their foundations in the ground. Such walls are a permanent structure....."

(20) The said observations are presumptive in nature that every permanent brick masonry walls must have foundation. As pointed out above, there is no material to come to such a conclusion. The presumption shall not take places of the substantive evidence. It follows, therefore, that there is little evidence on the record to come to the conclusion that the wall in the dark room had been set up with the foundation.

(21) In *Om Parkash's case* (supra), the Supreme Court, as mentioned above, has categorically stated that when there is a partition wall without digging any foundation and it does not touch the ceiling, it must be taken to be a temporary wall which will not substantially change the character of the building. As a necessary corollary, it follows that it does not impair the value and utility of the premises. Thus, the findings to this effect of the learned Appellate Authority cannot be approved.

(22) Coupled with that is another important fact. Petitioner No. 1 is carrying on the said profession in the said premises. He is there for a very long time. The landlord did not deem it appropriate to file eviction petition on the earlier occasion. Dark room would invariably be set up with the profession of a Radiologist. Consequently, there is an implied consent which can be inferred.

(23) It is true that there is concurrent finding of fact. But, as noticed above, there is an illegality in the order because the order proceeds on a presumption which is not correct in law or on fact. Thus, sub-section (5) to Section 15 of the Act will permit this court to interfere.

(24) For these reasons, the revision petition is allowed. The impugned order of eviction is set aside. Instead of the application for eviction is dismissed.

S.C.K.

Before N.K. Sodhi and N.K. Sud, JJ.

JATINDER KUMAR BHAG AND ANOTHER,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 1661 of 1999

9th February, 2000

Constitution of India, 1950—Art. 226—Punjab Municipal Act, 1911—Ss. 78 and 229—Goods of the petitioners seized within municipal

limits of Nagar Council without payment of octroi—Council issuing notice requiring petitioner to deposit octroi and composition fee @ 20 times the octroi payable— Challenge thereto—Provisions of S. 229 permit the parties to compromise the dispute—Composition fee can be levied only if both the parties have agreed—Council cannot levy composition fee unilaterally—If the parties did not agree Council may lodge a complaint with a Criminal Court—Expressions 'compound & composition' and 'fine' defined—'Compound and composition' means to imply a settlement or an agreement whereas 'fine' is a pecuniary punishment—Action of the Council in demanding the composition fee is without jurisdiction and not warranted by the provisions of S. 229—Notices requiring the petitioner to deposit the composition fee quashed.

Held, that a perusal of the provisions of Sections 78 and 229 of the Punjab Municipal Act, 1911 makes it clear that any person who takes within the Municipal limits without payment of octroi any goods on which octroi is chargeable is liable to be punished with fine which may extend to twenty times the value of such octroi or Rs. 50 whichever is greater. If the Council wants to prosecute the petitioners for having taken within the Municipal limits the goods without payment of octroi which was payable thereon, it is open to it to lodge a complaint with a criminal court which alone will have the power to punish the petitioner, if they are found guilty of the offence and impose fine. The power to impose fine thus vests only in a criminal court and cannot be assumed by a council or by any of its officers. However, it is open to the parties to settle the dispute at any stage because the offence u/s 78 of the Act is a compoundable offence. Section 229 is an enabling provision which permits the parties i.e. Council and the person suspected of having committed the offence under the Act to compromise the dispute and agree to a certain sum on the payment of which the offence could be compounded. A composition fee under this provision can be levied only if both the parties have agreed and the same cannot be levied by the council unilaterally.

(Para 3)

Further held, that the expressions 'compound' and 'composition' according to their ordinary dictionary meaning imply a settlement or an agreement whereas fine is a pecuniary punishment for some violation and a compulsory exaction of money. In such a situation, the amount sought to be recovered by the council as a result of its unilateral decision is in the nature of a fine and cannot be described as a composition fee. The action of the council in demanding the amount as composition fee is, therefore, clearly impermissible and not warranted by the provisions of Section 229 of the act. Thus, the demand made by

the council for the payment of the alleged composition fee at the rate of twenty times the octroi payable is without jurisdiction and the petitioners are not liable to pay the same.

