in respect of legal rights, or suffering from an infringement or denial of legal rights."

(9) According to this definition also, the second wife or the husband not having prior knowledge of the first marriage will be positively aggrieved. It will be just and proper that such a person should not be deprived of filing a complaint against the guilty spouse under section 198 of the Code.

(10) In view of the above discussion, we do not agree with the ratio of the decision in *Jarnail Singh's case* (supra). The reference is answered accordingly. The case will now be fixed before the learned Single Judge for disposal.

H. S. B.

Before S. S. Sandhawalia, C.J. and S. C. Mital, J.

CHOWDHRY TUBEWELL CENTRE,—*Petitioner*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ No. 3366 *of* 1978

November 3, 1978.

Punjab General Sales Tax Act (XLVI of 1948) as amended by Punjab Act XI of 1976—Section 5(1) first proviso and Schedule 'A'—Deletion of the word 'luxury' from the proviso and the Schedule—Whether vests arbitrary power in the Government to levy enhanced tax—First proviso to section 5(1) as amended—Whether constitutional.

Held, that section 5(1) of the Punjab General Sales Tax Act, 1948, with regard to the rate of tax provides that the same shall be levied on the taxable turnover of a dealer at such rates not exceeding seven paise in a rupee which the State Government may by notification direct. The amended proviso to the aforesaid sub-section has obviously and inevitably to be read with the main provision which it controls. So construed, the proviso, therefore, vests power of levying an enhanced rate of tax with the maxima limit of ten per cent

only. In strictness, therefore, the variation of the tax left to the reasonable discretion of the Government with regard to the goods included in Schedule 'A' by the power flowing from the proviso does not exceed a variation of three per cent, that is, seven per cent for the general class of goods and ten per cent for those which may be brought under the proviso thereof. The general delegation of power to the Government to tax from zero to seven per cent under section 5(1) being valid then equally the power vested by the proviso to enhance that rate after following the procedure prescribed and including the goods in Schedule 'A' to the Act cannot be deemed so utterly unreasonable or unguided as to attract the vice of unconstitutionality. The upper limit or the maxima has been firmly pegged by the legislature itself to be ten per cent. Therefore, it cannot be said that the power vested in the Government is wholly unguided or without a limit. Then the proviso operates in the marginal area between the general rate of tax at seven per cent and a special rate which may be levied by raising it by one, two or three per cent up to the upper limit of ten per cent by including the goods in Schedule 'A'. This appears to be a reasonable area of discretion left in the hands of the Government even after the omission of the word 'luxury' from the proviso. Again, the prescription of the procedure by the legislature itself for the levying of the enhanced rate spelled out in the proviso amounts to a guideline or acts as a fetter on the discretion vested in the Government. It is required that before including any goods in Schedule 'A', the State Government must publish by notification a notice of not less than twenty days regarding its intention to add to or delete from the items included in Schedule 'A'. This apparently provides and is obviously intended for any representation to be made and an opportunity for those adversely affected to show cause why the enhanced rate should not be levied. These procedural safeguards in themselves may amount to a guideline or act as a fetter on the discretion vested in an authority. Thus, by a mere omission of the word 'luxury' from the first proviso to section 5(1) of the Act and the limited discretion vested in the Government thereby to levy an enhanced rate of tax (coupled as it is with the prescription of the maximum rate and the procedural safeguards) is not one which can be termed as unguided or unreasonable so as to attract the vice of unconstitutionality.

(Paras 10, 11, 12, 13, 14 and 20).

Petition under Article 226 of the Constitution of India praying that :—

(i) *a writ in the nature of certiorari be issued, calling for the records of respondents relating to the impugned order Annexure "P-1" and after perusal of the same, the impugned order and the Notification (Annexure "P-2") be quashed;*

(*ii*) *first proviso to Section 5(i) be declared unconstitutional and be struck down ;*

(*iii*) *any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case be issued ;*

(*iv*) *that service of advance notice of motion upon the respondents be ordered to be dispensed with as the matter is of urgent nature and other petitions on the same point of law are on the list for hearing;*

(*v*) *the costs of this petition may also be awarded to the petitioner.*

H. L. Sibal, Senior Advocate with R. C. Dogra and S. K. Sarwal, Advocate, *for the Petitioner.*

I. S. Tiwana, Additional A. G., *for the respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.—

(1) The constitutional validity of the first proviso to section 5(1) of the Punjab General Sales Tax Act, 1948, as recently amended by Punjab Act No. 11 of 1976 has been the sole subject-matter of debate in this set of twenty-one connected writ petitions.

