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of the landowner and were not liable to be ejected even in execution of a decree obtained before the Punjab Land Reforms Act, 1972 came into force. The ratio of that decision applies to the present tenants.

(11) However, in view of our finding arrived at on the preliminary objection as to the jurisdiction of the Financial Commissioner to review his order, which had merged in the order of the High Court, this writ petition cannot but succeed. In fact, the order of the Financial Commissioner, Annexure 'P-2', was without jurisdiction and hence it is quashed. These writ petitions are, therefore, allowed with costs. Counsel's fee in each petition to be assessed at Rs. 200. In view of rule 1-A of Order XXVII-A of the Code of Civil Procedure, we also decided to give a notice to the Government Pleader and duly heard him before arriving at this decision.

(12) This decision is being given in Civil Writ petition No. 3097 of 1977 and shall govern the decision in the other connected writ petitions. A copy of this judgment shall be kept on the record of the other connected writ petitions.

K. T. S.

Before J. M. Tandon, J.

NARAIN DASS DAULAT RAM—Petitioner.

versus

STATE OF HARYANA and another—Respondents.

Civil Writ Petition No. 2886 of 1978.

June 7, 1978.

Essential Commodities Act (X of 1955)—Sections 3(2)(d) and (e) and 5—The Haryana Milk and Milk Products Control Order 1978—Clauses 1 and 3—Constitution of India 1950—Articles 14, 19 and 301—Control Order prohibiting export of milk from the State—Whether covered by a "class of commercial transactions relating to foodstuffs" within the meaning of section 3(2)(g)—Exemption to State controlled organisations from the bar imposed on private exporters—Whether violates article 14—Export ban order—Whether a reasonable restriction under article 19(6)—Whether violative of Article 301—Milk—Whether includes pasteurised milk.

Held, that the preamble of the Haryana Milk and Milk Products Control Order 1978 shows that it has been issued for the maintenance and increase of supplies and distribution in the State of milk in fluid form, a commodity essential to the life of the community. For achieving the object contained in the preamble, the private exporters have been stopped from exporting milk from the State of Haryana for a limited period. The operative part of the Control Order has a direct nexus with its object. The nature of transactions of the exporters of milk are of a commercial nature. Milk is admittedly a foodstuff. The export of milk from the State to other States is, therefore, covered by the term "class of commercial transaction relating to foodstuffs" in terms of sub-clause (g) of sub-section 2 of section 3 of the Essential Commodities Act, 1955. (Para 7).

Held, that the State controlled organisations are manned by Government officials and they supply milk to the people at subsidised rates. As against this, the sole object of the private exporters exporting milk from the State is pecuniary. In view of the salient features of distinction between the private exporters and the State controlled organisations, they cannot be clubbed into the same class or category. The question of the Control Order violating Article 14 of the Constitution, therefore, does not arise. (Para 12).

Held, that under Article 302 of the Constitution the Parliament can by law impose restrictions on the freedom of trade, commerce and intercourse in the public interest. This freedom guaranteed under Article 301 is subject to any law framed by Parliament under Article 302. The Control Order having been framed under Section 3 of the Essential Commodities Act is a valid piece of legislation contemplated under Article 302 of the Constitution and has passed the tests of Articles 14 and 19(1)(g) and cannot, therefore be said to be violative of Article 301. (Para 14).

Held, that pasteurised milk is covered by the definition of 'milk' as contained in the Control Order. Pasteurization is a process widely employed in all branches of the dairy industry including milk to eliminate bacteria and to prevent its formation. The process consists in heating milk to a temperature which destroys nearly all the micro-organisms present without seriously affecting its composition or properties. Milk is then immediately cooled to a temperature sufficiently low to check the growth of micro-organisms resistant to the temperature used. As such, milk after being subjected to such process will not cease to be milk. (Para 15).

