On the contrary, the following decisions take the view that we have adopted, inrepelling Mr. Anand Swarup's contention:—

(1) *Khem Karan* v. *State of Uttar Pradesh,* (5) and

(2) *Maria Rosal De Rose,* v. *The State of Tamil Nadu,* (6).

It is not disputed, as already indicated, that the requirements of section 4(1) have been satisfied. The only dispute raised was that the second requirement of section 4(1) was satisfied after section 6 notification had been issued. This is of no consequence. For the reasons recorded above, we see no warrant either in principle or authority for the first contention advanced by Mr. Anand Swarup. We accordingly repel the same.

(13) So far as the second contention is concerned, the learned Single Judge upheld the preliminary objection of the learned Advocate for the State on the short ground that this contention had not been advanced in the petition. However, the learned Single Judge proceeded to deal with the contention on merits. We have already stated the reasons which prevailed with the learned Single Judge to reject that contention on merits. We entirely agree with those reasons and it is not necessary for us to repeat the same all over again.

(14) For the reasons recorded above, these appeals fail and are dismissed, with no order as to costs.

(15) I agree that these appeals be dismissed, but with no order as to costs.

B.S.G.

APPELLATE CIVIL

Before S. S. Sandhawalia and M. R. Sharma, JJ.

STATE OF PUNJAB.,—*Appellant.*

versus.

DES RAJ.,—*Respondent.*

Regular Second Appeal No. 415 of 1967

May 19, 1972.

Punjab Police Rules (1934)—*Rule* 16.38—*Railways Act (IX of* 1890)—*Section* 120—*Police constable in uniform while returning after delivering*

(5) A.I.R. 1966 All. 255.

(6) 1970(2) M.L.J. 471.

official papers committing acts of misconduct in a drunken condition in a Railway compartment—Whether commits an offence under section 120, Railways Act—Such offence—Whether committed in connection with the official relations of the constable with the public—Rule 16.38—Whether attracted.

Held, that where a police constable in unifom, while travelling in a train after delivering official papers, is in drunken condition insults his co-passengers and so misconducts himself that he has to be physically restrained, his conduct comes well within the definition of an offence under section 120, Railways Act. His criminal misconduct, however, does not relate to his official duties. The acts of misconduct committed by the constable whilst drunk and even if in uniform cannot be deemed to be in connection with his official relations with the public. Rule 16.38 of Punjab Police Rules, 1934, is, therefore, not attracted. (Paras 8 and 11)

Regular Second Appeal from the decree of the Court of Shri Pritam Singh Pattar, District Judge, Sangrur ,dated the 2nd day of January, 1967 reversing that of Shri Mohinder Singh, Sub Judge II Class, Sangrur, dated 27th July, 1966 and granting the plaintiff a decree for declaration as prayed for in the plaint against the defendant and leaving the parties to bear their own costs of both the Courts.

J. S. Wasu, Advocate-General, Punjab with S. K. Sayal, Advocate, *for the appellant.*

M. R. Agnihotri, Advocate, *for the respondent.*

JUDGMENT

SANDHAWALIA, J.—The true import of the words—"which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public"as used in rule 16.38 of the Punjab Police Rules has been the primary subject of debate in this appeal.

(2) The issue arises from facts which are not in serious dispute. Des Raj, respondent had joined police service in the erstwhile State of Patiala in the year 1940 and it suffices to mention that after the creation of the State of Pepsu and its subsequent merger with the State of Punjab, he was integrated in the Punjab Police service as a Constable.

(3) In the year 1961, the plaintiff was posted in the district of Sangrur and on the 4th of November of the said year he took official papers for delivery to the Deputy Superintendent of Police, Barnala, and thereafter was returning by train from that place to Dhuri.

Apparently he travelled in an intoxicated condition and had an affray with the passengers in the said compartment. Three pasengers by the names of Darbara Singh, Bakhtawar Singh and Kasturi Lal took him in custody and handed him over to one Sain Das, Constable at Dhuri Railway Station in a drunken condition with the complaint that he had insulted the above-said persons in the compartment of the tarin. Constable Sain Das above-said took the respondent to the Railway Post, Dhuri, where Labhu Ram, Sub-Inspector got him medically examined and it was discovered that he was smelling of liquor, but nevertheless could talk intelligently. Owing to this misconduct, the Station House Officer of the Government Railway Police, Dhuri, submitted the relevant papers through proper channel to the Superintendent of Police, Sangrur, who ordered a departmental enquiry by the Inspector of Police at Sangrur. On receipt of the report of this enquiry the Superintendent of Police passed the order of dismissal against the respondent with effect from the 18th of April, 1962. The respondent then brought the suit from which the proceedings arise claiming that the order of dismissal was null and void, without jurisdiction and that the Superintendent of Police, Sangrur, was not competent to remove him from service. An infraction of rule 16.38 and rule 16.24 of the Punjab Police Rules was expressly alleged and it was further averred that the plaintiff-respondent had not been given a reasonable opportunity to show cause regarding his removal from service. The Punjab State contested the suit and controverted the allegations in the plaint except the fact that the plaintiff was employed as a member of the Police Force on the relevant date and that he had been duly dismissed by the Superintendent of Police, who it was averred was competent to do so. On these pleadings the following issues were framed:—

