This Rule also debars a person from holding two types of licences mentioned therein. This Rule has admittedly been framed by the State Government under its powers under section 58(2)(e) of the Act. In this view of the matter, I am clearly of the opinion that the proviso to Rule 4, which has been promulgated by the Financial Commissioner, is *ultra vires*, and the Financial Commissioner has no power under section 59 of the Act to frame such a rule. Consequently, the proviso to Rule 11-A of the Rules is also liable to be quashed as the same is a procedural rule. Since the impugned order has been passed in view of the proviso to Rule 4 of the Rules, therefore, the impugned order has also to be quashed as I find that earlier respondent No. 2 himself had ordered the renewal of the licence and that obviously was done as the petitioner had satisfied all the requirements of law.

(6) For the reasons recorded above, this writ petition is allowed, with no order as to costs. However, the petitioner is directed to comply with the formalities, if not already done, as desired by the authorities.

N.K.S.

Before A. S. Bains, J.

KARAM SINGH,—*Petitioner.*

versus

HARDAYAL SINGH and others,—*Respondents.*

Criminal Revision No. 623 of 1979

August 8, 1979.

Code of Criminal Procedure (II of 1974)—Sections 46, 129, 132 and 482—Indian Penal Code (XLV of 1860)—Section 141—Prosecution of police officers—Complaint alleging unprovoked firing and use of force by them on a peaceful jatha—No allegation or suggestion in the complaint regarding the existence of pre-requisites of section 129—Sanction for prosecution under section 132—Whether necessary—Complaint—Whether liable to be quashed—'Arrest' and 'unlawful assembly'—Meaning of.

Held, that from a reading of section 132 of the Code of Criminal Procedure, 1973, it is plain that if any person does any act purporting to be done under sections 129, 130 or 131, no prosecution can be initiated against him except with the sanction of the Central Government where such person is an officer or member of the armed forces and with the sanction of the State Government in any other case. Before the accused can get the benefit of section 132 of the Code, the court is to see whether their action was under sections 129, 130 or 131. Section 129 of the Code makes it evident that any Executive Magistrate or officer in charge of a police station or, in the absence of such officer, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse and then it is the duty of the members of such assembly to disperse in obedience to the command of such officer and if, inspite of such command any such assembly does not disperse or without being so commanded if it conducts itself in such a manner as to show a determination not to disperse, any such officer referred to in sub-section (1) of section 129 of the Code may proceed to disperse such assembly by force and may require the assistance of any male person, not being an officer or member of the armed forces, for the purpose of dispersing of such assembly. If necessary, he can arrest and confine the person who form part of such assembly in order to disperse it. But before any force can be used, three pre-requisites are to be satisfied. Firstly, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace. Secondly, such assembly is ordered to be dispersed and thirdly, in spite of such orders to disperse, such assembly does not disperse. If none of these pre-requisites is satisfied from the perusal of the complaint and other evidence on the record the provisions of section 132 of the Code cannot apply. For the purpose of quashing a complaint, the court is to look into the allegations in the complaint filed by the complainant. Where the complaint *prima facie* shows that the accused and their companions opened fire indiscriminately on a peaceful jatha without any provocation, the provisions of section 132 of the Code are not attracted.

(Paras 5, 6 and 8).

Held, that from a reading of section 141 of the Indian Penal Code, 1860, it is evident that an assembly would be unlawful if five or more persons have a common object to overawe, by criminal force or show of criminal force the Central or any State Government or Parliament or the legislature of any State or any public servant in the exercise of the lawful power of such public servant; or to commit any mischief or criminal trespass or other offence;

or by criminal force or by show of it to any person to take a forcible possession of any property or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or by criminal force or show of criminal force to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. (Para 6).

Held, that a reading of section 46 of the Code of Criminal Procedure, 1973, shows that a police officer or other person making the arrest shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action and if such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest. But such police officer or other person has no right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life. (Para 6).

Petition for revision under sections 397 & 401, *Cr.P.C. against the order of the court of Shri H. L. Garg, Additional Sessions Judge, Rupnagar, dated* 29*th November*, 1978, *making reference to the Hon'ble High Court under section* 482, *Cr.P.C. quashing the commitment order of Shri P. C. Singal, Additional Chief Judicial Magistrate, Rupnagar, dated* 19*th July*, 1976 *against the respondents.*

Ajmer Singh, Advocate, *for the Petitioner.*

M. L. Nanda, Advocate, *for the respondent.*

JUDGMENT

Ajit Singh Bains, J.

(1) Criminal Revision No. 623, filed by Karam Singh complainant against Hardyal Singh and others and Criminal Revision No. I-R of 1979 (State *v.* Hardyal Singh and others) will be decided by this judgment as these revisions arise out of the same order, dated 29th November, 1978, of the learned Additional Sessions Judge, Rupnagar, making reference to this Court under section 482, Criminal Procedure Code, for quashing the commitment order, dated 19th July, 1976, against the respondents.

