that a premature retirement without notice is not valid. The language of Rule 5.32 of the Punjab Civil Services Rules which is also the rule concerned in this case, differed in material particulars from the language of the rule which the Division Bench was called upon to construe. The service of notice made in the way and manner recognised and sanctioned by the law is an essential requisite of it. Unless the notice is given as the law directs or allows, the party to whom it is given is not bound to recognise or act upon it nor, indeed, is it a notice. What gives the notice life and efficiency is the legal sanction. The impugned notice in this case did not have the requisite legal sanction.

I feel satisfied that the requirements of the statutory rule have not been complied with. Neither the order of 3rd June, 1967 (Annexure A-2), nor the communication, dated 19th June, 1967 (Annexure R-1), satisfies the requirement as to the giving of valid notice in accordance with statutory rule. In the circumstances, I quash the orders retiring the petitioner from service. It is, however, open to the appropriate authority to retire the petitioner by giving a notice complying with the requirements of the rule. The petition of writ is allowed and *mandamus* shall issue to respondents Nos. 1 and 3, the State of Haryana and the Chief Conservator of Forests, Haryana, respectively. Respondent No. 2, the State of Punjab, is an unnecessary party and no relief has been sought by the petitioner or can be granted against that State. There will be no order as to costs.

R. N. M.

REVISIONAL CIVIL

Before Mehar Singh, C. J.

INDERJIT SINGH,—*Petitioner.*

versus

RAJ KUMAR GUPTA AND ANOTHER,—*Respondents*

Civil Revision No. 219 of 1966

March 1st, 1968.

Punjab Gram Panchayat Act, 1952 (*IV of* 1953)—*S.* 79—*Code of Criminal Procedure* (*Act V of* 1898)—*Ss.* 480 *and* 481—*Penal Code* (*XLV of* 1860)—*S.* 228—*Judicial Proceedings before Panchayat—Ss.* 480 *and* 481 *of Code of Criminal*

Procedure—Whether applicable—Requirements of section 481—*Stated—Offender instead of making statement before a Court abuses and throws mud on the Presiding Officer—Opportunity to make statement—Whether deemed to be given.*

Held, that sections 480 and 481 of the Code of Criminal Procedure apply to judicial proceedings before a Panchayat under Punjab Gram Panchayat Act, but by proviso to sub-section (1) of section 79 of this Act the maximum amount of fine is limited to Rs. 25. Where an offence under section 228 of the Penal Code is committed in the view or presence of a Gram Panchayat it may cause the offender to be detained in custody and then proceed against him in accordance with section 480 and the following section 481 of the Code of Criminal Procedure.

Held, that the requirements of sub-section (1) of section 481 of the Code of Criminal Procedure are (a) that facts constituting the offence have to be stated by the Court, (b) that the statement (if any) made by the offender has to be recorded, and (c) that the finding and sentence have to be stated. This the Court is enjoined to record and obviously this is mandatory. In addition, if the offence is under section 228 of the Penal Code, then according to sub-section (2) of this section, the record has to show further (d) the nature and stage of the judicial proceedings in which the Court so interrupted or insulted was sitting, and (e) the nature of the interruption or insult. So the record must, in a case under section 228 of the Penal Code, where contempt of court is committed in the view or presence of the Court, comply with those five conditions.

Held, that sub-section (1) of section 481 of the Code of Criminal Procedure takes into account the recording of statement of the offender, if he makes one, which obviously can only be when he has the opportunity to make such a statement. However, if the opportunity is there, but instead of making any statement before the Court the offender further abuses and throws mud, on the Presiding Officer, an argument is not admissible on his side that he had no opportunity to make a statement in answer to the charge made against him or that his statement was not taken.

Petition under Article 227 *of the Constitution of India, praying that the Hon'ble High Court may exercise its power of superintendence and set aside the order, dated* 27*th August*, 1965, *passed by the respondent No.* 1.

G. R. Pal Singh, Advocate, for the Petitioner.

R. P. Bali, Advocate, for the Respondents.

JUDGMENT.

Mehar Singh, C.J.—The Panchayat of village Jamitgarh was on February 3, 1965, with Inderjit Singh, Sarpanch, presiding and

quorum complete, seized of a case against Sarwan Singh, respondent 2 under section 21 of the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953), for encroachment on a thoroughfare, and when they announced their decision in the case, respondent 2 started abusing them and throwing challenges that he would see how and who was going to make him vacate the land with him. The Panchayat tried to explain the matter to him and to make him understand what the position was, but he even then abused them. In this manner respondent 2 interrupted the proceedings of the Panchayat and threw mud on the members thus insulting them.

Section 228 of the Penal Code provides—

"Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both". Section 79 of Punjab Act 4 of 1953 reads—

"79. (1) The provisions of sections 480 to 482 of the Code of Criminal Procedure, 1898, shall apply to judicial proceedings under this Act :

Provided that the fine imposed for contempt of court shall not exceed twenty-five rupees.

