REVISIONAL CRIMINAL

Before D. S. Tewatia, J.

JARNAIL SINGH,—*Petitioner*

versus

THE UNION TERRITORY OF CHANDIGARH AND ANOTHER,—*Respondents.*

Criminal Revision No. 32-M of 1970.

July 27, 1970.

Punjab Reorganisation Act (XXXI of 1966)—Sections 88 and 89—Law existing in the State of Punjab before reorganisation—Whether continues to remain in force even after two years from the appointed day—East Punjab Essential Services (Maintenance) Act (XIII of 1947)—Section 7—Union Territory of Chandigarh—Whether a 'State'—Complaint under section 7(1) filed by a person authorised by the Administration of such territory—Whether can be taken cognizance of by the Court under section 7(3)—Lodging of First Information Report under section 7(1)—Whether constitutes a complaint under section 7(3).

Held, that a perusal of the provisions of section 88 of Punjab Reorganisation Act, 1966, makes it clear that every law in force immediately before the appointed day shall continue to apply to the territories, which before the appointed day comprised in the erswhile State of Punjab, till such time the same is amended or otherwise changed by a competant legislature or other competent authority. While this section enables an existing law to remain in force in the whole of the territory of the erstwhile State of Punjab without imposing any limitation in point of time regarding its continued application to such a territory, section 89 of the Act is an enabling provision which enables the appropriate Government i.e. the executive to amend, adopt or modify such a law by repealing or amending it by an executive order within two years from the appointed day and if it fails to do so, then the law existing before the appointed day will continue to remain in force in the whole of the territory of the erstwhile State of Punjab until the same is altered, repealed or amended by a competent legislature or other competent authority. After the expiry of two years from the appointed day, what is put to an end is not the application of the existing law to the territory in question, but the authority of the appropriate Government to adapt or modify the same by an executive order. Hence even after the expiry of two years from the appointed day, the existing law continues to remain in force in the said territory and its application will not automatically lapse. (Para 4)

Held, that the Union Territory of Chandigarh is a 'State' and a complaint under section 7(1) of Essential Services (Maintenance) Act, 1947 by

a person authorised by the Administration of the Union Territory can be taken cognizance of by the Courts under section 7(3) of the Act. (Para 5)

Held, that a Court takes cognizance of an offence upon receiving a complaint of facts which constitute an offence and, secondly, upon a report in writing of such facts made by any police officer. The lodging of First Information Report of an offence with the police does not fall under any of these categories. Even in a cognizable case, which is investigated by Police, the Court does not take cognizance until such time a report under section 173 of the Code of Criminal Procedure is placed before the Magistrate and that too only when he takes cognizance of such a report for the purpose of initiation of judicial proceedings against the offender in respect of the offence concerned. Hence a mere lodging of First Information Report under section 7(1) of East Punjab Essential Services (Maintenance) Act, 1947, does not constitute a complaint in terms of sub-section (3) of section 7 of the Act. (Para 7)

Application under sections 497 and 498 read with section 561-A of the Code of Criminal Procedure praying that the petitioner be granted bail so as to remove the restraint on his movement and quashing the proceedings initiated against the petitioner under section 7 of the Essential Services Act.

JAWAHAR LAL GUPTA, ADVOCATE, for the petitioner.

A. L. BAHRI, ADVOCATE, for the respondents.

JUDGMENT

D. S. TEWATIA, J.—(1) This application is filed by the petitioner under sections 497 and 498, read with section 561-A of the Code of Criminal Procedure, alleging that he joined the Punjab Armed Police on 12th October, 1962, and was in the employment of the Union Territory of Chandigarh on deputation since the year 1968; that he proceeded on eight days' leave commencing from 5th March, 1969, which was further extended by ten days on his request; that thereafter he sent in his resignation from service, and that since he had heard nothing from his department he presumed that his resignation had been accepted. The petitioner is further alleged to have learnt before the filing of the present application that a case under section 7 of the East Punjab Essential Services (Maintenance) Act, 1947 (Act 13 of 1947), hereinafter referred to as the Essential Services Act, had been registered on a complaint filed by Inspector Kuldip Singh, respondent No. 2. It is also alleged by the petitioner that he apprehended his arrest as a result of warrant of arrest having been issued against him.

