

Darshan Singh v. The State of Punjab (Tewatia, J.)

relief is open to a plaintiff at the time he filed the suit, he has to claim that relief in that very suit, failing which it will not be open to him to file another suit to claim it. The judgment of a Division Bench of the Bombay High Court in *State of Bombay v. Dr. Sarjoo Prasad Gumasta* (7) does not help in the decision of the point before me because that case related to a suit and not to a writ petition for getting a declaratory decree passed by a civil Court implemented.

(4) The reason stated by the respondent in the return for not implementing the declaratory decree passed in favour of the petitioner is that the matter is still pending decision before the Supreme Court, which means that the Government will take decision in the case of the petitioner and other officials like him after the matter is finally decided by the Supreme Court and I have no reason to doubt that the Government will itself allow the necessary reliefs to the petitioner after the matter is finally decided by their Lordships of the Supreme Court. As I am of the opinion that the remedy provided by Article 226 of the Constitution cannot be resorted to for getting a declaratory decree passed by a civil Court implemented, I hold that this petition is not maintainable and dismiss the same as incompetent. Since the matter was *res integra* I leave the parties to bear their own costs.

N.K.S.

REVISIONAL CRIMINAL

Before A. D. Koshal and D. S. Tewatia, JJ.

DARSHAN SINGH,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Revision No. 516 of 1970

February 11, 1971.

*Punjab Excise Act (1 of 1914)—Sections 11, 46, 60, 71 and 75—Police officer invested with the powers of first class excise officer without being expressly empowered to submit a report under section 75—Whether competent*

(7) I.L.R. 1968 Bom. 1204. \

*to put in a complaint for the commission of excise offence—Magistrate—Whether authorised to take cognizance of the offence on such complaint—Police Act (V of 1861)—Section 20—Whether prohibits the conferment of the powers of an excise officer on a police officer—Such power, if conferred—Whether ultra vires.*

*Held*, that by a notification issued by the Punjab Government under section 11 of the Punjab Excise Act, all police officers of the rank of Head Constable or above have been invested with the powers of first class excise officers which *inter alia* include powers to investigate under section 46 of the Excise Act. After this notification nothing more is required to have been done to enable the police officers to file a valid complaint under section 75 of the Act regarding the excise offences. The police officers have been expressly designated as excise officers of the requisite status for the purposes of the provisions of section 46(1) of the Act. The perusal of section 71 of the Act further shows that an investigating officer, empowered under section 46(1) of the Act, is duty-bound to submit a report to a Magistrate having jurisdiction to enquire into or try the case regarding an excise offence in which it appears to such an excise officer that there exists sufficient evidence to justify the prosecution of the accused. Any express mention in the notification of the fact that the police officer in question would have the authority to file a complaint under section 75 of the Act would have been unnecessary and superfluous. For the purposes of section 75 of the Excise Act, the police officer in question will have to be considered an Excise Officer and consequently on his report the Magistrate will be competent to take cognizance of offence in question.

(Paras 9, 11 & 12)

*Held*, that the meaning of the expression 'police officers enrolled under this Act shall not exercise any authority, except the authority provided for a police officer under this Act' in section 20 of the Police Act, does not mean that the Acts, which do not have the regulation of criminal procedure as their object, cannot confer on a police officer the power to exercise such functions and authority as can be exercised by him under the Police Act. What the provisions of section 20 of the Police Act restricts is the conferment of those powers or functions, which are qualitatively different from the powers and functions which a police officer under the Police Act is entitled to exercise. This provision additionally may also be envisaged to put restriction regarding conferment of power or authority which is wider in amplitude and scope than the power and authority conferred on him by the Police Act. The provisions of section 20 of the Police Act cannot be held to have debarred a police officer from being designated as an excise officer, so long as the enactment, which designates the police officer as such, does not require of him to perform such functions and exercise such authority which he cannot do under the Police Act and which is not in consonance with the functions and authority exercisable by him under the Police Act. The submission of police report of the excise offence under section 75 of the Excise Act will fall in the category of the information which section 24 of the Police Act empowers a police officer to lay before a Magistrate. Neither section 11 of the Excise Act, which authorises the State Government to issue

Darshan Singh v. The State of Punjab (Tewatia, J.)

a notification conferring powers of the excise officer on a police officer nor the notification conferring such powers on a police officer comes into conflict with the provisions of section 20 of the Police Act and hence the conferment of the powers of excise officers on the police officers is not *ultra vires* this section.