(2) It is unnecessary to advert to the facts and indeed Mr. H. L. Sibal whilst presenting the main argument on behalf of the petitioner did not make any reference thereto. Nevertheless to give the barest factual background on which the primary legal question aforesaid rests, it may suffice to advert briefly to the averments in CWP No. 3368 of 1978. The petitioner herein is a partnership concern duly registered under the Punjab General Sales Tax Act (hereinafter referred to as the Act) and engaged in the business of the purchase and sale of tubewell fittings like monoblock electric motors, starters etc. When filing the requisite quarterly returns under section 10(3) of the Act, the petitioner claimed electric motors and starters to be liable to tax at 6 per cent only as these did not fall in Schedule 'A' of the said statute. However, the assessing authority subsequently treated electric motors and starters as goods falling in Schedule 'A' to the Act and consequently assessed them at the rate

of 10 per cent instead of the 6 per cent as claimed by the petitioner,— *vide* assessment order, annexure P. 1 dated the 15th of January, 1978. Aggrieved by this enhanced assessment, the petitioner and the others have presented this set of writ petitions.

(3) To appreciate the legal contentions noticed hereafter it becomes necessary to refer albeit briefly to the legislative history of the provisions. When originally enacted in 1948 section 5(1) of the Act read as follows :—

"5(1) *Rate of tax.*

Subject to the provisions of this Act, there shall be levied on the taxable turn-over every year of a dealer a tax at such rates as the Provincial Government may by notification direct.

(2) * * * *"

By the East Punjab General Sales Tax (Amendment) Act, 1956 (Punjab Act No. 3 of 1956), the concept of 'luxury goods' was introduced in the Act by adding a proviso to section 5(1) of the Act. In the objects and reasons of the said Act it was pointed out that the Government being committed to a socialistic pattern of society and consequently gradual reduction in the disparity of wealth, considered it necessary that the rate of sales tax should not be uniform on all commodities. It was, therefore, decided to double the rate of sales tax on luxury goods and consequently the added proviso laid down that a tax just double the rate of tax so notified on the ordinary goods may be levied on the sale of luxury goods as specified in Schedule 'A' appended to the Act from such date as the State Government may by notification direct. Subsequently changes in the statute also followed to which reference, however, is unncessary and suffice it to mention that prior to the impugned amendment the section read as follows :—

"5(1) Subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax at such rates not exceeding seven paise in a rupee as the State Government may by notification direct :

Provided that a tax at such rate, not exceeding ten paise in a rupee, as may be so notified may be levied on the sale

of *luxury* goods as specified in Schedule 'A' appended to this Act from such date as the Government may by notification direct. The State Government after giving by notification not less than twenty days notice of its intention so to do may by like notification add to or delete from this Schedule, and thereupon this Schedule shall be deemed to have been amended accordingly."

(4) However, in its practical application the classification of luxury goods posed sizable problems and the matter was carried to Court in a number of cases. To mention only a few in *Amir Chand Om Parkash* v. *The Assessing Authority, Amritsar, and another* (1), M. R. Sharma J., took the view that Dhoop and Agarbatti could not be regarded as luxury goods within the meaning of the proviso to section 5(1) of the Act and, therefore, could not be taxed at the enhanced rate. Again in *Science House* v. *The Assessing Authority, Ludhiana* (2), R. N. Mittal J., took the view that beakers, test tubes flasks, jars, etc., might be glasswares but they were not luxury goods.

(5) Apparently to obviate the aforesaid difficulties of classification and interpretation, the Governor of Punjab issued Ordinance No. 14 of 1975 whereby the word 'luxury' from the first proviso to section 5(1) of the Act as also from the heading of the Schedule 'A' of the same was deleted. This Ordinance was subsequently substituted by the Punjab General Sales Tax (Amendment) Act 1976 and sections 2 and 3 thereof were in the following terms :—

"2. In section 5 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the principal Act), in the first proviso, the word 'luxury' shall be and shall always be deemed to have been omitted.

3. In Schedule 'A' appended to the principal Act, the word 'Luxury' shall be and shall always be deemed to have been omitted."

Consequential changes in the earlier notification No. SO 26/PA 46/48/S. 5/72, dated the 10th of August, 1972, prescribing the rate of tax were then made,—*vide* notification No. SO 16/P.A. 46/48/S. 5/76, dated the 25th of March, 1976 (annexure P. 2), whereby the word

(1) (1973) 31 S.T.C. 232.
(2) (1973) S.T.C. 233.

luxury' was declared to have been omitted from the said notification and would always be deemed to have been so omitted.