(1) Whether the order of dismissal, dated 15th April, 1962, of the S.P. Sangrur, is liable to be set aside on the following grounds:—

(a) The Superintendent of police was not competent to pass the order of dismissal as the plaintiff was appointed in the police force by the Inspector-General of Police, Patiala;

(b) Whether the sanction under Rules 16.38 P.P.R. was necessary before holding the departmental enquiry;

(c) Whether the impugned enquiry is void for the grounds mentioned in the plaint?

(2) Whether the plaintiff was afforded reasonable opportunity to show cause against the action proposed to be taken before passing the impugned order?

(3) Relief.

(4) The suit was first dismissed in 1965, but on appeal being carried was remanded for redecision after framing an additional issue as follows:—

"Whether Rule 16.24 of the Punjab Police Rules was not complied with by the punishing authority before passing the impugned order, if so, to what effect?"

(5) On the crucial issues 1(b) and 1(c) which alone are the subject-matter of challenge in the present appeal, the trial Court took the view that the respondent had not committed any criminal offence in connection with his official relations with the public and therefore, rule 16.38 of the Punjab Police Rules was not attracted. Also on issue No. 1(c) it was held that the plaintiff had been afforded adequate opportunity to show cause in the departmental proceedings and the same were proper with the result that this issue was also decided against the plaintiff. Both issue Nos. 2 and the additional issue were also held against the plaintiff and in consequence the suit was dismissed.

(6) On appeal the District Judge, Sangrur, whilst upholding the findings of the trial Court on other issues reversed them specifically on issues Nos. 1(b) and 1(c). As regards issue No. 1(b) the learned Judge took the view that the conduct of the respondent fell squarely within the mischief of section 120 of the Indian Railways Act and he was thus guilty of a criminal offence. On the ground that the plaintiff was returning from Barnala after delivering important official papers to the Deputy Superintendent of Police, Barnala, he opined that consequently the commission of the offence under section 120 of the Railways Act was necessarily in connection with his official relations with the public and, therefore, the provisions of rule 16.38 of the Punjab Police Rules applied. As admittedly there had been no compliance of this rule it was held that the departmental enquiry and the proceedings thereafter were illegal and *ultra vires*. On issue No. 1(c) the finding was again reversed on the ground that no adequate opportunity had been granted to the respondent because on the same day when the summary of allegations was delivered to him the recording of evidence was commenced.

In the result the appeal was accepted and the decree of the lower Court was set aside.

(7) The learned Advocate-General first seriously assails the finding of the District Judge on issue No. 1(b) holding that the act of the respondent was in connection with his official relations with the public. It was argued that even a private individual may well be involved in a brawl whilst in a running train and the mere fact that the respondent was returning after performance of an official duty and was similarly mixed up in the affray presumably whilst in uniform would not necessarily convert his offence as one which was in any way connected with his official relations with the public.

(8) The relevant provision of rule 16.38 (1) is in these terms:—

> "16.38(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected magistrate having 1st Class powers."

On the facts as found by the Courts below, which are not challenged before us it is evident that the respondent was drunk whilst travelling in the train. He has been found to have insulted his co-passengers and so misconducted himself that he had to be physically restrained by them and was delivered over to police custody at Dhuri Raliway Station. On the accepted facts, therefore, his conduct comes well within the definition of the offence under section 120 of the Railways Act. The sole question that remains is whether the said offence can be said to have been necessarily committed in connection with the official relations with the public.

(9) Learned counsel for the parties had frankly conceded their inability to cite any authority bearing directly on the point under rule 16.38 of the Punjab Police Rules. A provision with a somewhat similar purpose of affording protection against prosecution to public servants generally, however, is in section 197 of the Criminal Procedure Code. It has not been disputed before us that both in purpose and in import section 197, Criminal Procedure Code, was a closely

parallel provision. The relevant language therein 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". Whilst it is evident that the language of the two provisions cannot be said to be *Pari materia* nevertheless it is equally manifest that they bear a close analogy to each other. The authorities, therefore, rendered under section 197 of the Code may equally apply in principle to the issues arising under the specific part of rule 16.38, which falls for construction in the present case.

