

## CRIMINAL MISCELLANEOUS

*Before P. D. Sharma, J.**RAM SARUP,—Petitioner**versus*THE STATE OF PUNJAB AND ANOTHER,—*Respondents.***Criminal Miscellaneous No. 881 of 1964.**

*Code of Criminal Procedure (Act V of 1898)—S. 480—Settlement Officer appointed under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L. of 1948)—Whether a civil, criminal or revenue Court entitled to act under S. 480.*

1965

February, 10th.

*Held*, that a Settlement Officer appointed under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, cannot be called a Civil, Criminal or Revenue Court for obvious reasons because the functions discharged by him do not fall within the ambit of the Civil, Criminal or Revenue Court as defined in the Code of Civil Procedure, Punjab Courts Act, or Code of Criminal Procedure. He cannot, therefore, convict a person under section 228 of the Indian Penal Code in the exercise of powers conferred by section 480 of the Code of Criminal Procedure.

*Petition for revision of the order of Shri Kul Bhushan, Sessions Judge, Rohtak, dated the 19th June, 1964, dismissing the appeal for want of jurisdiction thereby affirming that of Shri B. D. Dhawan, Settlement Officer, Rohtak, dated the 16th November, 1963, convicting the petitioner.*

B. R. TULI, SENIOR ADVOCATE INSTRUCTED BY S. K. TULI, ADVOCATE, for the Petitioner.

M. R. PUNJ AND G. R. MAJITHIA, ADVOCATES, for the Respondents.

**ORDER**

SHARMA, J.—The present position under Article 227 of the Constitution has arisen out of the following circumstances :

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Shri B. D. Dhawan, Settlement Officer, Rohtak, convicted Ram Sarup petitioner on 16th November, 1963, under section 228 of the Indian Penal Code in the exercise of jurisdiction under section 480 of the Code of Criminal

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Procedure and sentenced him to pay a fine of Rs. 200 or in default to undergo simple imprisonment for one month. Annexure A is a copy of this order. Although Shri B. D. Dhawan has signed the order as Settlement Officer, Rohtak, but in the opening part thereof he has described his Court as "In the Court of Shri B. D. Dhawan, P.C.S., Magistrate, First Class, Rohtak." Ram Sarup felt aggrieved from the above order and preferred an appeal in the Court of the learned Sessions Judge of Rohtak which was dismissed by him on the ground that appeals from the decrees or orders passed by the Settlement Officer, Consolidation of Holdings, did not lie to his Court. The petitioner in his present petition has alleged that Shri B. D. Dhawan, while acting as Settlement Officer under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, was neither Civil nor Criminal or Revenue Court and as such was not competent to exercise the powers vested in such Court under section 480 of the Code of Criminal Procedure. In the circumstances he was not competent to punish him under section 228 of the Indian Penal Code while acting under section 480 of the Code of Criminal Procedure. He also controverted the allegations which, according to Shri B. D. Dhawan, constituted an offence punishable under section 228 of the Indian Penal Code and added that proper procedure was not followed in the matter.

Shri B. D. Dhawan respondent No. 2 pleaded that even if it was found that the Settlement Officer was not a Court then also he was a public servant or a Revenue Officer acting in judicial capacity and so in the wider sense of the term was a Revenue Court. He also contended that an appeal against the impugned order lay before the Assistant Director, Consolidation of Holdings, and so the petitioner could not have come to this Court under Article 227 of the Constitution before filing the appeal. He finally urged that all the ingredients which go to constitute an offence punishable under section 228 of the Indian Penal Code had been proved against the petitioner and that the requisite procedure was followed by him in convicting the petitioner as he did.

A Settlement Officer appointed under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, cannot be called a Civil,

Criminal or Revenue Court for obvious reasons because the functions discharged by him do not fall within the ambit of the Civil, Criminal or Revenue Court as defined in the Code of Civil Procedure, Punjab Courts Act, Code of Criminal Procedure, the Punjab Land Revenue Act, and the Punjab Tenancy Act. Shri B. D. Dhawan as Settlement Officer, could have convicted the petitioner under section 228 of the Indian Penal Code in the exercise of powers conferred by section 480 of the Code of Criminal Procedure if he had been a Civil, Criminal or Revenue Court. Therefore, the impugned order was passed by him without any jurisdiction and as such has to be quashed.

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In the result, the petition under Article 227 of the Constitution is allowed and the order of Shri B. D. Dhawan, Settlement Officer, respondent convicting the petitioner under section 228 of the Indian Penal Code and sentencing him to pay a fine of Rs. 200 is quashed. The amount of fine, if paid, should be refunded.

B.R.T.

APPELLATE CIVIL

*Before S. S. Dulat and A. N. Grover, JJ.*

THE MUNICIPAL COMMITTEE, RAMPURA PHUL,—*Appellant.*

*versus*

AMAR NATH KARKARA,—*Respondent.*

**Letters Patent Appeal No. 128 of 1964.**

*Punjab Municipal Act (III of 1911)—S. 240—Rules framed under—  
Punjab Municipal Account Code—Rule V. 4—Post of Octroi Superintendent—Whether can be retrenched and services of the incumbent of  
the post terminated.*

1965

February, 11th.

*Held*, that sub-rule (1) of rule V. 4 of the Punjab Municipal Account Code makes no distinction whatsoever between Committees, where octroi (without refunds) is in force and any other class of Committees and it provides in mandatory terms that an officer has to be appointed as an Octroi Superintendent who has to discharge the duties imposed upon him by the rules and has to be responsible generally for the assessment and collection of octroi. He