(Para 3)

M.L. Sarin, Senior Advocate with Hemant Sarin, Advocate, *for the petitioners.*

Gurminder Singh, DAG, Punjab, *for respondent No. 1.*

Nirmaljit Kaur, Advocate, *for respondent No. 2.*

Deepak Sibal, Advocate, *for respondent No. 3.*

JUDGMENT

N.K. Sodhi, J.

(1) Petitioner No. 2 is engaged in the business of manufacturing cigarettes and has a wide market all over India. Petitioner No. 1 is a dealer of petitioner No. 2 and makes purchases of cigarettes which are despatched through a transport company against bills. The goods are delivered by the transporter at the go-downs of the dealer who before taking the goods within Municipal limits for sale, consumption or use is required to pay the requisite octroi wherever payable. It is alleged that cigarettes worth Rs. 5,22,503 which were loaded in truck No. PB-10-AD-9645 were brought within Municipal limits of Nagar Council, Samrala (for short the Council) on 28th September, 1998 at about 5 PM without payment of octroi. The tempo was seized by the officers of the Council and a seizure notice was issued to petitioner No. 1 calling upon him to deposit a sum of Rs. 15,675 as octroi on the aforesaid goods at the rate of 3% of their value together with composition fee which was levied at the rate of twenty times the octroi payable. Petitioner No. 1 was thus required to pay a total sum of Rs. 3,29,177 which included the octroi and also the composition fee. Since this amount was not paid, petitioner No. 1 received another notice dated 2nd November, 1998 requiring it to deposit the said amount within seven days of the receipt of the notice, failing which, the goods would be sold by public auction to recover the aforesaid amount. It is against these notices that the present writ petition has been filed under Article 226 of the Constitution.

(2) Shri M.L. Sarin, learned Senior Advocate appearing on behalf of the petitioners has contended that the Council has in fact imposed a fine under section 78 of the Punjab Municipal Act, 1911 (hereinafter called the Act) at the rate of twenty times the value of the octroi payable

on the seized goods which power the Council did not possess and that criminal court alone could impose such a fine. In support of his contention, the learned counsel has placed reliance on a judgement of the Apex Court in *Municipal Corporation, Ludhiana* v. *Commissioner of Patiala Division, Patiala and another* (1). Ms. Nirmaljit Kaur learned counsel appearing for the Council has, on the other hand, submitted that the council has not imposed any fine but has levied a composition fee under section 229 of the Act which power it had under the Act. Her argument indeed is that the act of the petitioner in taking the seized goods inside the Municipal limits without payment of octroi is an offence under section 78 of the Act which is compoundable in terms of Section 229 of the Act and, therefore, the petitioners are liable to pay the composition fee as determined by the council. Before we deal with the rival contentions of the parties, it is necessary to refer to the provisions of Sections 78 and 229 of the Act which read as under :—

> "78. If (animals or articles) passing the octroi (or terminal tax) boundary of a municipality are liable to the payment of octroi (or terminal tax) then every person who, with the intention to defraud the committee or a lessee under section 83, causes or abets the introduction of, or himself introduces or attempts to introduce within the said octroi (or terminal tax) boundary, any such (animals or articles) upon which payment of the octroi (or terminal tax) due on such introduction has neither been made nor tendered, shall be punishable with fine which may extend either to twenty times the value of such octroi (or terminal tax) or to fifty rupees, whichever may be greater."

> "229. (1) The committee or with the authorization of the committee its President, Vice-President, (Executive Officer) (Medical Officer of Health) or Secretary, or any sub committee thereof, may accept from any person against whom a reasonable suspicion exists that he has committed an offence against this Act or any rule or bye-law, a sum of money by way of composition for such offence."