(2) In the return filed on behalf of respondent Union Territory of Chandigarh the contents of paras 1 and 2 of the application of

the petitioner have not been denied. The respondent also admitted in para 3 of its return that eight days' leave was granted to the petitioner and a telegram for the extension of leave by ten days on the ground of illness was also received. However, the respondent has further pleaded that the request of extension was not supported by any medical certificate and, therefore, leave could not be extended. It is further stated by this respondent that an effort to inform the petitioner about his leave not being extended was made through the Superintendent of Police, Ludhiana, but he was reported to be not available at his home address. However, on 28th April, 1969, Sardara Singh, brother of the petitioner, undertook to inform the petitioner about the same. It is also pleaded by the respondent that even after the expiry of ten days the petitioner did not join the service and that no resignation letter was received by either respondent No. 1 or respondent No. 2. The respondent in its return admitted that a case under section 7 of the Essential Services Act has been registered,—*vide F.I.R.* No. 694, dated 28th August, 1969, in Police Station Central, Chandigarh, but it has been denied that any warrant for the arrest of the petitioner had been issued. Respondents Nos. 1 and 2 have justified the action taken by them and it has been stated that the action is in accordance with law and is legally valid.

(3) The first point that has been urged by the learned counsel for the petitioner is that the Essential Services Act cannot be considered to be in force in the Union Territory of Chandigarh. The learned counsel for the respondents, on the contrary, has maintained that by virtue of section 88 of the Punjab Reorganisation Act, 1966 (Act 31 of 1966), hereinafter called the Reorganisation Act, all the laws in force immediately before the appointed day, i.e., 1st November, 1966 in the erstwhile State of Punjab shall continue to remain in force after the appointed day in the whole of the territory whether, after the reorganisation of the erstwhile State of Punjab that fell within the present States of Punjab or Haryana or that of the Union Territory of Chandigarh or other transferred territories. Section 88 of the Reorganisation Act reads as follows:—

> "88. The provisions of Part II shall not be deemded to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be

construed as meaning the territories within that State immediately before the appointed day."

(4) A bare perusal of the provisions of section 88 of the Reorganisation Act, reproduced above, makes it clear that every law in force immediately before the appointed day shall continue to apply to the territories, which before the appointed day comprised in the erstwhile State of Punjab, till such time the same is amended or otherwise changed by a competent legislature or other competent authority. The learned counsel for the petitioner then submitted that even if the provisions of section 88 of the Reorganisation Act enable such a law to remain in force in the territory concerned after the appointed day, such a law would remain in force only for two years and thereafter its application to the territory other than the territory of the existing State of Punjab will automatically come to an end. The learned counsel for the petitioner has placed reliance in support of his submission on the provisions of section 89 of the Reorganisation Act, which reads—

"89. For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union Territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.—In this section, the expression 'appropriate Government, means—

(*a*) as respects any law relating to a matter enumerated in the Union List, the Central Government, and

(*b*) as respects any other law,—

(*i*) in its application to a State, the State Government, and

(*ii*) in its application to a Union Territory, the Central Government."

The learned counsel for the petitioner appears to import limitation on the continuance of the laws to all the territories of the erstwhile State of Punjab, as made so by virtue of the provisions of section 88 of the Reorganisation Act, from the two years period limit, prescribed in section 89 of the Reorganisation Act, enabling the appropriate Government to make such adaptations and modifications of the law whether by way of repeal or amendment as may be necessary and expedient. The learned counsel seems to infer that unless the existing law, whose continued application is enabled by section 88 of the Reorganisation Act, is adapted and modified with a view to facilitate its application in relation to the States of Punjab and Haryana or to the Union Territories of Himachal Pardesh and Chandigarh within two years from the appointed day, the said law would automatically cease to be applicable to such territories. In my view, the learned counsel has not correctly appreciated the true scope of the provisions of sections 88 and 89 of the Reorganisation Act. While section 88 enables such a law to remain in force in the whole of the territory of the erstwhile State of Punjab without imposing any limitation in point of time regarding its continued application to such a territory, section 89 is an enabling provision which enables the appropriate Government, i.e., the executive to amend, adapt or modify such a law by repealing or amending it by an executive order within two years from the appointed day and if it fails to do so, then the law existing before the appointed day will continue to remain in force in the whole of the territory of the erstwhile State of Punjab until the same is altered, repealed or amended by a competent legislature or other competent authority. So it is clear that after the expiry of two years from the appointed day, what is put to an end is not the application of the existing law to the territory in question, but the authority of the appropriate Government to adapt or modify the same by an executive order, and, therefore, I hold that after the expiry of two years from the appointed day the application of the existing law will not automatically lapse, as suggested by the learned counsel.