(Paras 11 & 12)

Case referred by Hon'ble Mr. Justice Jindra Lal on 29th July, 1970, to a larger Bench for decision of the important question of law involved in the case and the case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice A. D. Koshal, and the Hon'ble Mr. Justice D. S. Tewatia, on 11th February, 1971.

Petition under section 435/439 of the Criminal Procedure Code, for revision of the order of Shri O. P. Saini, IInd Additional Sessions Judge, Ludhiana, dated the 25th June, 1970, affirming that of Shri Daljit Singh Chatha, Chief Judicial Magistrate, Samrala, dated the 25th February, 1970, convicting the petitioner.

AJMER SINGH AND H. R. BANSAL, ADVOCATES, for the petitioner.

D. N. RAMPAL ASSISTANT ADVOCATE-GENERAL (PUNJAB), AND K. S. KEER, ADVOCATE, AS AN INTERVENER, for the respondent.

JUDGMENT OF THE DIVISION BENCH.

TEWATIA, J.—(1) Darshan Singh petitioner was challaned under section 61(1)(c) of the Punjab Excise Act, 1914 (Punjab Act 1 of 1914), hereinafter referred to as the Excise Act. He was found guilty of the charge by the trial Magistrate and consequently was convicted under section 61(1)(c) of the Excise Act and was awarded sentence of nine months' rigorous imprisonment and a fine of Rs. 200 and in default of payment of fine to further undergo rigorous imprisonment for three months. He was also required to furnish bond with one surety in the amount of Rs. 1,000 covering a period of one year after his release from prison under section 69(a) of the Excise Act. An appeal to the Additional Sessions Judge, Ludhiana, at the instance of the petitioner against his conviction and sentence also failed and hence this revision petition. Criminal Revision No. 786 of 1970 was also ordered to be heard along with the present revision, as a common question of law and fact is involved in them. Therefore, this judgment will dispose of both of these revisions.

(2) The petitioner challenged his conviction and sentence on many grounds but the admitting Bench admitted this revision petition only on grounds Nos. 1, 2 and 3 which run as under :

“(1) That entire proceedings are void *ab initio* inasmuch as before the Magistrate there was no complaint or report

made by an Excise Officer within the meaning of section 75 of the Punjab Excise Act, 1914, and as such the Magistrate was not competent to take cognizance of the offence.

- (2) That section 20 of the Police Act, 1961, clearly prohibits the conferment or investiture of the powers of an Excise Officer under the Punjab Excise Act, 1914, or otherwise on a police officer and as such the notification No. 990-E&T-56/724, dated 19th March, 1956, Revenue Department, Punjab Government so far as the said notification purports to confer or vest the powers of an Excise Officer on a Police Officer is *ultra vires* the powers of the Punjab Government.
- (3) That the said notification is further bad in law inasmuch as under section 46 of the Punjab Excise Act, the powers to investigate an excise offence can be invested on an Excise Officer, not below the rank of Sub-Inspector. As such the powers under section 46 of the Punjab Excise Act, 1914, can be invested on a Police Officer only after appointing a Police Officer as an Excise Officer of the rank not below that of an Excise Sub-Inspector. But no such appointment has been made."

This revision petition came up for hearing before our learned brother Jindra Lal, J., who referred it for decision to a larger Bench, *vide* his order, dated 29th July, 1970, and that is how this revision has come up before us for decision.

(3) Mr. Ajmer Singh, learned counsel for the petitioner in Criminal Revision No. 516 of 1970 has urged two contentions before us. First, that section 20 of the Police Act, 1861, prohibits the conferment of the powers of an Excise Officer on a police officer with the result that the police officers cannot perform the functions of the Excise Officers and since under section 75 of the Excise Act, the Magistrate could take cognizance of an excise offence either on his own knowledge or on the complaint or report submitted to him by an Excise Officer and there being no report before him from a competent Excise Officer in this case, so the trial of the present case before the trial Magistrate was null and void *ab initio* and conviction of the petitioner, consequently, is illegal. The second contention advanced by the learned counsel is that even if it is held that a police officer could be appointed as an Excise Officer, yet the notification, dated 19th

March, 1956, investing a police officer with the powers of an Excise Officer has not specifically conferred on him the power to submit a report under section 75 of the Excise Act. Hence, for the purposes of section 75 of the Excise Act, the police officer in question cannot be considered as an Excise Officer.

