to be an end to litigation at some point of time. If the complainant had failed to appreciate the starting point of limitation, there would be nothing now for him to explain the delay when he stands confronted that such period commences from the date of making the defamatory statement. There is nothing on the complaint, as also from the judgment of acquittal, to suggest that the interest of justice would require this old matter to be raked up for the sake of satisfying private vendetta. The complainant having neglected to explain the delay rightfully in the first instance cannot be permitted to do now.

(6) For the foregoing reasons this petition is allowed. Not only are proceedings from the cognizance stage onwards quashed, but the complaint is dismissed as well. Ordered accordingly.

N.K.S.

Before D. S. Tewatia, J.

SHIV DAYAL,—*Petitioner.*

versus

KEWAL VERMA,—*Respondent.*

Civil Revision No. 2453 *of* 1979.

January 21, 1982.

Haryana Urban (Control of Rent & Eviction) Act (II of 1973)—Section 13—Landlord filing appeal against order of Rent Controller refusing application for ejectment—Compromise order passed in such appeal—Appeal allowed and tenant ordered to be ejected on a future date—Tenant refusing to vacate demised premises on such date—Tenant challenging the compromise order on the ground that it did not state the grounds for ejectment—Such objection—Whether tenable—Compromise order—Whether a nullity.

Held, that it is not necessary that in a compromise order the Court must necessarily refer to the ground on which the tenant is being evicted, nor is it necessary for the court to mention that it was satisfied that one or more statutory grounds of eviction is prima facie made out by the landlord. What the courts are required to guard against is the eviction of a tenant as a result of compromise decree on a ground other than those which are envisaged by the

statute, i.e. parties are prohibited from contracting out of the statute. If the eviction of a tenant is sought by a landlord strictly on statutory grounds and the tenant does not contest the ground and enters into a compromise, then such a compromise decree would be a valid decree. However, the court has to be prima facie satisfied that the ground for eviction has been made out. Although there is no requirement that the court must say so in writing in its order, once a legal and statutory ground for eviction is pleaded and the tenant says that a decree for ejectment may be passed against him and the order of Rent Controller dismissing the petition may be set aside it is clear that the court is prima facie satisfied that a ground for eviction does exist, and the tenant is liable to be ejected in view of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973.

(Paras 5, 6 & 8).

Petition Under Section 115 C.P.C. for revision of the Order of the Court of Shri D. R. Goel, H.C.S., Sub-Judge 1st Class, Panipat dated 16th August, 1979 dismissing the application.

Anand Swaroop Senior Advocate with Sanjiv Pabbi, Advocate, *for the Petitioner.*

J. S. Malik and R. S. Cheema, Advocate with M. L. Saini, Advocate, *for the Respondent.*

JUDGMENT

D. S. Tewatia, J. (Oral)

(1) Respondent Kewal Verma happens to be the tenant of Shiv Dayal, the petitioner herein. Shri Shiv Dayal sought eviction of Shri Kewal Verma on grounds which squarely fall within the provisions of Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1972 Shri Kewal Verma, hereinafter referred to as 'the tenant' contested the petition. The Rent Controller dismissed the same. When the appeal filed by Shri Shiv Dayal, hereinafter referred to as 'the landlord', came up before the Appellate Authority for hearing of arguments, both the parties made statements in Court, so did their lawyers. As a result of the statements made by the parties, the Court allowed the appeal, set aside the judgment of the Rent Controller and by order dated 5th December, 1975 ordered the eviction of the tenant, but directed that the order for eviction shall not be executed till 1st July, 1977.

2. When the landlord sought to execute the order of eviction, the tenant filed objections under section 47 of the Code of Civil Procedure and challenged the maintainability of the execution application on two grounds (i) that the rent had been increased from Rs. 100 to Rs. 150 with effect from 1st June, 1978 and in that manner a fresh tenancy had been created and the tenant had spent a sum of Rs. 2,155 from his pocket on repairs of the house and that amount had not been completely paid off; (2) that the order of ejectment was not executable as the Appellate Authority had no where mentioned the ground of ejectment therein and Court had not satisfied itself about the same.

3. The Executing Court found no merit in the first ground. However, it was of the view that the second ground was male out and it allowed the objections with the following observations:-

> "Taking into consideration, the legal position discussed above, it is clear that the compromise should be based on a valid ground containing one of the grounds of ejectment as the Rent Controller has already rejected application for eviction. It was necessary for the Appellate Authority to mention that ground of ejectment exists and the compromise is based on that account and the Court is satisfied that there exists ground of ejectment of the J.D. from the premises in question. As already discussed, a perusal of the compromise and statements of the parties would show that there is nothing mentioned therein that there existed one or more grounds of ejectment as contained under the Rent Act. Under these circumstance, order of ejectment dated 5th December, 1975 is not executable under law. The issue is decided against the decree holder and in favour of the objector."

