is not explained how, in what manner and in relation to which Article. At the hearing the learned counsel has addressed no argument in this respect. These sections merely provide a machinery for the enforcement of the substantive provisions of Punjab Act 10 of 1953 for ascertainment of permissible area, and of surplus area, and then for utilisation of surplus area. There is nothing in these sections which attracts violation of any Article of the Constitution. So this ground is without substance".

Counsel further pointed out that section 5-C of the Punjab Security of Land Tenures Act has thereafter held unchallenged sway.

(14) On this aspect also we agree with the appellant-State that the provisions of section 32-BB(2) cannot be characterised as either arbitrary or vesting uncanalised and unguided powers in the Collector.

(15) In the light of the aforesaid discussion we are, with great respect, constrained to set aside the judgment of the learned Single Judge and restore the orders of the revenue authorities below. The appeal is allowed but in view of the difficult questions raised, the parties are left to bear their own costs.

N. K. S.

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

SURJIT SINGH—*Petitioner.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ No. 3829 *of* 1978

March 21, 1979.

Code of Criminal Procedure (II of 1974)—*Section* 197—*Sanction refused for the prosecution sought—State Government—Whether can review its earlier order and grant sanction subsequently—Order passed under section* 197—*Nature of—Whether* quasi-judicial *—Opportunity of being heard—Whether necessary to be granted before the passing of such order.*

Held, that the Government acts in administrative capacity while passing an order under section 197 of the Code of Criminal Procedure, 1973 and the Government exercises a statutory power and that power can be exercised by it only once in whatever way it chooses to do but later on it cannot change its mind and pass a fresh order taking a different view, otherwise there will be no end to the exercise of this power. There is no specific provision empowering the State Government to pass a second order on the same facts either expressly or by necessary implication. There may be a difference in passing an administrative order in exercise of its statutory authority under a specific statute in contradistinction to its purely administrative or executive authority under Article 162 of the Constitution. Therefore, the general power of the Government to rescind or vary its order has to be kept at a different level than the orders which the Government has the authority to pass on the basis of a statute framed by Parliament or the State Legislature. If the Government has exercised its power once, it cannot exercise the same power in a given case for the second time but if the Government has not exercised its power, it has not exhausted its power and there is no bar in the exercise of that power. Therefore, once having exercised its power the Government has no power or authority to pass a fresh order on the matter under section 197 of the Code.

(Para 18).

Held, that an order passed under Section 197 of the Code is an administrative one and not a *quasi-judicial* order and, therefore, no one is entitled to any hearing before the passing of such an order.

(Para 21).

Case referred by Hon'ble Mr. Justice D. S. Tewatia on February 16, 1979 to a Division Bench for decision of an important question of law involved, in the case. The Division Bench consisting of Hon'ble the Chief Justice, Mr. S. S. Sandhawalia and Hon'ble Mr. Justice G. C. Mital finally decided the case on 21st March, 1979.

Petition under Articles 226/227 of the Constitution of India praying that :—

(*i*) *a writ in the nature of certiorari uashing the order Annexure P-3, be issued ;*

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

(*iii*) *the record of the case be ordered to be sent for ;*

(*iv*) *the cost of the petition be awarded to the petitioner.*

It is further prayed that during the pendency of the writ petition the operation of the impugned order Annexure P-3, be stayed.

Kuldip Singh, Advocate with R. S. Mongia, Advocate, *for the Petitioner.*

I. S. Tiwana, Additional A.G.

Ajmer Singh, *for the added respondent.*

JUDGMENT

Gokal Chand Mital, J.

(1) A point of substantial importance raised in this writ petition is whether the State Government has power to review its earlier order passed under section 197 of the Code of Criminal Procedure (hereinafter referred to as the Code). The State Government,—*vide* order dated July 10, 1973 (annexure P-2), refused sanction for the prosecution of the petitioner under section 197 of the Code on the basis of a complaint but, later on,—*vide* order dated June 15, 1978 (annexure P-3), accorded sanction for the prosecution of the petitioner on the basis of the same complaint. Since interpretation of section 197 of the Code is involved, its relevant part is reproduced hereunder:—

> "197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction:—
>
> (a) * * * *
>
> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government."