(4) Taking the second contention of the learned counsel for the petitioner first, we are of the view that there is no substance in the same. The learned counsel, in support of this contention, has placed reliance on the following observations of Austhana, J., who delivered the Division Bench judgment in *Ganga Din v. State*, (1).

“In my opinion a police officer, or any other person, on whom only some of the powers of an excise officer are conferred by the Provincial Government, does not become an excise officer for all purposes of the Excise Act but he is an excise officer for the limited purpose for which the powers have been conferred on him and, therefore, he is not competent to file a complaint in respect of an offence under section 60 of the Excise Act unless that power has been expressly conferred on him under some notification of the Provincial Government. As in this case there is nothing on the record that any such power was conferred on the police officer who submitted the charge sheet, he was not competent to file the complaint as required under section 70 of the Excise Act, nor could he be considered an Excise officer for the purposes of that section, and in this view of the matter the learned Magistrate had no jurisdiction to take cognizance of the case.”

To be able to view the aforesaid observations of Austhana, J. in correct perspective, it will be desirable to take notice of a few relevant provisions of the United Provinces Excise Act, 1910, hereinafter referred to as the U. P. Act. Section 3(2) of the U. P. Excise Act defines ‘Excise Officer’ as follows :—

“3. In this Act, unless there is something repugnant in the subject or context,—

\* \* \* \* \*

(2) ‘Excise Officer’ means a Collector or any officer or person appointed or invested with powers under section 10.”

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(1) I.L.R. 1955 All. 205.

Section 10(2) (d) of the U. P. Excise Act deals with the powers of the State Government to appoint officers of the Excise Department. Section 10(2)(e) thereof authorises the State Government to order exercise and performance of powers and duties by officers other than excise officers and by other persons and it reads thus :

“10(2). The State Government may by notification applicable to the whole of Uttar Pradesh or to any district or local area comprised there—

\* \* \* \* \*

(e) order that all or any of the powers and duties assigned to an officer of the Excise Department under clause (d) of this sub-section shall, subject to the provisions of this Act, be exercised and performed by any officer other than an officer of the Excise Department or by any person ;

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A consideration of the above extracted provisions of the U.P. Excise Act shows that a person designated as the excise officer can exercise only such powers and can perform only such duties as are specifically assigned to him by the State Government. Consequently, this leaves no scope to entertain any doubt about the correctness of the view expressed by Asthana, J. in *Ganga Din's case* (1) (supra) that a police officer or any other person, on whom only some of the powers of the excise officer are conferred by the State Government, does not become an excise officer for all purposes of the Excise Act and that he is an excise officer for the limited purposes for which the powers had been conferred on him.

(5) At this stage, the provisions of the Punjab Excise Act may also be noticed. Section 3(8) of the Punjab Excise Act defines 'Excise Officer' as under :

“3. In this Act, and the rules made under it, unless there is something repugnant in the subject or context,—

\* \* \* \* \*

(8) 'Excise Officer' means any officer or person appointed, or invested with powers, under this Act ;

\* \* \* \* \*

Section 10 of the Excise Act deals with the powers of the State Government to create certain classes of excise officers, to appoint any

number of persons to be excise officers of such classes, to declare the powers that will be exercisable by the excise officers of each class, and, finally, the mode of conferring powers on them and it reads as under—

- “10. (a) There shall be such other classes of excise officers as the State Government may by notification declare, and State Government may appoint as many persons as it deems fit to be excise officers of these classes.
- (b) The State Government shall by notification declare what powers under this Act shall be exercised by excise officers of each class.
- (c) In conferring powers under this Act the State Government may empower persons by name or in virtue of their office or classes of officials generally by their official titles.”