(6) Having noticed the background of the legislation, one may now advert to the hard core of the argument raised on behalf of the petitioner. It is the omission of the word 'luxury' from the proviso to sub-section (1) of section 5 as also from the heading of Schedule 'A' and the consequential notification for fixation of the rates of tax which is the primary matter of attack herein. It is contended that the omission of this guideline has inducted the element of arbitrainees and whimsicality in the power vested in the Government to levy varying rates of tax by notification. This, according to the learned counsel, results in the vice of unconstitutionality in the proviso to section 5(1) of the Act. In essence the submission herein is that prior to its amendment by deleting the word 'luxury', the proviso vested the power in the Government to levy an enhanced rate of tax on luxury goods by following the procedure prescribed therein. However, by the omission of the only guideline, namely, that of 'luxury', an absolutely unguided and arbitrary power now vests in the Government to levy an enhanced rate of sales tax on any and every class of goods by adding them in Schedule 'A'. It is, therefore, contended that the legislature cannot delegate in absolute terms to the Government the power to levy any rate of sales tax on any class of goods. In other words, it was contended that such an unlimited delegation amounted to an abdication of its essential function by the legislature and was consequently hit by unconstitutionality.

7. Though reference was also made to *Krishnamurthi and Co.* v. *The State of Madras and another* (3) the primary reliance of Mr. Sibal was on the following observations in *Devi Dass Gopal Krishnan and others* v. *The State of Punjab and others* (4).

> "Even so it was contended that section 5, as amended, only gave the maximum rate and did not disclose any policy giving guidance to the Legislature for fixing any rate within that maximum. Here we are concerned with sales tax. If the Act had said '2 pice in a rupee' it would be manifest that it was a clear guidance. But, as the Act

(3) (1973) 31 STC 190.
(4) (1967) 20 STC 430.

applies to sales or purchases of different commodities it had become necessary to give some discretion to the Government in fixing the rate. Conferment of reasonable area of discretion by a fiscal statute has been approved by this Court in more than one decision (see *Khandige Sham Bhat* v. *The Agricultural Income-tax Officer* (5). At the same time a larger statutory discretion placing a wide gap between the minimum and the maximum rates and thus enabling the Government to fix an arbitrary rate may not be sustained. In the ultimate analysis, the permissible discretion depends upon the facts of each case. The discretion to fix the rate between 1 pice and 2 pice in a rupee is so insignificant that it is not possible to hold that it exceeds the permissible limits. It follows that section 5 of the Act as amended is valid."

Basing himself on the above-said enunciation, it was contended that an unlimited and unreasonable discretion has been vested in the Government by the proviso to levy a rate of tax varying from zero per cent to ten per cent. This variation, according to the learned counsel, was so high and so unguided that the same cannot possibly be sustained.

8. It is manifest that the crux of the matter here is factually the degree of discretion vested in the Government to fix and vary the quantum of tax and the reasonableness thereof in its peculiar context.

9. Though it appears to me that the particular issue before us is largely covered by binding precedent, both directly and by way of analogy, the argument raised nevertheless does call for some examination thereof on principle as well. A catina of cases on tax law has now well settled the rule that in fixed statutes the legislature can and may validly delegate to the Government the power of selection of persons on whom taxes are to be laid, the rates at which these are to be so levied and also the different classes of goods and the like which may be brought within the ambit of tax net.

10. With this background, one may first examine the factual aspect of the learned counsel for the petitioner's argument that the

(5) (1963) 3 S.C.R. 809.

amendment of the proviso under challenge has vested an unguided power in the Government to levy sales tax at such varying rates as from zero per cent to ten per cent. This contention suffers from one basic fallacy and loses sight of the main provision of section 5(1) of the Act. The gallaxy of the learned counsel for the petitioners had to concede that no challenge to the constitutionality of section 5(1) of the Act could now be laid in view of the admitted position that the same has now been repeatedly upheld by the final Court. Section 5(1) with regard to the rate of tax provides that the same shall be levied on the taxable turnover of a dealer at such rates not exceeding seven paise in a rupee which the State Government may by notification direct. That being the situation, it is plain that the vesting of a discretion in the Government to levy a general rate of tax varying from zero to seven per cent has been held to be wholly constitutional under section 5(1) of the Act.

11. It is against this background that the amended proviso to the aforesaid sub-section (1) of section 5 has to be correctly construed. This has obviously and inevitably to be read with the main provision which it controls. So construed, the proviso, therefore, vests the power of levying an enhanced rate of tax with maxima limit of ten per cent only. In strictness, therefore, the variation of the tax left to the reasonable discretion of the Government with regard to the goods included in Schedule 'A' by the power flowing from the proviso does not exceed a variation of three per cent, that is, seven per cent for the general class of goods and ten per cent for those which may be brought under the proviso thereof.

