period of thirty days is prescribed to have the sale set aside, Article 127 is in the following terms:—

"Description of application	Period of limitation	Time from which period begins to run
127. To set aside a sale in execution of a decree, including any such application by a judgment-debtor	Thirty days	The date of the sale."

This Article lays down no distinction as to under what provision of law an application is made or at whose instance it is made. Whenever an application is in substance to set aside a sale, it has to be made within thirty days from the date of the sale. In other words, it does not matter that the first application was under Order 21, rule 90 and the subsequent application is under section 47 of the Code. The period of limitation in either case will be the same and the Courts below rightly dismissed the second objection petition as barred by time.

(5) For the foregoing reasons, there is no merit in this appeal which stands dismissed with no order as to costs.

R. N. M.

CRIMINAL MISCELLANEOUS

Before S. C. Mital, J.

KULWANT SINGH,—*Petitioner.*

versus.

SENIOR SUPERINTENDENT OF POLICE AND ANOTHER,—*Respondents.*

Criminal Writ No. 53 of 1969.

October 23, 1969.

Code of Criminal Procedure (V of 1898)—Section 173—Challan of cognizable case submitted in Court after completion of investment—Court taking cognizance of the case—Such case—Whether can be re-investigated by Police.

Held, that under the scheme of Code of Criminal Procedure, re-investigation of a cognizable case after the submission of challan under

section 173 of the Code is nowhere provided. In the nature of things also re-investigation after the stage mentioned above cannot be conceived of, inasmuch as section 173 emphatically requires that as soon as the investigation is complete, the officer incharge of the police station shall forward the challan in the prescribed form. The significance of the use of the word "complete" has to be given due weight. It follows, therefore, that re-investigation and especially which the Magistrate has taken cognizance of the offence cannot be contemplated. Hence where a challan of a cognizable case is submitted after completion of the investigation and the Court takes cognizance of the case, the police has no power to re-investigate such a case. (Para 7).

Petition under Articles 226 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus or any other appropriate writ order or direction be issued quashing the further investigation of the case F. I. R. No. 133, dated 4th November, 1968, under section 302/34 I.P.C. of Police Station Nihalsinghwala, taken in hand by the respondents, and restraining the respondents from arresting the petitioner and others in F.I.R. 133 dated 4th November, 1968 till the decision of this petition.

K. S. KWATRA AND SHRI M. P. MALERI, ADVOCATES, for the Petitioner.

J. S. TIWANA, ASSISTANT ADVOCATE-GENERAL, for the Respondents.

JUDGMENT

S. C. MITAL, J.—Kulwant Singh has filed this criminal writ petition in the following circumstances. With respect to the murder of Nirmal Singh, his widow Jasmer Kaur lodged the first information report on 4th November, 1968, at Police Station, Nihalsingwala, district Ferozepore, against Dyal Singh, his brother Chand Singh and Balwant Singh. Upon completion of the investigation, the police filed challan, dated 15th December, 1968, against them in the Court of the Illaqa Magistrate, who after recording the evidence of the doctor and the eye-witnesses committed them to the Court of Session to stand their trial under section 302/34, Indian Penal Code. On 18th July, 1969, the Public Prosecutor made an application in the Court of the Sessions Judge, Ferozepore, requesting for adjournment of the case on the grounds; (1) the gun, pistol and empty cartridges were sent to the Director, Forensic Science Laboratory, Chandigarh, but his report had not been received, and (2) the police on receipt of further information probed into the matter,—*vide* Annexure 'A'. The Sessions Judge declined to grant adjournment and directed by his order, dated 7th August, 1969, that the case shall be fixed for trial early,—*vide* Annexure 'B'.

(2) It transpires from the return filed by D.S.P. Pritam Singh that after the presentation of the challan D.O. letter, dated 24th April, 1969, from the Additional Inspector-General of Police, C.I.D., Punjab, saying that Dyal Singh and Chand Singh had been falsely implicated and that the real culprits were let off after accepting illegal gratification, was received by Shri Daljit Singh Dhillon, I.P.S., Senior Superintendent of Police, Ferozepur. In compliance with the direction of the Additional Inspector-General of Police, Shri Daljit Singh Dhillon deputed D.S.P. Pritam Singh to re-investigate the case. During the pendency of the commitment proceedings, the D.S.P., above-named carried out the investigation. Gurdev Singh, son of Sajan Singh evaded arrest but he was apprehended on 23rd August, 1969. As a result of the investigation conducted by the D.S.P., up to the stage of the filing of the writ petition in hand, it was found that the above-named three persons, who had been charge-sheeted, were innocent, and that Kulwant Singh petitioner, Gurdev Singh, Mehma Singh and Arjan Singh could reasonably, be believed to be the real culprits.