(2) The petitioner, Surjit Singh, Deputy Superintendent of Police, has filed this writ petition challenging the order of the State Government, annexure P-3, by which sanction has been granted against him under section 197 of the Code for his prosecution along with another.

The writ petition came up for hearing before D. S. Tewatia, J., on February 16, 1979, who was of the opinion that a question of considerable legal importance arises in this case and there is no direct decision covering the point and desired that the matter may be decided by a larger Bench. That is how this petition has been placed before us for final decision.

(3) It is alleged in the petition that on January 20, 1972, two First Information Reports Nos. 19 and 20 were registered at Police Station, Ropar, under sections 307, 332, 148/149, Indian Penal Code, sections 25—27 of the Arms Act and section 45 of the Explosive Substances Act, 1908, against a Jatha of Nihangs and they were asked to join investigation by the police but instead the Nihangs took positions in Gurdwara Sadabrat and refused to come out in spite of request by the police. After some time, they attacked the police party injuring a number of them and the police had to fire in self-defence as a result of which a number of persons were killed and injured. The Akali leaders made the incident a political issue and met the Governor of Punjab for registration of the case against the police officials/officers, to which the Governor did not agree but, later on, the Punjab Government appointed Shri R. S. Narula as one-man Commission to hold an enquiry into the incident. The Commission gave its report and held that the firing was justified but was excessive. The Akalis filed a complaint against the petitioner and 33 other police officers under sections 302, 307, 148 and 149, Indian Penal Code, in the Court of the Chief Judicial Magistrate, Ropar, after the Commission had given its report. While the case was pending before the Chief Judicial Magistrate, Ropar, for recording of preliminary evidence, application annexure P-1, was filed by Karam Singh, respondent No. 3, before the State Government for grant of sanction for the prosecution of the petitioner and another Deputy Superintendent of Police stating therein that the trial of Deputy Superintendents of Police could only take place if sanction under section 197 of the Code was granted by the State Government. In the meantime, the Chief Judicial Magistrate had summoned the petitioner but since the State Government refused to grant sanction for the prosecution,—*vide* annexure P-2, the petitioner was discharged for want of sanction. The complainant Karam Singh, respondent No. 3. filed a revision petition against the order of discharge of the petitioner which is still pending before the Additional Sessions Judge, Ropar.

(4) It is further alleged that the Shiromani Akali Dal has come in power in the State of Punjab and the present Ministry, taking

advantage of its position and in order to appease the Akali Janta, has set aside the earlier order of the State Government and has now granted sanction for the prosecution of the petitioner and another Deputy Superintendent of Police,—*vide* annexure P-3. It is specifically pointed out that in the order annexure P-3 there is no mention of the earlier order of refusal nor was the petitioner granted any opportunity whatsoever before passing the impugned order. It is also averred that the impugned order has been passed without application of mind for the reason that the Government was not conscious of its earlier order annexure P-2 when the impugned order annexure P-3 was passed. It is also alleged that once power was exercised under section 197 of the Code and the State Government refused to grant sanction, the order could not be reviewed and there was no provision under the Code giving power to review the earlier order. It was further averred that the impugned order is *mala fide* as it has been passed to appease the Shiromani Akali Dal.

(5) In the written statements, the allegations contained in the writ petition have been controverted. It is stated that on the fresh application of Karam Singh, respondent No. 3, the State Government, after thorough and careful consideration of the relevant material, was satisfied that *prima facie* commission of criminal offences by the petitioner was indicated and as such accorded sanction under section 197 of the Code. It is further averred that the sanction was granted purely on merits and not for any political or extraneous reasons. The further stand is that there was application of mind to the facts of the case and, that the Government had the power to pass the impugned order. The other stand taken is that the impugned order is purely an administrative order and the petitioner was not entitled to be heard in person before according sanction for his prosecution. The allegations of *mala fide* have been stoutly denied.