(2) The provisions of sections 512, 517 and 522 of the Code of Criminal Procedure, 1898, shall apply to criminal proceeding before a Panchayat, and if any order made by a Panchayat in relation to sections 517 and 522 of the Code of Criminal Procedure, 1898, is not complied with, the Panchayat shall forward the same to the nearest Magistrate who shall proceed to execute it as if it were an order passed by himself."

Sections 480 and 481 of the Code of Criminal Procedure are—

"480. (1) When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody; and at any

time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. * * *.

481. (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(2) If the offence is under section 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult."

So sections 480 and 481 of the Code of Criminal Procedure apply to judicial proceedings before a Panchayat under Punjab Act 4 of 1953, but by proviso to sub-section (1) of section 79 of this Act the maximum amount of fine is limited to Rs. 25. Where an offence under section 228 of the Penal Code is committed in the view or presence of a Court, it may cause the offender to be detained in custody and then proceed against him in accordance with section 480 and the following section 481 of the Code of Criminal Procedure.

The resolution, Annexure A, to the petition of the Sarpanch-petitioner under Article 227 of the Constitution, gives in detail the facts as have been stated above. After the Panchayat had decided the case against respondent 2, the latter abused them. When the Panchayat tried to make him understand the matter, he did not allow them to proceed but further abused them. Not only that he threw mud on the members of the Panchayat also. So the Panchayat convicted respondent 2 for the offence of contempt of court under section 228 of the Penal Code, proceeding under section 79 of Punjab Act 4 of 1953 and sections 480 and 481 of the Code of Criminal Procedure, and sentenced him to a fine of Rs. 25. Against that respondent 2 made an application to the District Magistrate under section 51 of Punjab Act 4 of 1953, which was heard and disposed of by Mr. Raj Kumar Gupta, Judicial Magistrate of the First Class, respondent 1, on August 27, 1965. The learned Magistrate set aside the conviction and sentence of respondent 2 on the ground that 'no notice to show cause was issued to the petitioner (respondent 2) before the fine was imposed'.

It is against the order of the learned Magistrate that the petitioner-Sarpanch has filed this petition under Article 227 of the Constitution. The grounds given in the petition are that in the case of an offence of contempt committed in the view or presence of the Court having regard to the provisions of sections 480 and 481 of the Code of Criminal Procedure, the giving of show-cause notice to respondent 2 was neither absolute nor mandatory, that the Panchayat could rely on its opinion of what happened and proceed to punish the offender, and that the Panchayat asked respondent 2 to desist from his conduct but he paid no head and continued to filthily abuse and interrupt their proceedings. A return has been filed to the petition by respondent 2 in which he has denied that there was any proper quorum of the Panchayat or that they were conducting judicial proceedings on that day when he appeared before them. He has also denied that he abused the Panchayat or threw mud on the members. He has stated that this case was made against him by the Panchayat on account of enmity with the petitioner-Sarpanch.

The requirements of sub-section (1) of section 481 of the Code of Criminal Procedure are (a) that facts constituting the offence have to be stated by the Court, (b) that the statement (if any) made by the offender has to be recorded, and (c) that the finding and sentence have to be stated. This the Court is enjoined to record and obviously this is mandatory. In addition, if the offence is under section 228 of the Penal Code, then according to sub-section (2) of this section, the record has to show further (d) the nature and stage of the judicial proceedings in which the Court so interrupted or insulted was sitting, and (e) the nature of the interruption or insult. So the record must, in a case under section 228 of the Penal Code, where contempt of court is committed in the view or presence of the Court, comply with those five conditions. In this case the facts constituting the offence under section 228 of the Penal Code are stated in the resolution of the Panchayat. Its finding and sentence given to respondent 2 on that have also been recorded. The stage at which respondent 2 interrupted the judicial proceedings and abused and insulted the Panchayat is also recorded. The nature of the interruption and insult has also been clearly set out in the resolution. There remains for consideration only one ingredient and that is the second, whether the statement (if any) made by respondent 2 was or was not taken ? The learned Magistrate while considering the proceedings of the Panchayat under section 51 of Punjab Act 4 of 1953 was of the opinion that no show-cause notice was given by the Panchayat for the offence alleged against