Petition under article 226 of the Constitution of India praying that this Hon'ble Court be pleased to issue a writ in the nature of mandamus or any other writ, direction or order which may be deemed appropriate under the circumstances of the case so as to quash the impugned order Annexure P1. It is further prayed that during the pendency of the petition, the issuance of the impugned order may

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kindly be stayed permitting the petitioner to carry on his business and trade as before. It is yet further prayed that the petitioner be exempted from filing certified copies of Annexure P1 and costs of the petition be also awarded to the petitioner.

M. M. Punchhi, Advocate and Qutbuddin Advocate with him,—
for the Petitioner.

S. C. Mohunta, A. G., Haryana and H. S. Gill, A.D.A. with him,—
for the respondents.

JUDGMENT

J. M. Tandon, J.

(1) This order will dispose of four civil writ petitions, Nos. 2385, 2386, 2396 and 2514 of 1978, involving a similar point.

(2) The petitioners in all these petitions are dealers in milk in the State of Haryana. They have challenged the legality of Notification No. G.S.R. 57/C.A. 10/55/S.3/78, dated May 24, 1978, hereinafter referred to as the Notification, issued by the Government of Haryana under section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act), prohibiting the use of milk for the manufacture of cream etc., as also its export from the State of Haryana, as detailed in clause 3 thereof, for the period May 24, 1978, to July 14, 1978. According to the petitioners, the Notification is *ultra vires* the authority of the State Government and further liable to be struck down because it offends their fundamental rights under Articles 14 and 19 of the Constitution of India. The Notification is also claimed to be bad being violative of Article 301 of the Constitution.

(3) The State of Haryana, in their written statement, denied that the Notification was *ultra vires* their authority inasmuch as the Central Government had made appropriate delegation to them for that purpose under section 5 of the Act. It was also denied that the Notification conflicts with the fundamental rights of the petitioners under Articles 14 and 19 of the Constitution or is violative of Article 301.

(4) The Act was enacted by Parliament and section 3 thereof reads:—

“3. Powers to control production, supply, distribution, etc., of essential commodities.

(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices or for securing, any essential commodity for the defence of India or the efficient conduct of military operation it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

* * * *

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

* * * *

(g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles which, in the opinion of the authority making the order, are, or if unregulated are likely to be detrimental to the public interest;

* * * *”

Section 5 of the Act deals with the delegation of powers and it reads:—

“5. *Delegation of powers.*—The Central Government may, by notified order, direct that the power to make orders or issue notifications under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by—

(a) such officer or authority subordinate to the Central Government, or

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(b) such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction”.

It is evident that apart from the Central Government, who is competent to issue orders under section 3 of the Act, it can delegate its powers for that purpose to the State Government. The Notification dated May 24, 1978, has been issued by the Government of Haryana under section 3 of the Act, exercising delegated powers from the Central Government. As the main attack is against the Notification dated May 24, 1978, it will be advantageous to reproduce below its relevant parts:—

“No. G.S.R. 57/C.A. 10/55/S. 3/78; whereas the Governor of Haryana is of the opinion that it is necessary so to do for the maintenance and increase of supplies and distribution in the State of Haryana of milk in fluid form, a commodity essential to the life of community.

Now, therefore, in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (Parliament Act 10 of 1955), read with Government of India, Ministry of Food and Agriculture, Order No. G.S.R. 1111, dated the 24th July, 1967 and all other powers enabling him in this behalf, the Governor of Haryana, with the prior concurrence of the Central Government, hereby makes the following order, namely:—

1. *“Short title, extent and commencement:—*

- (1) This order may be called the Haryana Milk and Milk Products Control Order, 1978.
- (2) It extends to the whole of the State of Haryana.
- (3) It shall come into force at once and shall cease to be operative at the expiry of the 14th day of July, 1978, except as regards, things done or omitted to be done before such cessation of operation;

2. * * * *

3. *Prohibition of manufacture, sale, service, supply and export of milk and milk products.*—No person shall—

