exercised, the Magistrate has no option but to send for the report of the Probation Officer and then to take the same into consideration before deciding whether the power under sub-section (1) of section 4 of the Act, should be exercised or not. This view of ours finds support from a decision of the Goa High Court in *State* v. *Naquesh G. Shet Govenkar and another*, (3).

(12) For the reasons recorded above, we are of the opinion that the provisions of section 4(1) of the Act cannot be made applicable to the present case.

(13) However, taking into consideration the fact that the occurrence took place in the year 1973, and keeping in view the fact that only one injury was given to the injured witness, we sentence the respondent to undergo rigorous imprisonment for one year under section 326 of the Indian Penal Code. However, the period of detention already undergone by him during the investigation and trial of the case, shall be taken into account. The appeal is, therefore, disposed of acordingly.

Kulwant Singh Tiwana, J.—I agree.

K.T.S.

APPELLATE CRIMINAL

Before D. S. Tewatia and D. B. Lal JJ.

STATE OF PUNJAB,—*Appellant.*

versus

PIARA SINGH,—*Respondent.*

Criminal Appeal No. 1482 of 1974

February 21, 1978.

Code of Criminal Procedure (2 *of* 1974)—*Section* 156 (1) *and* (2)—*Punjab Excise Act* (1 *of* 1914)—*Section* 161 (1)—*Investigation by a police officer not having territorial jurisdiction—Whether vitiates the trial—Section* 156 (2)—*Whether cures the defect.*

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(3) A.I.R. 1970 Goa Daman and Diu 49.

Held, that any defect or illegality committed in investigation has no effect on the trial and the decision of the Magistrate. An investigation in contravention of sub-section (1) of section 156 of the Code of Criminal Procedure 1973 will not be a ground for discharge as it is cured under sub-section (2) of that section. Illegalities during investigation covered by the section are (1) when the powers to investigate a cognizable case given to a Police officer incharge of a police station are exercised by him outside the territorial limits specified in section 156(1) of the Code and (2) when the investigation in a cognizable case is made by a Police Officer inferior in rank to an officer incharge of a police station. Section 156(2) of the Code has no application to objections which do not fall within section 156(1) of the Code. It means that in case objection does fall within section 156(1), sub-section (2) of section 156 would have its application and the said objection will not vitiate the trial. The objection that investigation was conducted by a police officer not having territorial jurisdiction clearly falls within section 156(1) and is curable under section 156(2).

(Para 5)

Appeal from the order of Shri H. S. Khushdil. Judicial Magistrate 1st Class, Tarn Taran, dated the 24th July. 1974, acquitting the respondent.

G. S. Bains A.A.G. Punjab. *for the appellant.*

Sudesh Kumar Advocate, *for the respondent.*

JUDMENT

D. B. Lal, J. (Oral)

(1) This appeal by the State of Punjab raises a short but very important question of law. Piara Singh accused was sent up to stand his trial in the Court of the Judicial Magistrate 1st Class. Tarn Taran, as a result of investigation conducted by the S.H.O. of the police station, Sirhali. The said S.H.O. got information on 12th August, 1972 that in village Gharka, Piara Singh was engaged in illicit distillation. Accordingly, a raid was organised and Piara Singh was arrested red handed while he was busy in the process of distillation. Forty Kilograms of Lahan was also recovered along with other articles. The necessary note of memo was written and after the investigation was complete, the said S.H.O., Sirhali sent up the case to the Magistrate Ist Class, Tarn Taran. Obviously, the said Magistrate took cognizance of the case upon a police report

under section 190(1)(b) of the then Code of Criminal Procedure. Thereafter the preliminary statement of the accused was recorded and a charge under section 61(1) of the Punjab Excise Act, 1914, was framed against him. The prosecution adduced evidence and after the closure of the case on behalf of the prosecution, the statement of the accused under section 342 of the Code was recorded. In neither of the two statements, the accused took up the plea that the S.H.O. Sirhali had no territorial jurisdiction to effect the recovery or to cause the arrest of the accused for that particular spot where the distillation was going on. One of the defence witnesses too indicated that the particular spot from where the recovery was made fell beyond the River Beas and that presumably the said area did not fall within the jurisdiction of police station, Sirhali. Before the Magistrate an argument was founded on the basis of section 156(1) of the Code that the officer incharge of the police station could not investigate this offence as he had no jurisdiction over the local area from where the recovery was made or the arrest was effected. This plea prevailed before the learned Magistrate and he recorded a finding of acquittal. Against that finding the State had preferred the present appeal.