12. Now it calls for pointed notice that if section 5(1) is constitutional which leaves it to the discretion of the Government whether to levy a general rate of tax varying from zero per cent to seven per cent then it might inevitably follow that the same authority may also be vested with some reasonable discretion to enhance that tax by three per cent of goods which in its view attracts or deserves to be taxed at a rate higher than the ordinary rate. In other words, it may well be said that the general delegation of power to the Government to tax from zero to seven per cent under section 5(1) being valid then equally the power vested by the proviso to enhance that rate after following the procedure prescribed and including the goods in Schedule 'A' to the Act cannot be deemed so utterly unreasonable or unguided as to attract the vice of unconstitutionality

13. Though repeatedly pressed, learned counsel could cite no precedent for his rather bald assertion that wherever the power to levy tax is delegated by the legislature to the Government without prescribing an upper limit therefor it would be *per se* and without more unconstitutional. Apart from this abstract contention, the concrete position which calls for notice here is the fact that the upper limit or the maxima has been firmly pegged by the legislature itself to be ten per cent. Therefore, it cannot be easily argued that the power vested in the Government is wholly unguided or without a limit. Then the proviso operates in the marginal area between the general rate of tax at seven per cent and a special rate which may be levied by raising it by one, two or three per cent up to the upper limit of ten per cent by including the goods in Schedule 'A'. This appears to me as a reasonable area of discretion left in the hands of the Government even after the omission of the word 'luxury' from the proviso.

14. Another aspect which calls for consideration is the prescription of the procedure by the legislature itself for the levying of the enhanced rate spelled out in the proviso. It is required that before including any goods in Schedule 'A', the State Government must publish by notification a notice of not less than twenty days regarding its contention to add to or delete from the items included in schedule 'A'. This apparently provides and is obviously intended for any representation to be made and an opportunity for those adversely affected to show cause why the enhanced rate should not be levied. As has been often said procedural safeguards in themselves may amount to a guideline or act as a fetter on the discretion vested in an authority.

15. As I said earlier, one must now inevitably turn to the judgments which by and large appear to govern the issue. These includes a number of authorities of the final Court and a judgment of the Division Bench of this Court.

16. Nearly two decades ago in *Banarsi Das Bhanot* v. *State of Madhya Pradesh* (6), the Supreme Court had observed as follows:—

> "Now the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws

(6) AIR 1958 S.C. 909.

such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods and the like."

Similar, if not identical, observations were also made by their Lordships of the Supreme Court whilst affirming the exhaustive judgment of the Madras High Court in the *State of Madras* v. *Gannon Dunkerley and Co. (Madras) Ltd.* (7).

17. The Supreme Court judgment nearest to the point, however is *Sita Ram Bishambhar Dayal* v. *State of U.P.* (8). Therein the legislature had left it to the discretion of the Government to levy sales tax on goods other than foodgrains upto the maximum of five per cent as may be notified from time to time. Whilst upholding the relevant statutory provisions, Hegde, J., speaking for the Court made the following categoric observations to illustrate the principle underlying the desirability and the necessity of such delegation of power by the legislature to the executive:—

"* * *. Though a tax is levied primarily for the purpose of gathering revenue, in selecting the objects to be taxed and in determining the rate of tax, various economic and social aspects such as the availability of the goods, administrative convenience, the extent of evasion, the impact of tax levied on the various sections of the society, etc., have to be considered. In a modern society taxation is an instrument of planning. It can be used to achieve the economic and social goals of the State. For that reason the power to tax must be a flexible power. It must be capable of being modulated to meet the exigencies of the situation. In a Cabinet form of Government, the executive is expected to reflect the views of the Legislature. In fact in most matters it gives the lead to the Legislature. However much one might deplore the 'New despotism' of the executive, the very complexity of the modern society and the demand it makes on its Government have set in motion forces which have made it absolutely necessary for the Legislatures to entrust more and more powers to the executive. Text book doctrines evolved in the 19th century have become out of date. Present position as regards delegation of legislative powers

(7) (1958) 9 STC 303.
(8) (1972) 29 STC 206.

may not be ideal, but in the absence of any better alternative, there is no escape from it. The Legislatures have neither the time, nor the required detailed information nor even that mobility to deal in detail with the innumberable problems arising time and again. In certain matters they can only lay down the policy and guidelines in as clear a manner as possible."