- (a) use milk of any kind for the manufacture of cream, casein, skimmed milk, khoa, rubree or any kind of sweets, in the preparation of which milk or any of its products except ghee is an ingredient; or
- (b) sell, serve, supply or export or cause to be sold, served, supplied or exported any cream, casein, skimmed milk, khoa, rubree or any kind of sweets in the preparation of which milk or any of its products except ghee, is an ingredient;
- (c) export milk from the State of Haryana, to any other State or Union Territory, and
- (d) export Paneer from the State of Haryana to any other State or Union Territory;

Provided that nothing in this clause shall apply to the use of milk—

- (i) for the manufacture, sale, service or supply of ice cream, kulfi, kulfa, or paneer in the preparation of which no khoa, rubree or cream is used.
- (ii) for the manufacture, sale, service or supply of such milk and milk products as the State Government may, having regard to the needs of the Defence Forces, by an order permit;
- (iii) by such milk factories engaged in the processing of milk for consumption in fluid form or factories registered or licensed under the Industrial (Development and Regulation) Act, 1951, for the manufacture of condensed milk, milk powder, baby food or any other such products;
- (iv) by the National Dairy Research Institute, Karnal, for the manufacture and sale of any milk products for the purposes of training and research;

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Provided further that nothing in this clause shall apply to the export of milk—

- (i) in any quantity by Delhi Milk Scheme, Mother Dairy Delhi through their well identified tankers and officers;
- (ii) in a quantity up to one quintal by any one vendor to Delhi;
- (iii) to Himachal Pradesh on permit issued by the Milk Commissioner, Haryana.

* * * * *

The Notification clearly prohibits the export of milk by the petitioners from the State of Haryana for the period May 24, 1978 to July 14, 1978.

(5) The first point to be considered is whether the Central Government has delegated the power to the Government of Haryana to issue the Notification, dated May 24, 1978 or in other words, the Notification has been issued by a duly authorised authority. The main thrust of the learned counsel for the petitioners is on this point. His contention is that the Central Government,—*vide* Notification No. G.S.R. 1111, dated July 24, 1967, also mentioned in the Notification, dated May 24, 1978 has restricted the delegation of authority to sub-clause (d) of sub-section (2) of section 3 of the Act, which only provides for regulating by licences etc., any essential commodity and not prohibition thereof. The ban on the export of milk by the petitioners from the State of Haryana,—*vide* the impugned Notification tantamounts to exercise of power of prohibition which was neither delegated to the State Government nor did it vest in it. The impugned Notification is, therefore, *ultra vires* the authority of the State Government.

(6) The Notification No. G.S.R. 1111, dated July 24, 1967 does not delegate the authority to the State Government in relation to sub-clause (g) of sub-section (2) of section 3 of the Act. The power to regulate and prohibit any class of commercial or financial transactions relating to foodstuffs is contained in sub-clause (g) and not in sub-clause (d). The latter is restricted to regulating by licences, etc.

any essential commodity. The contention of the learned counsel for the petitioners that banning the export of milk from the State of Haryana by the petitioners will come within the mischief of prohibition and would not be a mere regulatory measure, is not without substance. In the event of the State Government holding the delegated power only in relation to sub-clause (d) of sub-section (2) of section 3 of the Act, it may have been rather difficult to repel the contention of the learned counsel for the petitioners. The factual position is, however, different. The Central Government,—*vide* Notification No. G.S.R. 168 (E), dated March 13, 1973, delegated the power to the State Government to make orders in relation to clause (g) of sub-section (2) of section 3 of the Act as well. When faced with this situation, the learned counsel for the petitioners argued that the State Government cannot take advantage of the Notification, dated March 13, 1973 in view of the fact that the authority under it was not exercised while making the impugned notification. For this purpose, he referred to the impugned Notification wherein specific mention has been made of Notification No. G.S.R. 1111, dated July 24, 1967 and not that of Notification No. G.S.R. 168 (E), dated March 13, 1973. I am not impressed by this argument. It is true that no specific mention of the Notification, dated March 13, 1973, has been made in the impugned Notification, but it is specifically mentioned therein that the order contained in the impugned Notification is being issued in exercise of all powers enabling the Governor of Haryana in this behalf to do so. The Notification, dated March 13, 1973, authorised the State Government to issue orders under sub-section (1) of section 3 of the Act, in relation to clause (g) of sub-section (2) thereof. It is clear that the Government of Haryana, did exercise this power while issuing the impugned Notification, dated May 24, 1978. In the first place, the mere omission to mention the Notification, dated March 13, 1973, in the impugned Notification is immaterial and will not render it *ultra vires*. And secondly, the specific mention in the impugned Notification that it was being issued in exercise of all powers enabling the Governor of Haryana in this behalf to do so will effectively negate the objection raised.