Section 11 of the Excise Act deals with the powers of the State Government to invest persons with special powers under this Act and it reads thus :

- “11. The State Government may by notification invest **any** person, not being an excise officer, with power to perform all or any of the functions of an excise officer under this Act, and such person shall in the exercise of these functions be deemed to be an excise officer.”

A perusal of the above extracted provisions of the Excise Act would show that like the parallel provisions in the U. P. Excise Act, under the Punjab Excise Act also a person other than an excise officer invested with the powers of an excise officer can exercise only such powers of an excise officer, with which he is specifically invested by a notification issued by the State Government in that behalf.

(6) The competency of the State Government to invest under section 11 of the Excise Act any person including a police officer with the powers of an excise officer not being in dispute, so to determine the extent and ambit of the powers conferred upon such police officers in this behalf, we shall have to take resort to the consideration of the provisions of the relevant notification which, in the present

case, is notification No. 990-E&T-56/724, dated 19th March, 1956, because once we come to the conclusion that the power to submit a complaint, as required by section 75 of the Excise Act, is not conferred on the police officer in question, then there is no escape from the conclusion that for the purposes of this section he is not an excise officer.

(7) The aforesaid notification is known as the Punjab Excise Powers and Appeal Orders, 1956. Order 5 therein mentions three classes of excise officers and designates them as first class, second class and third class. This order further states that the persons mentioned in Groups A, B and C shall be the excise officers of the first class, second class and third class respectively. Then further therein the personnel of the Excise Department falling in the said three Groups i.e. A, B and C are enumerated and in this enumeration, *inter alia*, the excise sub-inspectors are also placed in Group A, which fact places them in the category of the excise officers of the first class. The personnel of the departments other than the Excise Department mentioned under Group A of Order 6 are expressly invested with the powers of an excise officer of the first class under section 11 of the Excise Act and such personnel, *inter alia*, include all police officers of the rank of Head Constable and any rank superior thereto. Clause C of Order 8 therein enumerates the powers of the excise officer of the first class which, *inter alia*, include the power to investigate under section 46 of the Excise Act.

(8) A perusal of the above clearly shows that every police officer of the rank of Head Constable or above has been conferred upon the status of a first class excise officer and has thus been empowered with the powers of investigation under section 46 of the Excise Act.

(9) Having found from the consideration of the relevant provisions of the notification in question that every police officer of the rank of Head Constable or above (Sub-Inspector Darshan Singh in the present case is a police officer decidedly above the rank of Head Constable) is invested with the powers of first class excise officer which, *inter alia*, include powers to investigate under section 46 of the Excise Act. So now we may move on to the consideration of the question that stares us in the face as to whether a police officer invested with the powers of a first class excise officer who, *inter alia*, is empowered with the powers of investigation under section 46 of the Excise Act, is competent to put in a complaint



Darshan Singh v. The State of Punjab (Tewatia, J.)

relating to the commission of an excise offence under section 60 of the Excise Act before a Magistrate (who is authorised to take cognizance of such an offence under section 75 of the Excise Act) without such a police officer being expressly empowered in so many words in that behalf. For facility of reference, the provisions of section 75 of the Excise Act are given below :

“75. (1) No Magistrate shall take cognizance of an offence punishable—

- (a) under section 61 or section 66 except on his own knowledge or suspicion or on the complaint or report of an excise officer, or
- (b) under section 62, section 63, section 64, section 65, section 68 or section 70, except on the complaint or report of the Collector or an excise officer authorised by him in that behalf.

(2) \* \* \* \* \*

In our opinion, nothing more is required to have been done in that respect to enable the police officer in question to file a valid complaint under section 75 of the Excise Act regarding the excise offence in question. In this connection, reference to the provisions of sections 46(1) and 71 of the Excise Act is pertinent which are as follows :

“46(1) The State Government may by notification invest any excise officer, not below the rank of sub-inspector with power to investigate any offence punishable under this Act, committed within the limits of the area in which the officer exercises jurisdiction.

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- 71. If on an investigation by an excise officer empowered under section 46, sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer, unless he submits the case for the orders of the Collector under section 80, shall submit a report (which shall for the purposes of section 190 of the Code of Criminal Procedure, 1898 (V of 1893), be deemed to be a police report) to a magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police reports.”

