ram, accused completely. He discharged all the other accused of the offence under section 506, Indian Penal Code, but framed charges against them under section 447 of the Indian Penal Code. Since an offence under section 447, Indian Penal Code, was triable by a Panchayat, he sent the case to Gram Panchayat Chakkan for trial.

A revision petition by the complainant, the present petitioner to the learned Sessions Judge, Hissar, assailing the order of discharge having been dismissed, as mentioned above, the petitioner has come up in revision to this Court.

The main question of attack by the learned counsel for the petitioner is that in deciding the question of the framing of the charge the learned Magistrate has taken into consideration not only the evidence of the complainant and his witness, but also the report under section 202 of the Code of Criminal Procedure submitted by the Station House Officer, Rania police station. The learned Magistrate relied upon the report, which according to him left nothing in doubt and held that the Sub-Inspector had denied the contention of the complainant that any one had threatened him with Gandasas and guns. He therefore, found that there was no case made out for framing a charge for offences under sections 506 and 148, Indian Penal Code, against any of the accused and that in any case Sarpanch Ganga Ram, one of the accused, was not a party in the alleged occurrence.

Learned counsel for the petitioner has urged that a court is not entitled to take into consideration a report under section 202, Criminal Procedure Code, after it has decided to issue process to summon an accused. That report, according to him, is only meant for the

purposes of arriving at a decision whether an accused is to be summoned or not and its purpose is served after a decision has been taken on it. It is urged that section 253, Criminal Procedure Code, provides as to the evidence that can be taken into consideration by a Magistrate for the purpose of framing a charge and report under section 202, Criminal Procedure Code, does not find any place in that section. A reference to section 202, Criminal Procedure Code, makes it clear that a Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint. Section 203, Criminal Procedure Code, provides for the dismissal of the complaint under certain contingencies. A Magistrate can dismiss a complaint if after considering the statement on oath, if any, of the complainant and the witnesses and the result of the investigation or inquiry, if any, under section 202, there is in his judgment no sufficient ground for proceeding. He can do so after briefly recording the reasons for his so doing. Therefore, at that stage a Magistrate can, in addition to the statement of a complainant and his witnesses also take into consideration the report made under section 202 of the Code of Criminal Procedure.

The procedure after a person appears before the Court in any case instituted, other than on a police report, is contained in section 252, Criminal Procedure Code. It provides that when an accused appears before him or is brought before him, a Magistrate is to proceed to hear the complainant, if any, and take all such evidence as may be produced in support of the prosecution. Sub-section (2) of section 252, enjoins upon a Magistrate to ascertain from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution. He is required to summon to give evidence before him such of them as he thinks necessary. Section 253, Criminal Procedure Code, provides for the discharge of the accused in certain circumstances. It provides that if, upon taking all the evidence referred to in section 252, and making such examination, if any, of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted,

would warrant his conviction, the Magistrate shall discharge him. Sub-section (2) of section 253, Criminal Procedure Code, provides that nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. It is pointed out that whereas in section 203 of the Code of Criminal Procedure it is provided that a Magistrate is to take into consideration the report under section 202, in deciding whether a complaint is to be dismissed or not, no mention is made of such a report in section 252 of the Code of Criminal Procedure.

Drawing attention to the provisions noted above, Mr. Sandhawalia, learned counsel for the petitioner, has urged that in the present case the learned Magistrate has taken into consideration the report by the police made under section 202 of the Code of Criminal Procedure, in discharging accused Ganga Ram and in discharging the other accused of offences under sections 148 and 506 of the Indian Penal Code.

From the language of sections 202 and 203, Criminal Procedure Code, it does appear that the report called for by a Magistrate under section 202 can be considered by him together with other evidence mentioned in section 203 only for either dismissing the complaint or for issuing process under section 204. Once a Magistrate has made up his mind whether to summon the accused or to dismiss the complaint, the report made under section 202 stands exhausted and thereafter the Magistrate can only look at the evidence as such produced before him. Section 253 as mentioned above, provides that it is after taking into consideration the evidence referred to in section 252 and also making such examination, if any, of the accused as the Magistrate may think necessary, that the Magistrate can discharge an accused if he finds that no case has been made out which, if unrebutted, would warrant his conviction. It is true that a Magistrate may even at an earlier stage discharge an accused for reasons which he must record, if he consider the charge to be groundless. He may, for instance, after examining the complainant himself, come to the conclusion that even if all that the complainant says is correct, no offence is made out against the accused. If at that stage only the evidence which a Magistrate can look at is the evidence referred to in section 252, then it is quite clear that a Magistrate at that stage can only hear the complainant and take such evidence as may be produced in support of the prosecution. It nowhere provides that a report made under section 202 is also evidence which can be taken into consideration by a Magistrate when making up his mind whether to frame a charge or to discharge the accused person.

Learned counsel for the petitioner has relied upon two decided cases which, according to him, help his contention. In *Queen Empress* v. *Khurram Singh* (1), it has been observed that the procedure prescribed by section 202 of the Code of Criminal Procedure can only be adopted before a process issues compelling the attendance of a person complained against. There one Khurram Singh was called upon to show why he should not be ordered to execute a bond for keeping the peace. The Magistrate after recording of the evidence that was forthcoming on behalf of the complainant called for a report from a Tehsildar and apparently relying upon the report of the Tehsildar cancelled his order calling for security. It was urged there that this was a procedure contemplated under section 202, Criminal Procedure Code, but it was repelled and it was held that a Magistrate who, after issue of process and taking of evidence in a case, calls upon another person to make an inquiry and a report acts distinctly in contravention of the procedure prescribed by law because he acts upon the report which is not evidence and abdicates judicial functions to some body else. It may be noticed that in that case, the learned Magistrate had called for a report from the Tehsildar after he had already summoned the accused and after he had examined witnesses in Court and consequently this case does not help the petitioner for the narrow proposition enunciated by him.