(6) Shri Kuldip Singh, the learned counsel for the petitioner, raised before us the following points:—

(1) That the State Government had no power to review its earlier order. There was no statutory provision granting power of review and in the absence of the same, the subsequent order is wholly without jurisdiction;

(2) that the Government exercised its powers under section 197 of the Code and once having exercised that power under the statute, the power was exhausted and could not be

exercised a second time and as such the first order became final;

(3) that an order passed under section 197 of the Code is a quasi-judicial order and before passing the order to the disadvantage of the petitioner, he should have been heard, and

(4) that there was no application of mind in passing the impugned order as it was not noticed whether any previous order was passed refusing to sanction on the same material and no grounds or reasons have been stated in the order for taking a different view.

(7) In support of his first point, Mr. Kuldip Singh has placed reliance on *Patel Narshi Thakershi and others* v. *Pradyumansinghji Arjunsinghji* (1), *State of Bihar* v. *D. N. Ganguly and others* (2), an unreported Division Bench decision of this Court in *Hardyal Rai* v. *The State of Punjab and others* (3), *Venkatesh Yeshwant Deshpande* v. *Emperor* (4), *Bherumal* v. *Motumal and another* (5) and *Kanta Devi and another* v. *State of Rajasthan and others,* (6).

(8) So far as *P. N. Thakershi* v. *Pradyumansinghji* (supra), is concerned, it lays down:—

"The power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication."

The aforesaid principle is well-settled but the facts of the case show that the proceedings were taken under Saurashtra Land Reforms Act whereunder a hearing had to be afforded to the landowner and from the orders of the first authority there were appeals and revisions to the higher officers and the State Government. Therefore, it is clear that the order which was sought to be reviewed was a quasi-judicial order and not a purely administrative order.

(1) A.I.R. 1970 S.C. 1273.
(2) A.I.R. 1958 S.C. 1018.
(3) C.W.P. No. 1084 of 1962 decided on August 26, 1964.
(4) A.I.R. 1938 Nagpur 513.
(5) A.I.R. 1956 Ajmer 67.
(6) A.I.R. 1957 Raj. 134.

(9) With regard to *State of Bihar* v. *D. N. Ganguly* (supra), the following passages would be of great bearing on the decision of the points involved in this case as the Supreme Court was considering the cancellation or supersession of a reference made under section 10(1) of the Industrial Disputes Act, as the reference order was passed while performing an administrative act:—

> "It has, however, been held by this Court in *State of Madras* v. *C. P. Sarathy,* (7) that in making a reference under section 10(1), the appropriate government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any-the-less administrative in character."
>
> "The Act does not expressly confer any power on the appropriate government to cancel or supersede a reference made under section 10(1) of the Act.
>
> Now can such power be claimed by implication on the strength of section 21 of the General Clauses Act. The rule of construction enunciated by section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of section 10(1) of the Industrial Disputes Act.
>
> If the appropriate Government has no authority to cancel or revoke a notification issued under section 10(1), the *bona fides* of the Government can hardly validate the impugned cancellation."

According to this decision of the Supreme Court, the Government does an administrative act while making a reference order under section 10(1) of the Industrial Disputes Act and the Act does not expressly confer any power on the Government to cancel or supersede a reference already made by it nor can such power be claimed under section 21 of the General Clauses Act. A reading of this judgment shows that the Government of Bihar referred an industrial dispute between the management and the workmen of the Bata Shoe Co. Ltd.,

(7) 1953 S.C.R. 334: (A.I.R. 1953 S.C. 53) (6).

under section 10(1) of the Industrial Disputes Act. Another industrial dispute of the same management but with different workmen was again referred by the Government of Bihar to the same Industrial Tribunal which had already been constituted for the earlier reference, while the two references were pending, the Government issued a third notification by which it purported to supersede its earlier two notifications to combine the said two disputes into one dispute, to implead the two sets of workmen involved togetner, to add the Bata Mazdoor Union to the dispute and to refer it to the adjudication of the same Industrial Tribunal. In the result, the consolidated reference was about the total number of workmen who were involved in the earlier two references separately. The management of the Bata Shoe Co. as well as its workmen filed two separate writ petitions before the Patna High Court challenging the last notification as being illegal and *ultra vires* with a prayer that the earlier two references should be allowed to proceed after quashing the last notification. The High Court allowed both the writ petitions and issued a writ in the nature of certiorari quashing the third notification and also issued a writ in the nature of mandamus requiring the Industrial Tribunal to proceed with the earlier two reference and to bring them to a conclusion in accordance with law. The decision of the High Court was sought to be challenged before the Supreme Court at the instance of the Government of Bihar, and Gajendragadkar, J., speaking for the Court, held that the Government had no power to cancel or supersede the earlier references and upheld the order of the High Court.