(7) The learned counsel for the petitioners has then argued that under sub-clause (g) of sub-section (2) of section 3 of the Act, the orders can be made for regulating or prohibiting any class of commercial transactions relating to foodstuffs if required to be done in public interest. The argument further is that in the instant case, the banning of export of milk by the petitioners cannot be termed

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as a class of commercial transactions relating to foodstuffs and it is not in public interest as well. I see no force in this contention. The preamble of the impugned Notification brings out that the Governor of Haryana is of the opinion that it is necessary to issue it for the maintenance and increase of supplies and distribution in the State of Haryana of milk in fluid form, a commodity essential to the life of the community. The object of the Notification as contained in its preamble cannot be stamped as not in public interest. For achieving the object contained in the preamble of the Notification, the petitioners have been stopped from exporting milk from the State of Haryana for a limited period, that is, from May 24, 1978 to July 14, 1978. It is a matter of common knowledge that the yield of the milch cattle stands reduced considerably in this part of the year due to heat and dry weather. The export of milk from the State of Haryana during this period would naturally cause hardship to the people. The operative part of the Notification has a direct nexus with its object. The petitioners are exporters of milk from the State of Haryana to other States. Their transactions relating to the supply of milk to other States are of commercial nature. Milk is admittedly a foodstuff. It is, therefore, difficult to conceive that the export of milk by the petitioners from the State of Haryana to other States will not be covered by the term "class of commercial transactions relating to foodstuffs" in terms of sub-clause (g) of sub-section (2) of section 3 of the Act. The prohibition contained in the Notification in relation to the export of milk by the petitioner from the State of Haryana to other States is clearly covered by sub-clause (g) *ibid.*

(8) Another point in this connection canvassed by the learned counsel for the petitioners is that the State Government being subordinate to the State Legislature cannot exercise such authority which cannot be exercised by the latter. Otherwise, it would tantamount to a servant exercising more authority than its master. This contention is devoid of substance. The State Government has exercised the validly delegated authority of the Central Government under section 5 of the Act for issuing the Notification. It hardly matters whether the State Legislature, in exercise of its inherent powers, can do so or not.

(9) The power to issue orders under sub-section (1) of section 3 of the Act in relation to clause (g) of sub-section (2) thereof stands delegated to the State Government and the latter exercised this authority for issuing the Notification, dated May 24, 1978. The

impugned Notification is, therefore, *intra vires* the authority of the State Government.

(10) Now, remain the points pressed with rather subdued vehemence. It has been argued that the Notification exempts Delhi Milk Scheme and Mother Dairy, Delhi, from the ban on the export of milk from the State of Haryana, thereby infringing the right of the petitioners to equality under Article 14 of the Constitution. The contention is that these two organisations purchase milk from the State of Haryana and take it to Delhi and the same right should have been conceded to the petitioners as well. The fact that the petitioners and the two organisations, named above have been treated differently in the Notification. Article 14 of the Constitution stands attracted and renders it bad. The learned Advocate-General, Haryana has argued that Delhi Milk Scheme and Mother Dairy, Delhi, are not on equal footing with the petitioners, and, therefore, the question of the Notification offending Article 14 of the Constitution does not arise. He has cited *M/s. Vrajlal Manilal and Co. and another v. State of Madhya Pradesh and others* (1), wherein it has been held that a mere literal or mechanical construction would not be appropriate where important questions such as the impact of an exercise of a legislative power on constitutional provisions and safeguards thereunder are concerned. In cases of such a kind, two rules of construction have to be kept in mind: (1) that courts generally lean towards the constitutionality of a legislative measure impugned before them upon the presumption that a legislature would not deliberately flout a constitutional safeguard or right, and (2) that while construing such an enactment the court must examine the object and the purpose of the impugned Act, the mischief it seeks to prevent and ascertain from such factors its true scope and meaning.