In *Kingam Savaranna* v. *State and another* (2), it was held that section 202, Criminal Procedure Code, can be availed of only before the issue of process compelling the appearance of the accused and for the purpose of ascertaining the truth or falsehood of the complaint. To invoke this section after the process had not only been issued to the accused, but he has gone through the whole trial was held to be gross abuse of the section. Such a course, it was held, was not for the purpose of testing the truth of the complaint, but gathering evidence in support of the prosecution. In that case, it may be noticed, a report under section 202, Criminal Procedure Code, was called for after the evidence of the complainant had been recorded.

Learned counsel for the respondents has relied upon *Kunj Behari Lal* v. *Emperor* (3), a judgment relied upon also by the learned Sessions Judge in dismissing the revision of the present petitioner. It was held in that case, that a Magistrate can discharge an accused even where process against him is issued before recording all evidence produced by the complainant if he is satisfied after considering the result

(1) 1896 Allahabad Weekly Notes Page 140.

(2) A.I.R. 1957 A.P. 472.

(3) A.I.R. 1926 All. 461.

of police enquiry and evidence already recorded that the charge is groundless. In that case under sections 147 and 426 of the Indian Penal Code against fourteen accused, the Magistrate had, before issuing process, ordered the complainant to produce his witnesses under section 202, Criminal Procedure Code. After hearing the complainant and presumably his witnesses, process was issued against the accused, but on that very day it was brought to the notice of the Magistrate that the District Magistrate had ordered a police inquiry and the Court was, therefore, asked to postpone further inquiry until the result of police inquiry. The result of the police inquiry was received by the Court and after considering it, as well as the evidence which he had already recorded, the Magistrate came to the conclusion that the charge was groundless and discharged the accused under section 253, Criminal Procedure Code. The Sessions Judge in that case had held that though admittedly a Court is entitled to take into account the result of a police inquiry in discharging the accused under section 203, Criminal Procedure Code, it cannot do so when once a summons or warrant has issued. The High Court, however, disagreed because in its view that would unduly restrict the meaning of the words "for reasons to be recorded" in section 253, Criminal Procedure Code. The learned Judges deciding that case relied mainly on the language of clause (2) of section 253, which gives power to the Magistrate to discharge an accused at any previous stage, if, for reasons to be recorded, he considers the charge to be groundless. It was held in that case that the Magistrate had actually before him all the evidence which the complainant was prepared to produce in support of his complaint. This, however, is begging the question because the sole question is whether or not a report under section 202, Criminal Procedure Code, can be looked at when dealing with the matter under section 253, Criminal Procedure. In that case it was held that on merits the order of discharge was not improper and consequently the learned Judge came to the conclusion that it was in any case not illegal. This authority can perhaps be distinguished because there the learned Magistrate had only ordered the issue of process and then held his hands and on consideration of the inquiry before him and the police inquiry report in Court, he came to the conclusion that the charge was groundless. It also appears that the District Magistrate had already ordered an inquiry before the learned Magistrate issued process, why this happened is not clear from the judgment. If, however, the case is cited as an authority for the proposition that a Magistrate can, even at the stage when he is dealing with the matter

under section 253, Criminal Procedure Code, go back, take into consideration the report made to him under section 202, Criminal Procedure Code, then with great respect I doubt very much the correctness of that decision. In the present case on merits two things are clear. The complainant and his witness had mentioned all the six accused and no distinction can be made between the part ascribed to Ganga Ram and the other accused who have not been discharged. No reasons are forthcoming why the learned Magistrate has done so. In my view, therefore, the learned Magistrate took into consideration material on which he could not rely and to which he could not refer and consequently his order is vitiated. I, therefore, accept this revision and set aside the impugned order. The case will now go back to the Chief Judicial Magistrate, Hissar, who will either try the case himself or send it to any other Magistrate of competent jurisdiction to be decided in accordance with law. Parties are directed to appear before the Chief Judicial Magistrate, Hissar, on 9th January, 1967.

---

*R.N.M.*

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur and Gurdev Singh, JJ.*

COL. HIS HIGHNESS RAJA SIR HARINDAR SINGH BRAR BANS BAHADUR,—*Petitioner*

*versus*

THE WEALTH-TAX OFFICER, BHATINDA AND OTHERS,—*Respondents*

**Civil Writ No. 1841 of 1962**

December 23, 1966

*Wealth Tax Act (XXVII of 1957)—S. 2(m)—"Net Wealth"—Meaning of—Computation of net wealth—Expenditure Tax, Gift Tax and Wealth Tax payable by an assessee in a particular year—Whether can be deducted from the aggregate value of his assets.*

*Held,* that "net wealth" as defined in section 2(m) of the Wealth Tax Act, 1957, means the amount by which the aggregate value of the assets of the assessee as on the valuation date exceeds the aggregate value of the debts owed by him on the said date.