(5) The second point that has been urged by the learned counsel for the petitioner is that even if the Essential Services Act is applicable to that part of the territory of the erstwhile State of Punjab, which now constitutes the Union Territory of Chandigarh, the action initiated against the petitioner cannot form the basis of criminal proceedings under the said Act, because in terms of sub-section (3) of section 7 of the Essential Services Act, no Court can take cognizance of

any offence under the said Act except upon complaint in writing made by a person authorised in this behalf by the State Government. While elaborating his submission, the learned counsel for the petitioner has pointed out that the Union Territory of Chandigarh is not a State and so any complaint filed against the petitioner at the instance of a person authorised by the Union Territory Administration cannot be taken cognizance of by a Court. For facility of reference, provisions of sub-sections (3) and (4) of section 7 of the Essential Services Act, are reproduced below:—

> "7. (3) No Court shall take cognizance of any offence under this Act except upon complaint in writing made by a person authorised in this behalf by the State Government.
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> (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), an offence under this Act shall be cognizable."

In my opinion, there is no merit in this contention of the learned counsel as well. The word 'State' has not been defined anywhere in the Essential Services Act. However, sub-section (58) of section 3 of the General Clauses Act, 1897 (Act 10 of 1897), as amended from time to time, has defined the word 'State' as follows:—

> "3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—
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> * * * * *
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> (58) 'State'—
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> (a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B State or a Part C State; and
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> (b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union Territory:"

(6) The matter is not *res integra*; in fact, this point as to whether Union Territory is a 'State' or not came up for consideration before

their Lordships of the Supreme Court in a case reported as the *Management of Advance Insurance Co., Ltd.* v. *Shri Gurudasmal and others* (1). The facts of that case were that on a complaint a case was registered by the Superintendent of Police, Special Police Establishment, New Delhi, and investigation was entrusted to an Inspector under the Superintendent of Police and the investigation was to be made in the State of Maharashtra and the appellant, Management of Advance Insurance Co., Ltd., challenged the power of the Special Police Establishment, New Delhi, to investigate the matter against the appellant in the State of Maharashtra, *inter alia*, on the ground that the Special Police Establishment is not constitutional and that it has no jurisdiction to investigate the cases in other States. The investigation in question was sought to be justified before the Supreme Court on the ground that section 6 of the Delhi Special Police Establishment Act, 1946 (Act 25 of 1946), as adapted by Adaptation of Laws Order, 1956, specifically authorises any member of the Special Police Establishment to do so. To this argument, the reply of the appellant was that after the Constitution (Seventh Amendment) Act, which removed the description 'Part C States' from the Constitution and introduced the expression 'Union Territories' the present Entry 80 of the Union List (corresponding to Entry 39 of the Federal Legislative List of the Government of India Act 1935) cannot be read as enabling the power to be exercised in respect of a police force belonging to the Union Territories such as Delhi. To appreciate the contention of the appellant in that case, the provisions of Entry 80 of the Union List are extracted below:—

> "80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State."

The argument in that case proceeded on the line that this Entry 80 speaks of a police force belonging to any State and not of a police force belonging to the Union Territory. The adaptation of the Delhi Special Police Establishment Act, 1946, by the Adaptation of

(1) A.I.R. 1970 S.C. 1126.

Laws Order, 1956, by substituting the Union Territories in place of Part 'C' States, cut the said Act adrift from the Entry under which the power could alone be exercised. It was further argued that the power conferred by Entry 80 is limited in extent and cannot be used except as specifically conferred. Under Entry 80, the powers of the police force of a State can be extended and not that of the Union Territory and that is how the question as to whether Union Territory is a State or not came up for consideration by their Lordships of the Supreme Court. M. Hidayatullah, C.J., who spoke for the Court, after referring to the provisions of sub-section (58) of section 7 of the General Clauses Act, as already noticed, observed as follows:—

> "This definition furnishes a complete answer to the difficulty which is raised since Entry 80 must be read so as to include Union Territory. Therefore, members of a police force belonging to the Union Territory can have their powers and jurisdiction extended to another State provided the Government of that State consents."