We have, in the earlier part of this judgment, already found that in view of the above-noted provisions of the aforesaid notification, the police officer in question will be competent to exercise the powers of a first class excise officer falling in Group A of Order 5 of the aforesaid notification which, *inter alia*, also includes an excise sub-inspector. To put it differently, the police officer in question, *inter alia*, has been expressly designated an excise officer of the requisite status for the purposes of the provision of section 46(1) of the Excise Act. And a perusal of the aforesaid provisions of section 71 of the Excise Act would show that an investigating officer, empowered under section 46(1) of the Excise Act, is duty-bound to submit a report to a Magistrate having jurisdiction to enquire into or try the case regarding an excise offence in which it appears to such an excise officer that there is sufficient evidence to justify the prosecution of the accused. That being the position, then in view of the said provisions of section 71 of the Excise Act any express mention in the notification of the fact that the police officer in question would have the authority to file a complaint under section 75 of the Excise Act would have been unnecessary and superfluous. So for the purposes of section 75 of the Excise Act, the police officer in question will have to be considered an Excise Officer and consequently on his report the Magistrate will be competent, under section 75 of the Excise Act, to take cognizance of offence in question.

(10) Now reverting to the first contention of the learned counsel for the petitioner, we are of the opinion, that there is no merit in this also. He has, however, placed reliance on the following observations of Asthana, J. in *Ganga Din's case* (1)—

“The next point for consideration is whether in view of section 20 of the Police Act, the Station Officer was competent to perform the duties of an excise officer under section 70 of the Excise Act and file the complaint. Section 20 provides that ‘police officers’ enrolled under the Police Act shall not exercise any authority except the authority provided for a police officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure. The question for consideration is whether the U. P. Excise Act is an Act passed for regulating criminal procedure. It has been contended for the State that as there are certain incidental provisions

Darshan Singh v. The State of Punjab (Tewatia, J.)

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in the Excise Act relating to procedure, there is no reason why this Act should also not be considered as an Act passed for regulating criminal procedure. In my opinion, the words 'Act passed for regulating criminal procedure' imply that the Act should be one the principal object of which is to regulate criminal procedure and not where the Act is passed for some other purpose but also contains certain incidental provisions relating to criminal procedure. It appears from a perusal of the U. P. Excise Act that as it was expedient to consolidate and amend the law in force in U. P. relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs, and as in order to promote, enforce and carry into effect the policy of prohibition, it was necessary to authorise the Provincial Government to prohibit the import, export, transport, manufacture, sale and possession of liquor and of intoxicating drugs in the U. P., or in any specified area or areas thereof, the Act was passed. There is nothing in the preamble of the Act to show that the Act had really been passed for regulating criminal procedure. In my opinion the U. P. Excise Act is not an Act which was passed for regulating the criminal procedure and, therefore, a police officer could not exercise any authority conferred upon him under the Excise Act. Though a police officer cannot exercise any authority conferred upon him under the Excise Act, yet under section 20 of the Police Act, he can exercise the authority conferred upon him by the Police Act itself. According to sections 23 and 24 of the Police Act, a police officer can detect the commission of any information before a Magistrate with regard to the commission of an offence and can apply for the issue of a summons, warrant, etc. In view of these provisions the Station Officer was competent to arrest the applicant and produce him before the Magistrate."

With respect we agree with Asthana, J. when he says that the Excise Act is not an Act passed for regulating criminal procedure but with great deference to the learned Judge we do not agree with his view that the provisions of section 20 of the Police Act debar a police officer from being clothed with the powers of an excise officer under the Excise Act. We also find it difficult to agree with the view expressed