(10) There had been a considerable conflict of judicial authority in the High Courts whilst interpreting the relevant part of section 197 of the Code of Criminal Procedure. Fortunately, however, in a considerable area, the controversy has been set at rest by decisions of high authority though in actual application of the test the matter may still be not devoid of difficulty. The argument that the offence was necessarily committed in an official capacity because at the relevant time the accused person happened to be on duty stands authoritatively repelled in *Dr. Hori Ram Singh* v. *Emperor* (1), in the following observations of Sulaiman J.—

> "The section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at the time. For instance, if a public servant accepts as a reward a bribe in his office while actually engaged in some official work, he is not accepting it even in his official capacity, much less in the execution of any official duty, although it is quite certain that he could never have been able to take the bribe unless he were the official in charge of some official work."

Subsequently in *H.H. B. Gill* v. *The King* (2), their Lordships again examined the much vexed questions that had arisen under section 197 of the Code and laid down the law in these terms:—

> "* * * *. A public servant can only be said to act or to purport to act in the discharge of his official duty, if his

(1) A.I.R. 1939 F.C. 43.
(2) A.I.R. 1948 P.C. 128.

act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged can reasonably claim that, what he does, he does in virtue of his office."

(11) Now applying the above test, could the respondent when apprehended in the midst of a brawl claim that he had misconducted himself by virtue of his office or further that he was drunk or disorderly because of it? The answer must obviously be in the negative. Merely because he was returning after delivering official papers and even presuming that he was in uniform would not necessarily relate his criminal misconduct to his official duties. It appears to me that the language used in the Punjab Police Rules is apparently of stronger import than that used in the corresponding part of section 197(1) of the Code of Criminal Procedure. It does not stand to reason that the acts of misconduct committed whilst drunk by the respondent can be deemed to be in connection with his official relations with the public. We would, therefore, hold that the view expressed by the first appellate Court on this issue is untenable and on the present facts rule 16.38 cannot possibly be attracted.

(12) Though we have held in favour of the appellant on issue No. 1(b), it appears that the present appeal must nevertheless fail because no infirmity could be pointed out in the reasoning of the first appellate Court as regards its finding on issue No. 1(c). The learned Advocate-General has not disputed the factual position that the summary of allegations in the department enquiry was delivered to the respondent on the 19th of December, 1961, and with undue haste on that very day the recording of the evidence was commenced. In *State of Punjab* v. *Kirpal Singh* (3), it has been held that when only a few hours notice is given it must be held to be insufficient and that exactly is the position in the present case. The correctness of the view *in Kirpal Singh's case* (3) was not even remotely assailed on behalf of the appellant.

(3) 1958 P.L.R. 16.

(13) In the result we cannot, but uphold the finding on the first appellate Court on issue No. 1(c). Consequently this appeal is dismissed, however, without any order as to costs.

SHARMA, J.—I agree.

B. S. G.

REVISIONAL CRIMINAL

Before Muni Lal Verma, J.

JAI PAL SINGH,—*Petitioner.*

versus.

THE STATE OF HARYANA.,—*Respondent.*

Criminal Revision No 113 of 1972

May 19, 1972.

Code of Criminal Procedure (Act V of 1898)—Section 549(1)—Army Act (XLVI of 1950)—Sections 3(ii), 69, 70, 125 and 126—Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules (1952)—Rules 3, 4, 5 and 6—Military Personnel on active service committing murder of a person not subject to military law—Offence triable both by criminal Court and Court Martial—Officers mentioned in section 125 not exercising discretion to have the accused tried by Court Martial—Proceedings in the criminal Court against the accused—Whether barred—Such accused person—Whether has any choice in the matter—Omission of the Magistrate to give written notice of the commitment proceedings to the Military authorities—Whether vitiates such proceedings.

Held, that under section 70 of the Army Act, 1950, offences of murder, culpable homicide and rape, when committed by a military personnel in relation to a person who is not subject to military, naval or air force law are exclusively triable by criminal Court. But when the offender is on active service at the time of commission of the offence, both Court martial as well as criminal Court have concurrent jurisdiction to try him. The provisions contained in sections 125 and 126 of the Act give the choice to the officer, mentioned in section 125, to choose the Court, out of the criminal Court and the Court-martial, in which the criminal proceedings could be instituted against the accused. If the said officer does not exercise his discretion and decide that the proceedings should be instituted before the Court-martial the Act does not debar the criminal Court from exercising its jurisdiction in the manner provided by law. Section 549, Criminal Procedure Code, has to be construed very strictly and jurisdiction