(10) The unreported Division Bench decision of this Court in *Hardyal Rai* v. *The State of Punjab* (supra), relates to the case of a municipal employee who challenged the order of his dismissal from service before the State Government by filing an application under sections 236/237 of the Punjab Municipal Act and the State Government allowed the application and annulled the relevant resolution of the municipal committee terminating the services of the employee. Later on, the Punjab Government issued a fresh order under section 236 of the Punjab Municipal Act and, with the aid of section 19 of the General Clauses Act, it rescinded its earlier order by which the resolution of the municipal committee removing the employee from service was annulled. The employee challenged the subsequent order of the State Government before the High Court in a writ petition and the High Court quashed the subsequent order holding that section 19 of the General Clauses Act did not confer power on the Government to reverse or review the order of the kind under

consideration. No other provision was shown granting power of review to the State Government.

(11) As regards *Venkatesh Yeshwant* v. *Emperor* (F.B.) (supra), there, in exercise of power under section 401 of the Code, the State Government passed an order unconditionally remitting the sentence of an accused but, later on, the Government rescinded its previous order granting remission of sentence to the accused. The subsequent order was challenged before the High Court and the Full Bench came to the following conclusion:—

> "It is not open to Government after remitting a sentence unconditionally, and in absence of fraud or mistake, to cancel the order and restore the sentence."

Vivian Bose, J., while agreeing with the judgment of the Chief Justice, delivered a separate judgment observing as follows:—

> "I do not say that an order of remission is never open to recall. It may be in certain circumstances; fraud and mistake for example might justify such action. But I am clear that it cannot be done arbitrarily. The matter vitally affects the liberty of the subject, and so, if such power exists at all, it can in my opinion only be exercised in circumstances which a Court of justice would uphold on general grounds of justice, equity and good conscience, and of public policy."

According to this decision, the Government has no power to recall its previous order in the absence of a specific provision to that effect in respect of the provision of the Code which was being considered by the Full Bench. Even before the Full Bench, section 21 of the General Clauses Act was brought in aid for rescinding the previous order but it was held that provision is a legislative provision and does not empower the doing of such an act. This case would be of great help in interpreting the section with which we are concerned here.

(12) The next case relied upon is *Bherumal* v. *Motumal* (supra). This again is a case under the Code. The relevant passage is as follows:—

> ".....and not to the judicial orders which by their own nature are incapable of revision, amendment or alteration

by the same Court unless so permitted by some express provisions of the Code of Criminal Procedure."

Here, the accused persons were allowed to appear through their counsel. On one date of hearing, their counsel was absent and the learned Magistrate forfeited the bonds furnished by the accused persons. Subsequently the order forfeiting the bonds was vacated and the subsequent order was the subject-matter of consideration before the learned Judicial Commissioner of Ajmer who was of the opinion that there was no provision in the Code permitting revision, amendment or alteration of an order by the same Court and section 21 of the General Clauses Act could not be brought in aid.

(13) In *Kanta Devi* v. *State of Rajasthan* (supra), the State Government in exercise of its powers under section 9 of the *Rajasthan* Town Municipalities Act, nominated certain persons as members of the Board. Later on, the State Government changed its mind and nominated certain other persons. Before the Division Bench, the subsequent order was challenged as being wholly illegal and without jurisdiction. There was no specific provision empowering the State Government to recall its previous order and sections 16 and 21 of the General Clauses Act were brought in aid for passing the subsequent order. The High Court quashed the subsequent order holding that sections 16 and 21 of the General Clauses Act could not be brought in aid. It also came to the conclusion that:—

"the Government having exercised its power under section 9 to make a nomination once exhausts that power and cannot nominate another person to the same seat.