(3) A perusal of the aforesaid provisions makes it clear that any person who takes within the Municipal limits without payment of octroi any goods on which octroi is chargeable is liable to be punished with fine which may extend to tweny times the value of such octroi or Rs. 50 whichever is greater. If the council wants to prosecute the petitioners for having taken within the Municipal limits the goods without payment of octroi which was payable thereon, it is open to it to lodge a complaint

(1) (1995) 1 S.C.C. 304

with a criminal court which alone will have the power to punish the petitioners, if they are found guilty of the offence and impose fine. The power to impose fine thus vests only in a criminal court and cannot be assumed by a council or by any of its officers. However, it is open to the parties to settle the dispute at any stage because the offence under section 78 of the Act is a compoundable offence. Section 229 is an enabling provision which permits the parties i.e. council and the person suspected of having committed the offence under the Act to compromise the dispute and agree to a certain sum on the payment of which the offence could be compounded. A composition fee under this provision can be levied only if both the parties have agreed and the same cannot be levied by the council unilaterally. In other words, an offer to compound the offence has to be made by the person suspected of having committed the offence which may be accepted by the council and when an amount to be paid as composition fee has been agreed upon, the council gets a right to enforce the compromise and recover the composition fee. In the case before us, the petitioners did not agree to compound the offence nor did they agree to pay any composition fee and on the other hand, their case is that no octroi is chargeable on the goods as they were not meant for sale, consumption or use within the Municipal limits of the council. The expressions 'compound' and 'composition' according to their ordinary dictionary meaning imply a settlement or an agreement whereas fine is a pecuniary punishment for some violation and a compulsory exaction of money. In such a situation, the amount sought to be recovered by the council as a result of its unilateral decision is in the nature of a fine and cannot be described as a composition fee. The action of the council in demanding the amount as composition fee is, therefore, clearly impermissible and not warranted by the provisions of Section 229 of the Act. We have, therefore, no hesitation in holding that the demand made by the council for the payment of the alleged composition fee at the rate of twenty times the octroi payable is without jurisdiction and the petitioners are not liable to pay the same.

(4) In the result, the writ petition is allowed and the impugned notices insofar as they require the petitioners to deposit the composition fee quashed. The council has also levied a sum of Rs. 15,675 as octroi and this levy is appealable under the Act which remedy the petitioners have not availed. We, therefore, decline to interfere with this part of the order and relegate the petitioners to the statutory remedies available to them under the act. Since the writ petition remained pending in this court for almost a year. We direct that in case the petitioners file an appeal within two weeks from the date of receipt of a copy of this order, the same shall be heard and disposed of by the Appellate Authority in

acordance with law and shall not be dismissed only on the ground of limitation. It is further clarified that it will be open to the council to proceed against the petitioners in accordance with law. There is no order as to costs.

R.N.R.

Before Jawahar Lal Gupta and M.S. Gill, JJ.

SANTOKH SINGH,—*Appellant*

versus

THE STATE OF PUNJAB,—*Respondent*

Murder Reference No. 1 of 1999 and

Criminal Appeal No. 43/DB of 1999

22nd February, 2000

Indian Penal Code, 1860—Ss. 302, 307 and 458—Arms Act, 1959—Ss. 2(1)(i), 7 and 27—Arms Rules, 1962—Rl.3, Schedule I—Trial Court awarding death penalty, imprisonment for life and fine to the accused for killing wife and injuring daughter of the complainant—No motive to harm the victims—Death penalty u/s 27 (3) of the 1959 Act—Recovery of 'bolt action rifle' which was used for the crime—'Prohibited arm'—Defined in S. 2(1)(i)—Bolt action rifle would not fall within the definition of a 'prohibited arm'—Provisions of S. 27(3) cannot be attracted—Appeal u/s 27 accepted—Sentence of death commuted to that of life imprisonment.

Held, that all human actions do not follow a definite pattern. The response of each individual can be different. It is governed by various imponderables. There is no fixed rule in this behalf. If is not unknown that the wife and child may be dearer to a person than his ownself. A harm caused to either or both of them would hurt the person more than any injury to his own body. The appellant may have thought it better to hurt Surinder Singh by killing or harming his wife and daughter. The evidence on record clearly establishes that he had used his service rifle to kill Swaran Kaur and to injure Kiranjit Kaur. Even if we assume that he had no motive to harm either of them, the fact remains that he has done so.

(Para 40)

Further held, that minor contradictions can occur when the statements of witnesses are recorded after a sufficiently long lapse of