

would be subject to the provisions of the Rent Control Act. Same would then be the case under the deeming provision and I can see no ground for differentiation. Wherever the Legislature intended to keep the terms of the lease intact they clearly provided so. See in this connection section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Moreover, the provisions of the Rent Control Act apply to all pending leases and, therefore, it cannot be said that those provisions have no effect in view of section 16(3), particularly in view of section 4(2) of the Administration of Evacuee Property Act, 1950.

Shiv Datt and
others
v.
Mst. Sardar
Begum and
others

Mahajan, J.

For the reasons rendered above, there seems to be no force in this petition, the same fails, and is dismissed with costs.

B.R.T.

REVISIONAL CRIMINAL

Before D. Falshaw, C.J., and Harbans Singh, J.

HAZARA SINGH AND ANOTHER,—Petitioners

versus

THE STATE,—Respondent.

Criminal Revision No. 436 of 1962

Railways Act (IX of 1890)—S. 120—Whether applies to railway servant while on duty.

1962

Dec., 6th.

Held, that section 120 of the Railways Act is not applicable to the acts of a railway servant while he is on duty and is acting as such.

Case referred by the Hon'ble Mr. Justice Bedi to a larger Bench on 6th November, 1962, for decision of an important question of law involved in the case. The case

was finally decided by a Division Bench consisting of the Hon'ble the Chief Justice, Mr. D. Falshaw and the Hon'ble Mr. Justice Harbans Singh, on 6th December, 1962.

D. N. RAMPAL for V. K. RANADE, ADVOCATE, for the petitioners.

NARINDER SINGH for ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Harbans Singh,
J.

HARBANS SINGH, J.—Dalip Singh and Hazara Singh, who were working as Sainiks of the Railway Protection Force at Jullundur, were proceeded against under section 120 of the Indian Railways Act for being found in a state of intoxication and quarrelling and abusing each other and creating nuisance at Hamira Railway platform, on 20th of October, 1961, at about 8.30 p.m. Half a bottle of liquor was recovered from the possession of Hazara Singh petitioner. On medical examination, the doctor found that he was smelling of alcohol. The petitioners before the learned trial Magistrate ultimately stated that they had committed the offences alleged. This was accepted as a plea of guilty and both of them were convicted under section 120 of the Railways Act and sentenced to pay a fine of Rs. 5 each or to undergo seven days' rigorous imprisonment in default of the payment of fine. A revision filed by Hazara Singh was forwarded by the learned Sessions Judge, Kapurthala, recommending that their conviction and sentence be set aside on the ground that section 120 was not applicable to the Railway servants acting as such. The matter went before a learned Single Judge, who, finding that there was a conflict of authority on the point, referred the case to a larger Bench.

Section 120 of the Railways Act, no doubt, is couched in very general terms and is as follows :—

Hazara Singh
and another
v.
The State

“If a person in any railway carriage or upon any part of a railway—

Harbans Singh,
J.

- (a) is in a state of intoxication, or
- (b) commits any nuisance or act of indecency, or uses obscene or abusive language, or
- (c) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp,

he shall be punished with fine which may extend to fifty rupees in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.”

In *A. F. Cuffly v. Muhamadali Muhmmad Ibrahim* (1), and *K. Appal Swamy v. Emperor* (2), it was held that the word “person” occurring in section 120 was wide enough to include a railway official. The other view, which was taken by the Judicial Commissioner of Sind in *Mulchand v. Emperor* (3), by the Bombay High Court in *Gurunath Shankar v. Emepror* (4), and by the Allahabad High Court in *Vishwanath Pandey v. State* (5), was that sections 99 to 105 specifically relate to “offences by railway servants” while

(1) A.I.R. 1919 Mad. 971 (2).
 (2) A.I.R. 1934 Pat. 52(1).
 (3) A.I.R. 1929 Sind. 249.
 (4) A.I.R. 1937 Bom. 357.
 (5) A.I.R. 1960 All. 721.