by the learned Judge that though a police officer cannot exercise any authority conferred upon him under the Excise Act, yet he is competent to place before a Magistrate a complaint under section 70 of the U. P. Excise Act Section (75 of the Punjab Excise Act) regarding an excise offence by virtue of the provisions of sections 20, 23 and 24 of the Police Act which authorise a police officer to detect the commission of any offence and then lay any information before a Magistrate with regard to the commission of the said offence. Our reason for disagreement with the aforesaid view is that once it is held that a police officer cannot act as an excise officer, then although he may have all the powers of investigation etc., yet in view of the ban imposed by section 70 of the U. P. Excise Act (section 75 of the Punjab Excise Act) the Magistrate cannot take cognizance of the offence on the report of a police officer and the provisions of sections 23 and 24 of the Police Act can be of no avail to him in such a situation. In this connection, we may also take notice of yet another decision of the Allahabad High Court reported as *Prem Shankar v. State* (2), wherein Desai, J., after holding that the U.P. Excise Act is not an Act regulating criminal procedure, expressed the view that a Station House Officer cannot exercise any authority conferred upon him under the U.P. Excise Act, but sought to justify the validity of the cognizance of the excise offence by the Magistrate under section 70 by observing—

“If the station officer had not been conferred the powers of an excise officer, though he could report to the Magistrate that the applicant has committed an offence punishable under section 60 of the Excise Act, the Magistrate could not take cognizance of the offence on that report because he would be barred from doing so by section 70 of the Excise Act. But in the present case, the station officer has been rightly or wrongly given the powers of an excise officer. He is a ‘de facto’ excise officer, if not a ‘de jure’ excise officer. Section 70 contemplates a ‘de facto’ excise officer: there are no such words as ‘duly appointed’ in it. Further when the Act itself treats him as an excise officer, he must be deemed to satisfy the requirements of section 70. The Act must be read as a whole and it could be against all canons of interpretation to hold that he is not an Excise Officer

(2) A.I.R. 1954 All. 342.

Darshan Singh v. The State of Punjab (Tewatia, J.)

within the meaning of section 70, when he is one as defined in section 3(2) of it.”

With due deference to the learned Judge, we find that the reasoning given by him is self-contradictory and confusing. Either a police officer can be appointed as an excise officer or he cannot be so appointed. If the Police Act, which is a Central Act is interpreted to mean that a police officer cannot be appointed and invested with the power of an excise officer, then the State Act envisaging conferment of such powers on the police officer shall be *ultra vires* to that extent, with the result that the police officer in question cannot be considered to have been legally designated as an excise officer for the purposes of the Excise Act and if he cannot be so considered, then in spite of the fact that under the Police Act he has the powers of investigation and of submitting his report for the cognizance of offences before the Magistrate, the Magistrate under the Excise Act cannot take the cognizance of an excise offence on such a report as he is specifically debarred from doing so under section 70 of the U. P. Excise Act (or section 75 of the Punjab Excise Act). Hence, the cognizance of the offence on the part of the Magistrate on the report of a police officer who in the eye of law is not an excise officer, cannot be considered valid and legal.

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(11) Now the stage is set to consider the scope of section 20 of the Police Act, which reads as under :—

“20. Police officers enrolled under this Act shall not exercise any authority, except the authority provided for a police officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.”

In our view, the meaning of the expression ‘police officers enrolled under this Act shall not exercise any authority, except the authority provided for a police officer under this Act’ does not mean that the Acts, which do not have the regulation of criminal procedure as their object, cannot confer on a police officer the power to exercise such functions and authority as can be exercised by him under the Police Act. In our view what the provisions of section 20 of the Police Act restrict is the conferment of those powers or functions which are qualitatively different from the powers and functions which a police officer under the Police Act is entitled to exercise, this provision additionally may also be envisaged to put restriction regarding conferment of power or authority which is wider in amplitude and scope

than the power and authority conferred on him by the Police Act. To quote an illustration, a head-constable of police cannot be invested with powers which under the Police Act are exercisable only by a gazetted police officer and not by a head-constable. An other example can be, where such an Act confers on a police officer powers to try an offender which, for instance, the Police Act does not confer on him. When viewed from this angle, the provisions of section 20 of the Police Act cannot be held to have debarred a police officer from being designated as an excise officer, so long as the enactment, which designates the police officer as aforesaid, does not require of him to perform such functions and exercise such authority which he cannot do under the Police Act and which is not in consonance with the functions and authority exercisable by him under the Police Act.