(11) Another ruling relied upon is *Madhya Bharat Cotton Association Ltd. v. Union of India and another* (2), wherein it was found that 'Hedging' in cotton trading like insurance and banking requires experience and stability; also, it so vitally affects the welfare of a large section of the people of India and India's economic stability in world markets that it cannot be lightly entrusted to inexperienced hands. Where, therefore, the Textile Commissioner in his discretion exempts certain Association which had been dealing with such contracts for twenty years from the prohibition under

(1) A.I.R. 1970 S.C. 129.

(2) A.I.R. 1954 S.C. 634.

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the Cotton Control Order 1950, a recently formed association cannot complain that it is discriminated against within the meaning of Article 14 of the Constitution. Further when the two associations cannot be said to be on a footing of equality, no question of discrimination under Article 14 can arise.

(12) In the background of the *ratio* of these two Supreme Court authorities, the learned Advocate-General has contended that Delhi Milk Scheme and Mother Dairy, Delhi are two State controlled organisations. They are manned by the Government officials and they supply milk to the people in the Capital at subsidised rates. As against this the petitioners are private persons and their sole object of exporting milk from the State of Haryana is pecuniary gain. Keeping in view the fact that the duration of the ban is for a short period, that is, from May 24, 1978 to July 14, 1978 it is obvious that the petitioners cannot be treated on equal footing with Delhi Milk Scheme and Mother Dairy, Delhi. After having carefully considered the points highlighted by the learned counsel for the parties, the view canvassed by the learned Advocate-General must prevail. There can be no manner of doubt that in view of the salient features of distinction between the petitioners and the two Delhi organisations, they cannot be clubbed in the same class or category. As the Delhi organisations constitute a class in themselves, distinct from the petitioners, the question of the Notification violating Article 14 of the Constitution does not arise.

(13) Another argument of the learned counsel for the petitioners is that Article 19(1)(g) of the Constitution guarantees to all citizens, including the petitioners, the right to practise any profession, or to carry on any occupation, trade or business. The petitioners, therefore, have a sacred right to carry on their business to sell milk throughout India irrespective of the State barriers. As the Notification negatives this right of the petitioners, it is liable to be quashed being violative of Article 19(1)(g). I am not impressed by the argument. Sub-clause (6) of Article 19 of the Constitution reads:—

“19(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause

shall affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to:—

- (i) * * * * *;
- (ii) the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise”.

It is clear that the right to practise any profession, trade or business in terms of Article 19(1)(g) of the Constitution, is subject to the provisions contained in sub-clause (6) thereof. The right under Article 19(1)(g) can be negated by law by imposing reasonable restrictions in the interest of general public. The Notification has been issued in public interest and there can be no manner of doubt about it. In *M/s. Chanan Ram Jagan Nath v. The State of Punjab and others* (3), the Punjab Khandsari and Gur Dealers Licensing Order (1963), made under section 3 of the Essential Commodities Act, was challenged being violative of Article 19 of the Constitution. It was found that merely because an order has the effect of restricting a particular business to certain persons who are already in that business will not by itself necessarily render the order to be unconstitutional. The Court will have to look into the circumstances in which the order is made, the commodity to which it relates, the situation which is sought to be remedied and the object which is desired to be achieved. Once it is found on the conspectus of all these factors that there is a rational connection between the provisions of the order and the objection sought to be achieved, the order will not be struck down. Applying the test laid in this authority, the restriction imposed on the petitioners banning the export of milk for a limited period, from May 24, 1978 to July 14, 1978 shall have to be certified as reasonable. The duration of the Notification is very short. The petitioners have not been completely stopped from doing their business in milk. They are at full liberty to sell milk within the State of Haryana which is the sole object of the Notification. The Notification, therefore, cannot be termed as violative of Article 19(1)(g) of the Constitution.