A second order nominating some other person and cancelling an earlier order of nomination would, therefore, beyond the jurisdiction of the Government and the first order must take effect unless it is shown that the first order was issued by mistake of fact,....."

This case would also be relevant for consideration of the first and the second points raised by the learned counsel for the petitioner.

(14) As against the above, Mr. I. S. Tiwana, Additional Advocate General, Punjab, in reply to the first point, has urged that an order under section 197 of the Code is a purely administrative order and

can be reviewed like any other administrative order even if no such power was contained in the Code. In support of his contention, he relied on *Matajog Dobey* v. *H. C. Bhari,* (8), *Atmaram* v. *The State of Maharashtra,* (9), *In the Matter of Kalagave Bapiah,* (10), *M/s. Western India Watch Co. Ltd.,* v. *The Western India Watch Co. Workers Union and others,* (11), *China Chendrayya* v. *Maddukuri Subbarayudu,* (12), and *Sadhu Singh* v. *The Delhi Administration,* (13).

(15) In *Matajog Dobey's case* (supra), the vires of section 197 of the Code was challenged on the ground of discrimination. The vires was upheld and it was found that discrimination is based upon a rational classification and the public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. In that case there was a raid by the Income Tax Authorities with the aid of policemen in which some altercation took place between the raiding party and the complainant. The complainant filed complaints under sections 323, 342, and 504 of the Indian Penal Code. Since no sanction for prosecution was obtained under section 197 of the Code, the learned Magistrate discharged the accused. Revision against that failed in the High Court and on further appeal, the Supreme Court upheld the orders of the Courts below. While upholding the orders, it observed whether sanction is to be accorded or not, is a matter for the Government to consider". This decision shows that it is for the Government to grant or not to grant the sanction and such an order would be an administrative order.

(16) As regards *Atmaram's case* (supra), it is held by a learned Single Judge of the Bombay High Court that under section 197 of the Code, the Government acts in an executive capacity and it is in the discretion of the Government whether to grant or withhold sanction and it need not be based on legal evidence. The facts of that case need not be given in detail as distinction was being drawn between section 197 of the Code and section 161 of the Bombay Police Act.

(8) A.I.R. 1956 S.C. 44.
(9) A.I.R. 1965 Bombay 131.
(10) 1 Criminal Law Journal 275.
(11) A.I.R. 1970 S.C. 1205.
(12) A.I.R. 1923 Madras 338.
(13) A.I.R. 1966 S.C. 91.

(17) A brief reference to *Kalagava Bapiah's case* (supra) may be made wherein a Single Judge of the Madras High Court, held as follows:—

> "The sanction accorded by Government under section 197 cannot be null and void for the reason that no notice was given to the accused to show cause why such sanction should not be given. It is a matter left entirely to the discretion of Government whether such opportunity should be given to the person concerned before sanctioning his prosecution, and the Criminal Court before which he is prosecuted is not an appellant authority over Government in the matter of the sanction."

(18) As regards *M/s. Western India Watch Co's case* (supra), it was a case under the Industrial Disputes Act. The Government did not make any reference under section 10 of the said Act, but later on it decided to make a reference. The order of the Government making a reference was challenged. The relevant part of the discussion is at page 1209, which may be quoted below:—

> "The reason given in these decisions is that the function of the Government either under section 10(1) of the Central Act or a similar provision in a State Act being administrative, principles such as *res judicate* applicable to judicial acts do not apply and such a principle cannot be imported for consideration when the Government first refuses to refer and later changes its mind. In fact, when the Government refuses to make a reference it does not exercise its power; on the other hand it refuses to exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage."

(19) In *China Chendrayya's case* (supra), it was held as follows:—

> "Action taken under section 197 is more of the nature of executive than judicial action, and there is no irregularity in not recording reasons. Sanction to be used to validate a trial on a complaint already laid without sanction, would be no good. No notice before sanction is granted is necesary."