(2) The learned Magistrate has obviously applied sub-section (1) of section 156 of the Code. The said section can profitably be extracted as below:—

> (1) "Any officer in charge of a police-station may without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.
>
> (2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
>
> (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

(3) The learned counsel for the State argued that sub-section (2) of section 156 clearly provided for a remedy in such a situation. The investigation conducted by the Police Officer in such a case was

protected and the trial could not be vitiated. As per language used in sub-section (2), it is evidently clear that no proceeding, during investigation, of the Police Officer could be called in question on the ground that the case was one which such officer was not empowered under sub-section (1) to investigate.

(4) It is manifest that the plea as to the jurisdiction of the investigation officer was not taken by the accused at an earlier stage. He gave his preliminary statement before the Magistrate and subsequently when the prosecution case was over, he gave his statement under section 342 of the Code. In niether of them he questioned the vires of the investigation. In such a situation the question before us would be as to whether sub-section (2) of section 156 would afford a protection to the trial and to subsequent decision by the Magistrate. In that connection, the learned counsel relied upon the observations of the Supreme Court in *H. N. Rishbud and another* versus *State of Delhi* (1). The following extract from the decision would be very pertinent to the question before us.

"A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt, a police report which results from an investigation is provided in S. 190, Criminal P.C. as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190, Criminal P.C. is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings." The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But S. 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore, a nullity. Such an invalid report may still fall either under Clause (a) or (b) of S. 190(1) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the

(1) A.I.R. 1955 S.C. 196.

trial. To such a situation S. 537, Criminal P.C. is attracted. If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled."

(5) It is, therefore, abduntantly clear that a valid and legal police report cannot be the foundation of the jurisdiction of the Court to take cognizance under section 190. If that was the case, cognizance rightly started before the Magistrate and similarly the trial also took place in a legal manner. Any defect or illegality committed in investigation had no effect on the trial and the decision of the Magistrate. The afore-mentioned decision of the Supreme Court was followed in *The State* versus *Pukhia and others,* (2). It was held that an investigation in contravention of sub-section (1) of section 156 will not be a ground of discharge as it is cured under sub-section (2) of that section. A Full Bench of this Court in *The State* versus *Krishan Kumar,* (3) considered section 156 and held that illegalities in investigation covered by that section are (1) when the powers to investigate a cognizable case given to a police officer in charge of a police station are exercised by him outside the territorial limits specified in section 156(1) of the Code, and (2) when the investigation in a cognizable case is made by a police officer inferior in rank to an officer in charge of a police station. It was held that section 156(2) of the Code has no application to objections which do not fall within section 156(1) of the Code. It means that in case objection does fall within section 156(1), sub-section (2) of section 156 would have its application and the said objection will not vitiate the trial. In the instant case, the objection as to investigation clearly fell within section 156(1), and it was curable under section 156(2).

(6) The learned Magistrate has in fact passed the order of acquittal presumably because the charge was already framed but in our opinion the said order could not be one under section 258 and rather it was an order under section 251-A of the Code. The learned

(2) A.I.R. 1963 Rajasthan 48.

(3) Cr. A No. 25-D of 1953 decided on 3rd May, 1954.

Magistrate did not consider the evidence on merit. Under section 258, he could only acquit the accused if he found him not guilty of the offence. That finding was not given. Rather the learned Magistrate chose to discharge the accused under section 251-A but that he could only do if the charge was found to be groundless. That could not be the case either, in the present situation.

(7) Had the accused taken his stand right in the beginning that the investigation was irregular, perhaps, the Magistrate would have set right that irregularity. This he has not done. On the other hand, he has taken his chance by standing to a trial and after the evidence was over that he took up the plea regarding jurisdiction of the S.H.O., Sirhali to conduct the investigation. In such a situation, whatever defect was pointed out in the investigation was curable under sub-section (2) of section 156 of the Code. The decision of the learned Magistrate was, therefore, illegal and will have to be set aside. The case be sent back to the learned Magistrate for a fresh trial and decision in accordance with the law. The appeal is, therefore, allowed and the order of the acquittal by the learned Magistrate is set aside, with a direction that he would decide the case on merit in the light of our observations made above.

D. S. Tewatia, J.—I agree.

K. T. S.

FULL BENCH

Before D. S. Tewatia, B. S. Dhillon and Gurnam Singh, JJ.

STATE OF HARYANA,—*Applicant-Appellant.*

versus

MEHAL SINGH AND ANOTHER,—*Respondents.*

Criminal Misc. No. 4766-M of 1977

April 12, 1978.

Code of Criminal Procedure (2 *of* 1974)—*Sections* 2(*h*) *and* (*r*),91, 161, 167(2) *proviso*, 173, 190(1) (b) *and* 309—*Report by police under Section* 173(2) *filed in Court within sixty days of the arrest without experts' reports—Investigation when to be considered complete—Such report—Whether a 'police report' in terms of section*