And again adverting specifically to the question of the delegation of power to the executive to levy sales-tax up to the maximum of five per cent, it was observed as follows:—

"* * *. All that was said was that in empowering the Government to levy tax on goods other than foodgrains at a rate not exceeding 5 paise in a rupee, the Legislature parted with one of its essential legislative functions as the power given to the executive is an unduly wide one. We are unable to accede to this contention. Whether a power delegated by the Legislature to the executive has exceeded the permissible limits in a given case depends on its facts and circumstances. That question does not admit of any general rule. It depends upon the nature of the power delegated and the purposes intended to be achieved. Taking into consideraton the legislative practice in this country and the rate of tax levied or leviable under the various sales tax laws in force in this country, it cannot be said that the power delegated to the executive is excessive. *In Devi Dass Gopal Krishnan* v. *State of Punjab,* 4 (supra) this Court ruled that it is open to the Legislature to delegate the power of fixing the rate of purchase tax or sales tax if the Legislature prescribes a reasonable upper limit."

18. Indeed faced with the aforesaid observations, Mr Sibal was even compelled to contend that in the aforesaid case, their Lordships had misread the judgment *in Devi Dass Gopal Krishnan's* case on which he had primarily relied. That argument might perhaps be open to counsel but obviously cannot be countenanced by this Court. It is plain that when a later judgment of the Supreme Court places a particular construction on the ratio of the earlier judgment, the same must necessarily bind the High Courts. That being so, it is obvious that in the present case, upper limit has been specifically prescribed by the legislature and it cannot be possibly characterised as unreasonable.

19. Reference may now be made to the Division Bench judgment of this Court in *Babu Ram Jagdish Kumar and Co.* v. *The State of Punjab and others,* (9). Therein the validity of section 31 of the Act which delegated to the State Government the power to add or delete the items in Schedule 'C' of the Act on which purchase tax was leviable was assiduously challenged on a wide variety of grounds. Repelling all the contention the Bench concluded as follows :—

> "In the light of the above principles of law regarding the delegated legislation, there can be no manner of doubt that the power conferred on the State Government under section 31 of the Act to add to or delete from Schedule C is neither unconstitutional nor excessive. The power conferred on the State Government under section 8 of the Act is similar in character and substance. The same having been held valid by their Lordships of the Supreme Court in *Pandit Banarsi Das Bhanot's case* (supra) cannot be held to be excessive or unconstitutional under section 31."

Relying heavily on the aforesaid observations, Mr. Tiwana was able to contend plausibly that if the absolute discretion vested in the Government to bring goods under the net of the purchase tax by adding to the Schedule C is constitutional then equally a more restricted power given to the Government to merely vary the sales tax by the impugned proviso from seven per cent to ten per cent is also within the bounds of constitutionality.

20. Both on principles and precedent, therefore, I conclude that by the mere omission of the word 'luxury' from the first proviso to section 5(1) of the Act and the limited discretion vested in the Government thereby to levy an enhanced rate of tax (coupled as it is with the prescription of the maximum rate and the procedural safeguards) is not one which can be termed as unguided or unreasonable so as to attract the vice of unconstitutionality. I accordingly uphold its validity and as a result these writ petitions must necessarily fail and are hereby dismissed. The parties, however, are left to bear their own costs.

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(9) (1976) 38 S.T.C. 259.

21. Before parting with this judgment, it deserves passing reference that Mr. R. L. Batta, learned counsel for the petitioners in C.W. No. 2038 of 1976 had half-heartedly challenged the levy of the market fee over and above Rs. 1.50 P. per hundred rupees but had to fairly concede that the matter stood concluded against him by the Full Bench judgment reported as *Kewal Krishan Puri and another* v. *The State of Punjab and others* (10).

S. C. Mital, J.—I agree.

N.K.S.

Before S. S. Sandhawalia, Chief Justice & S. C. Mital, J.

GIAN CHAND,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 662 of 1974.

November 7, 1978.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7, 10 and 16(1)(b)—Prevention of Food Adultration Rules 1955—Rule 22—Punjab Hydrogenated Oil Dealers Licensing Order 1967—Clauses 8 and 10—License prohibiting sale of article of food below the prescribed quantity by a wholesale dealer—Food Inspector requiring wholesale dealer to sell article of food less than such quantity—Refusal by such dealer on the ground that sale was in violation of the terms of his license—Such refusal—Whether amounts to preventing the Food Inspector from taking sample—Proviso to clause 10 of the Licensing Order—Whether a sufficent protection to the licensee.

Held, that section 10 of the Prevention of Food Adulteration Act 1954 confers powers on the Food Inspector to take sample of any article of food from the persons specified therein. This statutory power cannot be easily whittled down by the plea that the accused being a wholesaler could not sell quantity of an article of food less than prescribed in his license to the Food Inspector. Otherwise, the

(10) AIR 1977 Pb. & Haryana 347.