(12) A perusal of the Excise Act and the notification investing powers on a police officer with the powers of excise officer would show that Sub-Inspector Darshan Singh in Criminal Revision No. 516 of 1970, who investigated the offence and who submitted the police report, has not exercised any function which he otherwise could not under the Police Act. His aforesaid act to submit the report of the commission of the excise offence to the Magistrate, after investigating the same is clearly covered by the provisions of Sections 23 and 24 of the Police Act, which for facility of reference are reproduced below :

“23. It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority: to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground exists: and it shall be lawful for every police officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking shop, gaming-house or other place of resort of loose and disorderly characters.

24. It shall be lawful for any police officer to lay any information before a Magistrate, and to apply for a summons,

Darshan Singh v. The State of Punjab (Tewatia, J.)

warrant, search-warrant or such other legal process as may by law issue against any person committing an offence."

In our opinion, the submission of police report of the excise offence under section 75 of the Excise Act will fall in the category of the information which section 24 of the Police Act empowers a police officer to lay before a Magistrate. Hence, we are of the opinion that neither section 11 of the Excise Act, which authorises the State Government to issue a notification conferring powers of the excise officer on a police officer nor the notification in question conferring such powers on a police officer comes into conflict with the provisions of section 20 of the Police Act, already quoted earlier. Consequently, the contention advanced by the learned counsel that the relevant provisions of the Excise Act and the notification be declared *ultra vires* is repelled.

(13) Before parting with the case, we may deal with the contention incorporated in the third ground of revision in Criminal Revision No. 516 of 1970, which is to the effect that the powers of investigation under section 46 of the Excise Act can only be exercised by an officer not below the rank of an excise sub-inspector and so a police officer could exercise power under section 46 of the Excise Act only if he is first appointed to the rank of Excise Sub-Inspector or above. This contention of the learned counsel has merely to be noted to be rejected because the notification in question confers on a police officer of the rank of Head Constable or above the powers and status of an Excise Sub-Inspector, as already noticed in the earlier part of this judgment.

(14) Since this revision (Criminal Revision No. 516 of 1970) was admitted only for the consideration of the legal point, so the learned counsel for the petitioner has rightly not urged any argument on the merits of the case. Mr. Atamjit Singh Nehra appearing for the petitioner in Criminal Revision No. 786 of 1970, who *mutatis mutandis* adopted the arguments on the law point advanced by Mr. Ajmer Singh, learned counsel for the petitioner in Criminal Revision No. 516 of 1970, however, refrained from addressing this Court on merits. So, we are not called upon to decide the two revision petitions on merits.

(15) For the reasons stated above, both the Criminal revision petitions Nos. 516 and 786 of 1970 are dismissed.

A. D. KOSHAL, J.—I agree.

N. K. S.

REVISIONAL CIVIL

Before Harbans Singh, C.J.

KAPUR SINGH,—Petitioner.

versus

FIRM BHAGWAN DASS SAT PAL,—Respondent.

**Civil Revision No. 695 of 1970**

February 12, 1971.

*Punjab Registration of Money-Lenders' Act (III of 1938)— Sections 3 and 5—Plaintiff not having Money-lender's Licence before institution of a suit for recovery of money—Such licence obtained during the pendency of the suit but which expired before the decision thereof—On application for renewal, Collector renewing the licence retrospectively without condoning delay for late application—Licence produced in appeal against the dismissal of the suit—Such production in the appellate Court—Whether sufficient compliance of section 3.*

*Plaintiff firm filing suit for money on 15th June, 1967, without having a Money-lender's licence—Application for licence made on 30th June, 1967 and licence granted valid upto 8th June, 1968—Application for renewal made on 4th February, 1969—Licence renewed upto 8th June, 1968 on payment of penalty without expressly condoning delay for late application—Suit dismissed on 1st January, 1969, for want of the licence—Licence produced in appellate Court during the pendency of the appeal against the dismissal of the suit.*

*Held*, that according to provisions of section 3 of the Punjab Registration of Money-Lenders' Act, 1938, either on the date of the institution of the suit or on the date of its decision, the plaintiff money-lender has to show to the satisfaction of the Court, first, that he is registered as a money-lender and, secondly, that he holds a valid licence under section 5 of the Act. In case he is not registered, but has filed an application for being registered and for being issued a licence, then, if he brings this matter to the notice of the Court, the Court must stay Proceedings and see what is the result of the application made by him. In case his application is granted, he will be