(20) As regards *Sadhu Singh's case* (supra), reliance is placed on the following passage:—

> "There is a clear distinction between cases in which an authority is invested with power to determine the rights of a person, and cases in which the authority is invested with power to act in a certain manner, and the exercise of that power affects the rights of a person."

(21) After hearing the learned counsel for the parties on the first point, we are of the opinion that an order under section 197 of the Code is an administrative order and that the Government has no power to review its earlier order passed under the said section. Even in the case of administrative orders it has been held by the *Supreme Court in D. N. Ganguly's case* (supra) that in the absence of a provision granting power to the Government to cancel or supersede its earlier order, no such power can be claimed on the strength of section 21 of the General Clauses Act. It may be mentioned that before us the counsel for the State has not relied on the provisions of the General Clauses Act to support the power of the State Government to review its earlier order, but argued purely on the basis of Government's administrative or executive power to pass orders on the same matter from time to time, and no fetter can be placed on such a power of the State Government according to the argument raised. With this broad argument of the learned counsel for the State, we are not impressed and we are unable to uphold the same. The Government does not act in administrative capacity while passing an order under section 197 of the Code and we may say that the Government is exercising a statutory power and that power can be exercised by it only once in whatever way it chooses to do, but later on it cannot change its mind and pass a fresh order taking a different view, otherwise there will be no end to the exercise of this power. In a given case, if we permit the power of review, it may be exercised a number of times on the same facts. We draw support for the above view from the decision of the Supreme Court in *D. N. Ganguly's case* (supra) as well as from *Hardyal Rai's case Venkatesh Yeshwant Deshpande's case, Bherumal's case and Kanta Devi's case* (supra). In all these cases, a fresh order was sought to be passed second time and there was no power for doing so under any of the concerned provisions of the statute and reliance was only placed on the provisions of the General Clauses Act where power to rescind or cancel was contained. In all the aforesaid cases, it was ruled that order could not be passed a second

time rescinding, cancelling or varying the earlier order and the orders passed second time were held to be null and void and were quashed. Same is the position here that there is no specific provision empowering the State Government to pass a second order on the same facts either expressly or by necessary implication. There may be difference in passing an administrative order in exercise of its statutory authority under a specific statute in contradiction to its purely administrative or executive authority under Article 162 of the Constitution. Therefore, the general power of the Government to rescind or vary its order has to be kept at a different level than the orders which the Government has the authority to pass on the basis of a statute framed by Parliament or the State Legislature. So far as the decision of the Supreme Court in *M/s. Western India Watch Co.'s case* (supra), is concerned, the passage quoted above itself has shown the distinction between the cases when the Government refuses to exercise its power and the cases where the Government has exercised its power. This case as well as *D. N. Ganguly's case* (supra) are under section 10 of the Industrial Disputes Act and a reasonable way to read them would be that if Government has exercised its powers once, it cannot exercise the same power in a given case for the second time. But if the Government has not exercised its power, it has not exhausted its power to act and there is no bar in the exercise of that power.

So far as the present case is concerned, the Government positively exercised its power under section 197 of the Code,—*vide* annexure P-2, dated July 10, 1973, which is in the following terms:—

> ".....The State Government after careful consideration of the matter have decided that permission sought by Shri Mohinder Singh for launching prosecution under section 197 Cr. P. C. against Sarvshri Surjit Singh and Sukhdevinder Singh, then D.S.Ps., Ropar, be refused....."

A reading of the above shows that in exercise of its power, the Government carefully considered the entire matter and declined the permission sought for launching prosecution under section 197 of the Code. Therefore, once having exercised its power, the Government had no jurisdiction or authority to pass a fresh order, annexure P-3, on the same matter. Hence the order annexure P-3 amounts to review of order annexure P-2, and as such is illegal and without jurisdiction. We decide point No. 1 in favour of the petitioner.