So after this authoritative pronouncement by their Lordships of the Supreme Court, no doubt about the Union Territory of Chandigarh being a State need be entertained and, therefore, I repel the contention of the learned counsel for the petitioner that the Union Territory of Chandigarh is not a State.

(7) Lastly, the learned counsel for the petitioner has urged that the F.I.R. lodged by the Senior Superintendent of Police, Chandigarh, constitutes a complaint under sub-section (3) of section 7 of the Essential Services Act and since the Senior Superintendent of Police has not been authorised to make the complaint in question, so the criminal proceedings initiated by him are illegal and cannot be taken cognizance of by the Court. The argument advanced by the learned counsel is fallacious, because the stage for the Court to take cognizance of an offence has not yet reached and the F.I.R. cannot be treated as a complaint in writing to the Court. It may be stated here that it is section 190 of the Criminal Procedure Code (Act V of 1898)), which deals with the taking cognizance of an offence by a Criminal Court, and before proceeding further, it is pertinent to notice its relevant provisions which are extracted below:—

> "190. (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate,

and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer ;

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.

* * * * *".

A bare reading of the abovesaid provisions makes it clear that the Court can take cognizance of an offence upon receiving a complaint of facts which constitute an offence and, secondly, upon a report in writing of such facts made by any police officer. So lodging of an F.I.R. of an offence with the police cannot fall under any of the clauses of sub-section (1) of section 190 of the Code of Criminal Procedurce. Even in a cognizable case, which is investigated by police, the Court does not take cognizance until such time a report under section 173 of the Code of Criminal Procedure is placed before the Magistrate and that too only when he takes cognizance of such a report for the purpose of initiation of judicial proceedings against the offender in respect of the offence concerned. So I hold that a mere lodging of an F.I.R. does not constitute a complaint in terms of sub-section (3) of section 7 of the Essential Services Act and, therefore, the F.I.R. of the kind can be lodged by the authority concerned without any prior authorisation by the State Government.

(8) The learned counsel for the petitioner has raised yet another argument that since the criminal proceedings under the Essential Services Act can be initiated by filing a complaint in writing, it was not open to the Senior Superintendent of Police, Chandigarh, to lodge the F.I.R. with the police. There is no merit in this argument of the learned counsel as well. It seems the learned counsel is oblivious of sub-section (4) of section 7 of the Essential Services Act which has treated every offence under this Act to be a cognizable offence meaning thereby that it was open to the Senior Superintendent of Police, Chandigarh, to lodge the F.I.R. with the police, and the police is competent to investigate the case.

(9) Yet another submission made by the learned counsel for the petitioner is that Inspector-General of Police, Punjab, was the appointing authority of the petitioner and only that authority could take action against him and the authorities of the State where he is serving on deputation have no such power to take action against him. There is hardly any merit in this contention of the learned counsel. The action that has been initiated is not a disciplinary one; the impugned action is in the natre ouf criminal proceedings envisaged by the provisions of section 7 of the Essential Services Act, which the authorities of the Union Territory of Chandigarh are competent to take, as already noticed.

(10) No other point has been urged by the learned counsel for the parties in this case.

(11) In view of the above discussion, I do not find any merit in this application and, therefore, the prayer for bail as well as for quashing the F.I.R. is declined and the application is dismissed.

N. K. S.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

HARDIAL SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2056 of 1968

August 3, 1970

Punjab Exise and Texation Department (State Service Class III-A) Rules (1956)—*Rules* 5(*a*), 7-*B*, 9(*b*), 9(*c*) *and* 19—*Constitution of India* (1950—*Articles* 14 *and* 309—*Power of relaxation under Rule* 19—*Whether excessive delegation of legislative power—Rule* 19—*Whether* ultra vires *Article* 309—*Such power—Whether arbitrary and violates Article* 14—*Promotion of a government officer on the acceptance of representation—Consequent reversion of another officer—Show cause notice affording opportunity against such acceptance to the reverted officer—Whether essential.*

Held, that by giving the power, under rule 19 of Punjab Excise and Taxation Department (State Service Class III-A) Rules (1956), of relaxation from the provisions of any of the rules to the Government, the Governor, as the framer of the rules, has not effaced himself and the relaxation