Hazara Singh
and another
v.
The State

Harbans Singh,
J.

sections 106 to 130 relate to other offences, apparently dealing with offences of persons other than the railway servants. It was further noted that under section 100, if a railway servant was found in a state of intoxication, while on duty, he would render himself liable to punishment which may extend to fifty rupees, and where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, he becomes liable to imprisonment which may extend to one year or with fine or with both. From this it was clear that drunkenness in case of a railway servant was treated to be a more serious offence than it was if found in case of any other person in any railway carriage or upon any part of a railway. It was, consequently, held that section 120 did not apply to acts done by the railway servants acting as such. In *Gurunath Shanker's case* (4) Beaumont, C.J. (who later became a member of the Judicial Committee of the Privy Council), delivering the judgment of the Division Bench, after quoting section 120, observed as follows:—

“The whole of the last paragraph suggests that the section was not intended to cover an act done by a railway servant in the course of his official duties. It can hardly be supposed that the Legislature intended that if a Station Master uses abusive language to some porter, who has committed some fault, the Station Master can be removed from the railway by another porter.”

After noticing that section 100 covers the same ground as section 120(a) and that section 101 deals with offences by a railway servant endangering public safety, while section 129 deals with an act

by any person endangering public safety, the learned Chief Justice observed—

Hazara Singh
and another

v.

The State

Harbans Singh,
J.

“In my opinion taking the sections of the Act as a whole, there can be no doubt that section 120 is not intended to include any act done by a railway servant acting as such. The offences specified in section 120, if committed by railway servants, can well be dealt with by departmental action.”

The view taken by the Court of Judicial Commissioner in *Mulchand's case* (3) was approved, and the opposite view taken by the Madras High Court in *A. F. Cuffly's case* (1) and by the Patna High Court in *K. Appal Swamy's case* (2) was dissented from. This Division Bench judgment was referred to by the Madras High Court in the case reported as *In re. M. Venkataswami* (6). It is a short judgment wherein P. Aiyar J. observed that a railway official hurling down a bundle of bangles of a fellow passenger and breaking them, will render himself liable under section 120 of the Railways Act because such an act is not an act done or doable by a railway servant as such and that *Gurunath Shanker's case* (4) would not apply. Desai, J. (now Chief Justice) of the Allahabad High Court in *Vishwanath Pandey's case* (5) preferred the view taken by the Bombay High Court and did not follow the view of the Madras and Patna High Courts in the cases noticed above and that of the Nagpur High Court in *Gajadhar Singh v. Emperor* (7). In *Gajadhar Singh's case*, Bose, J. (as he then was) did not agree with the Bombay view and observed that the word “person” in section 120 includes a railway servant whether on or off duty.

(6) A.I.R. 1950 Mad. 406.

(7) A.I.R. 1946 Nag. 200.

Hazara Singh
and another
v.
The State
Harbans Singh,
J.

There can be no manner of doubt that if a railway servant is off duty and during that period, in his capacity as a private individual, he commits an act which falls under section 120 of the Railways Act, he would certainly be liable and this appears to be the case in *M. Venkataswami's case* (6). However, I am inclined to prefer the view taken by Beaumont, C.J. in *Gurunath Shanker's case* (4) following the Sind Judicial Commissioner's view in *Mulchand's case* (3), followed by Allahabad High Court in *Vishwanath Pandey's case* (5), and would hold that section 120 of the Railways Act is not applicable to the acts of a railway servant while he is on duty and is acting as such.

This was the only point in the reference. It is, therefore, not necessary to send the case back to the learned Single Judge. I would, consequently, accept the revision, quash the proceedings and set aside the convictions and sentences of the petitioner and Dalip Singh. Fine, if paid, shall be refunded.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.
B.R.T.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

KARAM SINGH,—Appellant

versus

DALJIT KAUR,—Respondent.

First Appeal From Order No. 64(M) of 1961

1962

Dec. 7th

Hindu Marriage Act (XXV of 1955)—S. 25—Decree for restitution of conjugal rights passed against wife—Application for maintenance by wife on the ground that her husband did not take her back after the decree—Whether maintainable.