As regards point No. 2, that the Government having once exercised its power under section 197 of the Code, had exhausted its

power and as such it could not exercise the same for the second time, we are inclined to hold that there is merit in this contention. The power given to the State Government under section 197, having been exercised by it while passing the first order, annexure P-2, stood exhausted and the same could not be exercised second time while passing the impugned order, annexure P-3. For this decision of ours, we find support not only from the decision in *Kanta Devi's case* (supra), but also from the quotation reproduced above in the case of *M/s. Western India Watch Co.'s case* (supra), wherein the Supreme Court did consider the question of exhausting the power. In that case it came to the conclusion that since the Government had refused to exercise its power, therefore, it was not exhausted. The necessary implication is that if the power had been exercised, then the same could not be exercised twice over. Furthermore, we find support from the decision of the Supreme Court in *D. N. Ganguly's case* (supra) where the subsequent order was held to be bad although not on the reasoning that the power had been exhausted while passing the earlier order. Hence we hold that the Government exhausted its power under section 197 of the Code while passing the earlier order, annexure P-2 and it could not exercise that power twice over while passing the impugned order, annexure P-3. On this ground also, the impugned order annexure P-3 is liable to be quashed as being null and void.

(21) As regards point No. 3, it stands covered by our decision on the first point where we have held that an order under section 197 of the Code is an administrative order and not a quasi-judicial order. As such, we decide this point against the petitioner and hold that he was not entitled to any hearing before the passing of an order under section 197 of the Code.

(22) With regard to point No. 4, it would not arise for consideration in this case in view of our finding on point Nos. 1 and 2, that the State Government has no power of review. If we had come to the conclusion that the State Government had the power of review, only then this point could arise for determination.

(23) Before parting with the judgment, it is necessary to mention that in the writ petition, allegations of *mala fides* have been made which have been controverted in the written statements. No argument has been advanced by the learned counsel for the petitioner to challenge the impugned order on the ground of *mala fides*. As such, no decision regardig this matter is called for.

(24) For the reasons recorded above, this petition is allowed with costs and the order of the Punjab Government, dated June 15, 1978

(annexure P-3), granting sanction for the prosecution of the petitioner is quashed.

S. S. Sandhawalia, C. J.—I agree.

N. K. S.

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

GURBACHAN SINGH and others,—*Petitioners.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ Petition No. 4263 of 1976.

April 6, 1979.

Punjab Cycle-Rickshaw (Regulation of Licence) Act (41 of 1976)—Sections 2(a), 3 and 4—Constitution of India 1950—Articles 14 and 19(1)(g)—Section 3 totally excluding rickshaw owners who want to ply the same on hire—Such exclusion—Whether violative of Articles 14 and 19(1)(g)—Restrictions imposed by the Act—Whether reasonable under Article 19(6).

Held, that a reading of the provisions of the Punjab Cycle-Rickshaw (Regulation of Licence) Act 1976 would show that what the Legislature has intended to do is not to totally prohibit the plying of cycle-rickshaws but has tried to regulate it by granting a licence only to an owner of a cycle-rickshaw who is prepared to ply it himself and to exclude any middle-man who may own a cycle-rickshaw but may not like to ply it himself. In this manner, the exploitation of rickshaw pullers by the middle-men has been obviated by giving facility to the actual rickshaw pullers to own their rickshaws either by arranging loans from the State Government which may be interest free or by purchasing their own rickshaws from their own resources. The whole underlying idea of the impugned Act is to favour grant of licences to such actual pliers of cycle-rickshaws who own the cycle-rickshaws and not to those who are prepared to ply rickshaws on hire. Of course, there is a total bar for obtaining licences by rickshaw owners who want to ply the same on hire and not ply themselves. But such a bar does not amount to violation of Article 19(1)(g) of the Constitution of India 1950 by itself as the restriction which has been placed is reasonable. Section 3 of the Act is, therefore, a valid piece of legislation not hit by Article 19(1)(g) as the restriction placed is covered by Article 19(6) of the Constitution. The scheme of the Act shows that only the middlemen have been excluded. The licences are to be granted only to actual rickshaw pullers and not to those who want to give the rickshaws on hire. There is, thus, a proximate nexus and reasonable connection between the restriction imposed and the object which is sought to be achieved. Moreover, it is based on sound public policy.

(Paras 9, 10 and 15).