(3) Before proceeding further it deserves mention that there is no merit in the petitioner's allegation that Shri Gurcharan Singh, against whom the petitioner worked in the last general election, was the person behind the application filed by one Gurdev Singh mazhabi, alleging that the persons facing trial were innocent and that the petitioner and others aforesaid were the culprits. In that, D.S.P., Pritam Singh, as indicated above, has convincingly explained the reason for re-investigation by him.

(4) The question for determination is; Has the police power to reinvestigate a case, of which upon completion of investigation, they have not only filed challan but also prosecuted the accused to the extent of getting them committed to the Court of Session?

(5) At the outset, it is noteworthy that section 5 of the Code of Criminal Procedure enacts:—

> "All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained."

(6) The powers of the police in the matter of investigation of cognizable offence, in respect of which information is given to them,

are defined in the Code. Section 154 speaks of the manner in which information relating to the commission of a cognizable offence is to be recorded by an officer incharge of a police station. Section 156 enables the said officer to investigate such a case within his jurisdiction, without the order of the Magistrate. The mode in which investigation has to be conducted as to a cognizable offence is laid down by section 157. The next relevant section is 170 which enacts that if upon investigation it appears to the police officer concerned that there is sufficient evidence or reasonable ground to justify the forwarding of an accused to a Magistrate he shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial. Finally comes section 173 in the scheme. Its sub-section (1) provides:—

> "Every investigation under this Chapter shall be completed without 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, in the form prescribed by the State Government, setting forth the 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 stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and
>
> (b) * * * * * * *."

After the above procedure has been complied with by the officer aforesaid, the case comes up for hearing before a Magistrate and the procedure to be followed by the Magistrate is mentioned in Chapter XVIII, relating to inquiry into cases triable by the Court of Session.

(7) It is no gainsaying that in the case in hand, after following the procedure detailed above, the police challaned Dyal Singh, Chand Singh and Balwant Singh and they are now to be tried by the Court of Session on a charge under section 302 read with section 34, Indian Penal Code. Under the scheme of the Code summarised

above re-investigation of a cognizable case after the submission of challan under section 173 is nowhere provided. In the nature of things also re-investigation after the stage mentioned above cannot be conceived of, inasmuch as section 173 emphatically requires that as soon as the investigation is complete, the officer-in-charge of the police station shall forward the challan in the prescribed form. The significance of the use of the word "complete" has to be given due weight. It means "having all its parts or elemental entire, full, whole, finished, ended, concluded" (see The Shorter Oxford English Dictionary, Third Edition). It follows, therefore, that reinvestigation and especially when the Magistrate has taken cognizance of the offence cannot be contemplated. The ground alleged by the Additional Inspector-General of Police C.I.D., Punjab, in his letter mentioned above that the real culprits were let off after accepting the illegal gratification could never be thought of by the framers of the Code; it is for this reason that the Code does not speak of re-investigation at the stage at which the instant case is. The earliest authority on the point is *S. N.* v. *King Emperor* (1), which lays down:—

> "A District Magistrate has no authority either as such or as Collector and head of the Excise administration of the District to order inquiry by the police with respect to an offence under the Excise Act after the case with reference to that offence had been made over to a Magistrate of competent jurisdiction and the trial commenced."

Learned counsel for the petitioner also relied on *Emperor* v. *Ali and another* (2), in which it was held, "When a challan case has been put up before a Magistrate under section 173 and is pending before him the District Magistrate cannot from information received from outsiders or otherwise direct the police to make further enquiries and as a result of those enquiries direct the Public Prosecutor to withdraw the case. Nor have the police any power to institute further investigation with a view to find evidence in favour of accused. This procedure is specially improper when a charge has been framed". At page 612, the learned Judge further observed, "I am aware of no legal sanction for further investigation by a police officer if he has sent up the case for trial under section 173." This ruling was

(1) 4 P.R. 1908.

(2) A.I.R. 1932 Lah. 611.

followed in *Hanuman and another* v. *State* (3). Another ruling on the point is *N. Krishnaswami and others' case* (4), which lays down:—

> "After filing of the charge-sheet under section 173, there can be no further investigation into the case by the police, and, therefore, any persons examined by them cannot be put forward before the Court as witnesses for the prosecution in support of their case."

(8) *Ram Gopal Neotia* v. *State of West Bengal* (5), enunciates the same principle in the following way:—

> "A Magistrate takes cognizance of a police report under S. 190(1)(b) after the investigation by the police ends and a challan is submitted under S. 173. With the submission of the challan, the cognizance of the offence starts. Any further investigation into the offence would trench on the cognizance that has already been taken by the Magistrate and is not legal."