4. A perusal of the observation extracted above of the Execution Court would reveal that since the Rent Controller had rejected the application of the landlord for eviction, it was considered necessary for the Appellate Authority to mention in the compromise order that there existed a ground of ejectment and that in its view such a ground had been *prima facie* made out and since this was not done, the compromise decree was a nullity.

5. In my view the learned Executing Court has clearly erred in holding that the compromise order of eviction is a nullity. The

ratio of the Supreme Court decision, that would be presently referred to, makes it crystal clear that it is not necessary that in a compromise order the Court must necessarily refer to the ground on which the tenant is being evicted, nor it is necessary for the court to mention that it was satisfied that one or more statutory grounds of eviction is *prima facie* made out by the landlord. The following observations of their Lordships in *Suleman Noormohamed etc., etc.* vs. *Umarbhai Janubhai,* (1) can be noticed in this regard with advantage:—

> "While recording the compromist under Order XXIII Rule 3 of the Code of Civil Procedure, it is not necessary for the Court to say in express terms in the order that it was satisfied that the compromise was a lawful one. It will be presumed to have done so unless the contrary is shown."

6. What the Courts are required to guard against is the eviction of a tenant as a result of compromise decree on a ground other than those which are envisaged by the statute, i.e., parties are prohibited from contracting out of the statute. If the eviction of a tenant is sought by a landlord strictly on statutory grounds and the tenant does not contest the ground and enters into a compromise. then such a compromise decree would be a valid decree. For instance, in reply to the ejectment application the tenant puts in his reply wherein he accepts all the grounds mentioned in the petition, surely in a case like this there is no question of the Court requiring the landlord to lead any evidence in support of the grounds. The court would have no option but to decree the ejectment of the tenant. Similar would be the case at later stages also. More particularly so when as a result of the compromise the tenants secures time and gets his ejectment delayed.

7. Mr. J. S. Malik, counsel for the respondent canvassed that since the Rent Controller had rejected the application of the landlord, the Appellate Authority was bound to record that it was *prima facie* satisfied that one or all the grounds were made out for ejectment of the tenant. For his above submission Mr. Malik sought support from the following observations of Sarkaria J. who delivered

(1) AIR 1978 S.C. 952.

the opinion for the Bench in *Naginlas Ramadas* v. *Dalpat Ram Ichharam alias Brijram and others*, (2) :—

> "From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court coull be *prima facie* satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction apparently passed on the basis of compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission itself. Admissions, if true and clear are by far the best proof of the facts admitted. Admission in pleadings or judicial admissions, admissible under section 58 of the Evidenve Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentionary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong".

8. These are the observations on which the learned counsel for the petitioner too has heavily relied. In fact the observations aforementioned clearly sum up the legal position. The expression "**prima facie** satisfied" occurring in the afore-mentioned observations do not require the court to say so in writing in its order. Once a legal and statutory ground for eviction is pleaded and the tenant says that a decree of ejectment may be passed against him and the order of the Rent Controller dismissing the petition may be set aside, then which Court could say that it was not prima facie satisfied that a ground for eviction existed. The Court can say so only in a case where the ground on which eviction was sought was not a ground on which the statute envisages eviction of a tenant, for in

(2) AIR 1974 S.C. 471.

such a case it could not be held that the Court was prima facie satisfied about the existence of the legal ground for the ejectment because the legal ground envisaged therein is one that is mentioned by the statute and not the one which lies out side the statute.

9. For the reasons afore-mentioned I hold that the order of the Executing Court is palpably erroneous and illegal. Hence the petition is allowed, the order of the Executing Court is set aside and the Executing Court is directed to forthwith execute the decree of ejectment in accordance with law and the objections under section 47 of the Code of Civil Procedure are dismissed.

H.S.B.

Before C. S. Tiwana and S. S. Dewan, JJ.

KARNAIL SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 1155 *of* 1981.
January 28, 1982.

Code of Criminal Procedure (II of 1974)—Section 100(4) & 103—*Punjab Excise Act (I of* 1914)—*Section* 50—*Excise Act providing that all searches to be made in accordance with the provisions of Section* 100(4) *of the Code—Search not held in accordance therewith—Such search—Whether illegal—Evidence collected in such search—Whether admissible—Weight to be attached to such evidence—Conviction—Whether could be based thereon.*

Held, that Section 50 of the Punjab Excise Act, 1914 provides that all arrests and searches etc. under the provisions of this Act are to be made in accordance with the provisions of Section 110(4) of the Criminal Procedure Act, 1973. However, even if the search is made in contravention of this provision the evidence collected does not become inadmissible and conviction can be recorded on the basis of the evidence so collected. Furthermore such contravention would not invalidate the search but being an irregularity in the search and recovery, it would affect the weight of evidence thereby collected.

(Paras 8 & 15).

Gurnam Singh vs. *The State of Punjab.* 1981 *C.L.R.* 438. *Overruled.*