(3) A.I.R. 1965 Pb. 74 (D.B.).

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(14) The learned counsel for the petitioners has also tried to take shelter under Article 301 of the Constitution which provides that subject to the other provisions of Part XIII of the Constitution, trade, commerce and intercourse throughout the territory of India shall be free. The argument is that the ban imposed on the petitioners for export of milk from the State of Haryana during the stipulated period violates the guarantee of freedom of trade contained in Article 301. This contention again has no force. Under Article 302, Parliament can by law impose such restrictions on the freedom of trade, commerce and intercourse in the public interest. In *Shobha and another v. State* (4), where U.P. Paddy (Restriction on Movement) Order (1958) issued under section 3 of the Essential Commodities Act, was under challenge, it was held that the freedom of trade, commerce and intercourse guaranteed under Article 301 is subject to any law framed by Parliament under Article 302. The impugned order having been framed under section 3 of the Essential Commodities Act, and passed by Parliament, was a piece of legislation contemplated under Article 302 and was fully protected by it. The impugned order merely carried out the purposes of the Act and was in the nature of delegated legislation. It was further held that the position of the impugned Order and other orders passed under section 3 of the Act was analogous to that of rules or regulations framed under the statute which were to be treated as part of the statute itself. The Notification in the instant case has passed the test of Articles 14 and 19(1)(g) of the Constitution. In view of the rule laid down in *Shobha and another v. State* (Supra) and the reasons given already, it cannot be held to be bad being violative of Article 301 of the Constitution.

(15) The last contention of the learned counsel for the petitioners is that the petitioners deal in pasteurised milk and the same is not covered by the definition of 'milk' as contained in the Notification with the result that it is not applicable to them. This contention is also without force. Pasteurization is a process widely employed in all branches of the dairy industry including milk to eliminate bacteria and further to prevent its formation. The process consists in heating milk to a temperature which destroys nearly all the micro-organisms present without seriously affecting its composition or properties. Milk is then immediately cooled to a temperature sufficiently low to check the growth of micro-organisms resistant to

the temperature used. It is hardly possible to hold that milk after being subjected to such process will cease to be milk.

(16) In the result, all the four writ petitions are without merit and are dismissed with costs.

N. K. S.

Before S. S. Dewan, J.

AVTAR SINGH—Petitioner

versus

STATE—Respondent.

Criminal Revision No. 59-R of 1975.

June 12, 1978.

Code of Criminal Procedure (V of 1898)—Section 540—Scope of—Power to summon court witness—Circumstances under which such power can be exercised.

Held, that by the very nature of the subject dealt with by section 540 of the Code of Criminal Procedure 1898, the action to be taken by the court thereunder must necessarily depend upon the facts of each case and it is not possible to formulate a general rule applicable to all cases determining when and under what circumstances power under the section should be exercised. It is necessarily so because the provisions of the section are intended to subserve the interests of justice and not the interest of either the prosecution or the accused before the Court. What is just in a given set of facts and circumstances may be clearly unjust in another set of facts and circumstances. Any attempt, therefore, to limit the amplitude of power or to formulate rules to govern the exercise of the Court's discretion in respect of it can never be totally free from the possibility of making the court powerless to render justice in the peculiar circumstances of a particular case. The only limitation which can be placed on that power are those which the judicial conscience of the Court may prescribe in the facts and circumstances actually before it. When the Court comes to entertain an opinion that the evidence of any person is essential to the just decision of the case, the section itself makes it obligatory for the court to summon and examine that person.

(Para 3).

Case reported under section 428 Cr. P.C. by Shri K. L. Wason, Addl. Sessions Judge, Ambala, dated 14th March, 1974 for revision of