(9) On the other hand, learned Assistant Advocate-General referred me to *Emperor* v. *Khwaja Nazir Ahmad* (6). In that case, their Lordships of the Privy Council held that the High Court cannot interfere in the exercise of inherent powers under section 561-A, Criminal Procedure Code, with the statutory powers of the police to investigate an offence. The authority is distinguishable on the simple ground that the case was at the stage of investigation. There Lordships further observed that the High Court can interfere under section 561-A only when a charge has been preferred and not before.

(10) The other ruling relied on by the Assistant Advocate-General is *Palaniswami Goundan's case* (7), the brief judgment of which reads:—

> "The only point for consideration in this case is whether a police officer, who had filed what is styled as a "final

(3) A.I.R. 1951 Raj. 131.
(4) A.I.R. 1956 Mad. 592.
(5) A.I.R. 1969 Cal. 316.
(6) A.I.R. 1945 P.C. 18.
(7) A.I.R. 1946 Mad. 502.

charge-sheet" in which he has not laid a charge against one of several persons against whom information was received by him at the earliest stage of investigation, could file a further charge-sheet against that person without disclosing that he had received any further information. No authority has been cited for the contention that such supplementary charge-sheet cannot be laid. All that the section says is that the final charge-sheet shall be filed after the investigation is closed, but there is nothing said in the Code as to when the investigation is to be considered to have ended. If a police officer after he lays a charge, gets information, he can still investigate and lay further charge-sheets; and so there is no finality either to the investigation or to the laying of charge-sheets in the sense in which it is sought to be understood in this case. I, therefore, do not think I will be justified in quashing proceedings. The petition is accordingly dismissed."

(11) Firstly, none of the rulings hereinbefore discussed was cited before the learned Judge of the Madras High Court. Secondly, the question of law involved in this case is different from the one decided by the learned Judge. It is accordingly distinguishable. *Raghunath Sharma and others* v. *State* (8), on which learned Assistant Advocate-General laid stress, in my view, is also distinguishable, for in that case, the first final report dated 21st of September, 1961, was submitted but somehow it did not reach the Magistrate till the 15th of November of the same year. In the meanwhile, the Station House Officer under the directions of the Superintendent of Police submitted the second final report on 1st of November. The Magistrate adjourned the case to 1st November. Thereafter, on 20th December, 1961, he took cognizance of the case. The question decided by the learned Judge was; "Whether the Superintendent of Police, who was an officer superior in rank to the officer incharge of the police station had authority to direct the submission of a charge-sheet when the officer incharge of the police station had already submitted the final report as directed by the Divisional Inspector of Police?" Besides, the Magistrate, before the submission of the second final report, had not taken cognizance of the first final report.

(8) A.I.R. 1963 Patna, 268.

(12) In view of the above, I find that the respondent has no power to reinvestigate the case, and, therefore, he is restrained from arresting Kulwant Singh, petitioner, his son Mohinder Singh, his (petitioner's) son-in-law Arjan Singh and Mehma Singh. The petition is allowed accordingly.

(13) Whether the police will have power to investigate the case after the withdrawal of the case pending against Dyal Singh, Chand Singh and Balwant Singh, is a point on which I am not called upon express any opinion on this occasion and I would say nothing either way.

K.S.K.

REVISIONAL CIVIL

Before D. K. Mahajan, J.

KIRPAL SINGH,—*Petitioner.*

versus

PARABHJOT SINGH,—*Respondent.*

Civil Revision No. 957 of 1967.

October 24, 1969.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 3 and 13—Municipal land let out by the Municipal Committee—Tenant building superstructure thereon and sub-letting it—Such superstructure—Whether becomes part of the land—Application for eviction of the sub-tenant—Whether lies.

Held, that a petition for eviction regarding Municipal land cannot be filed before the Rent Controller under the provisions of the East Punjab Urban Rent Restriction Act, 1949, because the provisions of this Act have been expressly kept in abeyance by a notification sofar as the Municipal land is concerned. When a Municipal Committee lets out some municipal land and the tenant builds superstructure thereon, the superstructure becomes part of the land. The Act will not apply to this superstructure also and no application for eviction by the tenant against his sub-tenant lies under the Act. (Para 4).

Petition under section 15(5) of the East Punjab Urban Rent Restriction Act, for revision of the order of the Court of Shri Udham Singh, Appellate Authority (District Judge), Patiala, dated 29th August, 1967 affirming that of Shri D. R. Mahajan, Rent Controller, Rajpura, dated 31st August,