respondent 2 and so on that account alone respondent 2's conviction and sentence could not be maintained. The learned counsel for the petitioner-Sarpanch contends that in this the learned Magistrate has made an erroneous approach to the facts of the case, because in the resolution of the Panchayat itself it is stated that when respondent 2 started abusing them and throwing challenges to the members to seek compliance of their order, they tried to explain to him what were the circumstances and what was being done, but respondent 2, instead of listening to them, further abused them and threw mud on them. The learned counsel points out that while the Panchayat made every effort to make respondent 2 understand the substance and nature of his conduct and its effect, in other words, the nature of the offence he was committing, he did not allow the members of the Panchayat to do so and rather persisted in his conduct in abusing them and throwing mud on them. The learned counsel presses that, in the circumstances, to say that respondent 2 has not been given an opportunity to give his answer to the facts constituting the offence of which he has been convicted is not correct. On the side of respondent 2 it has first been pointed out by the learned counsel that his affidavit shows that the Panchayat was conducting no judicial proceedings on that particular day and further that respondent 2 never abused them. He was in fact involved in the case because of his enmity with the petitioner-Sarpanch. This is a matter on merits and cannot be gone into in a petition like this under Article 227 of the Constitution. The only question for consideration here is whether the order of the learned Magistrate is legal or whether he has exceeded his jurisdiction in setting aside the order of the Panchayat and remitting the fine imposed on respondent 2 ? In this respect the first case on which the learned counsel for respondent 2 relies is *Devendra Nath Maitra* v. *Emperor* (1) in which there was prosecution for an offence under section 228 of the Penal Code because of interruption caused to a Magistrate at the time he was doing judicial work, but there it was not the very Court before whom the offence had been committed that proceeded against the contemner under sections 480 and 481 of the Code of Criminal Procedure. A complaint was made to another Court and it was that other Court which tried the contemner for the offence under section 228 of the Penal Code, which was a summons case, and it was in those circumstances that the learned Judge pointed out that section 242 of the Code of Criminal Procedure demands that the accused should be apprised

(1) I.L.R. (1948) 2 Cal. 50.

of what exactly his offence is. In that case the provisions of that section had not been complied with. Obviously that case has no bearing on the facts of the present case. The other case to which the learned counsel for respondent 2 has made reference is *Krishna Chandra Bhomick* v. *Emperor* (2). That was a case of an offence under section 228 of the Penal Code committed in the view and presence of a Magistrate who proceeded to sentence the contemner to a fine of Rs. 50. In appeal the argument was that the order passed by the Magistrate was illegal and without jurisdiction inasmuch as the contemner was not called upon to make a statement and no statement was as a matter of fact recorded as required by section 481 of the Code of Criminal Procedure. The learned Session's Judge hearing the appeal remarked that the principle that a man must be heard before he is condemned had no application to such cases where special procedure has been provided by express law. The learned Judges, exercising revisional jurisdiction, did not agree with that opinion of the Sessions Judge, and, with reference to the words 'if any' as appearing in sub-section (1) of section 481 of the Code of Criminal Procedure, they observed—"All that the expression 'if any' indicates is that the Court cannot compel the accused to make a statement but it cannot mean that it should not give him a opportunity to make a statement". This case does not help respondent 2 because in the facts of the present case even when the members of the Panchayat tried to explain the position and circumstances of what respondent 2 was doing, he did not permit them to do so, rather he further abused them and threw mud on them. So that *Krishna Chandra Bhomick's case* is different on facts from the present case. No doubt sub-section (1) of section 481 of the Code of Criminal Procedure takes into account the recording of statement of the offender, if he makes one, which obviously can only be when he has the opportunity to make such a statement. However, as in the present case, if the opportunity is there, but instead of making any statement the offender further abuses and throws mud, as respondent 2 is said to have done in so far as the Panchayat was concerned, an argument is not admissible on his side that he had no opportunity to make a statement in answer to the charge made against him or that his statement was not taken. It is in this approach that the order of the learned Magistrate cannot be upheld and has to be found to have been made in excess of his jurisdiction.

(2) A.I.R. 1923 Cal. 562.

So this petition by the petitioner-Sarpanch is accepted, and the order, dated August 27, 1965, of the Magistrate is quashed, with a direction that he will now proceed to dispose of the application of respondent 2 under section 51 of Punjab Act 4 of 1953 on merits and in accordance with law. There is no order in regard to costs.

R. N. M.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

RAM RIKH,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 91 of 1967

March 1st, 1968.

Nothern India Canal and Drainage Act (VIII of 1873)—Ss. 30-B and 30-F—Scheme not approved by the Divisional Canal Officer—Power of revision by Superintending Canal Officer—Whether exists.

Held, that the jurisdiction of the Superintending Canal Officer is to revise the scheme which has been approved by the Divisional Canal Officer. Rejection of a scheme *in toto* cannot be said to be a scheme which has been approved by the Divisional Canal Officer and consequently the power of interference by the Superintending Canal Officer does not exist. Sub-section (3) of section 30-B of the Northern India Canal and Drainage Act, 1873, does not empower or authorise the Superintending Canal Officer to frame a scheme when none has been approved by the Divisional Canal Officer. The scheme has to emanate with the Divisional Canal Officer who has to approve it as it is published or in such modified form as he considers proper after hearing the objections. When the scheme itself does not commend itself to the Divisional Canal Officer who does not submit it to the Superintending Canal Officer for approval, the matter ends there. The power of interference with an approved scheme does not imply power to make a scheme afresh, which has not been approved by the Divisional Canal Officer. The power of interference by the Superintending Canal Officer is also not spelled out from the provisions of section 30-F of the Act.