(2) The complainant Karam Singh has challenged the impugned order. The State has also supported the contention of the complainant that the reference be answered in the negative.

(3) Briefly stated, the facts giving rise to these petitions are as under:—

(4) Karam Singh, petitioner (complainant) filed a complaint on 19th of June, 1972, against the accused-respondents, two Deputy Superintendents of Police and other police officials under sections 302, 307, 326, 324, 148, 149, 193 and 195, Indian Penal Code, for committing rioting with deadly weapons and committing murders of 9 persons and causing grievous injuries with deadly weapons and by fabricating false evidence. In the complaint it was alleged that Sant Chanan Singh was a social worker who used to render voluntary service in the construction of the Gurdwaras. He along with his followers numbering about 21 constituted a Jatha. After rendering voluntary service at Anandpur Sahib Gurdwara, they returned to Parivar Vichhora on the evening of 19th January, 1972. They stayed there for the night. Since it was winter season, the Jatha people demanded quilts from Sher Singh, Sewadar of the Gurdwara. Mahant Ajit Singh was the Manager of the said Gurdwara. Sher Singh supplied only 4/5 quilts to them. There was a dispute between Sher Singh on the one side and the Jatha people on the other side for the supply of quilts. On the morning of 20th January, 1972, at about 7 a.m., the Jatha started from Gurdwara Parivar Vichhora Sahib. When it had reached in the limits of Malikpur after crossing Bhakra Canal Bridge, a police party headed by Surjit Singh, D.S.P. was found coming from the opposite side. Sardar Surjit Singh, D.S.P., asked the Jatha people to surrender to the police, on which Sant Chanan Singh refused to surrender and offered to be arrested if they were required in any criminal case. Consequently, a scuffle ensured between the Jatha people on one side and Sher Singh, Tara Singh and Nasib Singh, on the other as they had tried to assault Sant Chanan Singh. Thereafter, the Jatha people reached Gurdwara Sada Bart at about 10 a.m. They were given assurance by the police that no harm would be done to them. Sukhdevinder Singh, D.S.P. and some other members of police party also joined the party headed by Surjit Singh, D.S.P. At about 1-10 p.m., Jatha people came out of Gurdwara Sada Bart on the aforesaid assurance as they had to go to Gurdwara Bhatha Sahib. A drain is located for the discharge of rainy water outside Gurdwara Sada Bart. Eighteen of the persons of the Jatha had crossed that drain. One Roop Singh was in the drain itself whereas the remaining 5 persons were yet to cross the drain. In the meantime, the police opened fire on the Jatha without any provocation on their part as a result thereof, Sant Chanan

Singh, Malkiat Singh, Balwant Singh, Nahar Singh, Sucha Singh and Jagga Singh, died at the spot while Nirmal Singh died in the P.G.I., Chandigarh. It is further alleged in the complaint that the members of the police party fired at them aimlessly and mercilessly causing grievous injuries to other members of the Jatha. The deceased and the injured were brought to Civil Hospital, Ropar, where the dead bodies were subjected to post-mortem examination and the injured were medically examined. The police arrested the complainant and many other persons and a false case under section 307, Indian Penal Code, was registered against them. They then made representations to the State Government against the high-handedness of the police. Consequently, the State Government appointed Mr. Justice R. S. Narula (as he then was) of this Court as the Commission under the Commissions of Enquiries Act, 1952, to make an enquiry into the matter. The complaint was filed in the Court on 19th June, 1972. This complaint was dismissed by the learned Chief Judicial Magistrate under section 203, Criminal Procedure Code, observing that there was no *prima facie* case made out against the accused so as to proceed further against them inasmuch as there was delay in filing the complaint. Karam Singh, petitioner (complainant), filed a revision petition in the Court of learned Sessions Judge, Rupnagar. This revision petition was allowed *qua* the respondents,—*vide* order, dated 2nd August, 1975 and the case was sent back for further enquiry to the learned Additional Chief Judicial Magistrate, Rupnagar, who after affording opportunity to the complainant to adduce further evidence summoned the accused persons,—*vide* his order, dated 17th November, 1975. Consequently, the seven accused persons appeared before him. Thereafter, the two Deputy Superintendants of Police, namely, Surjit Singh and Sukhdevinder Singh, made an application under section 197, Criminal Procedure Code, seeking to get the proceedings pending against them quashed as no sanction of the State Government was obtained in this behalf. The remaining five accused also filed application for quashing the proceedings against them in view of the provisions of rule 16.38 of the Police Rules, 1934. The learned Additional Chief Judicial Magistrate, Rupnagar,—*vide* order, dated 19th July, 1976, accepted the application made on behalf of Surjit Singh and Sukhdevinder Singh, D.S.Ps., and held that he cannot take cognisance against them as no sanction under section 197, Criminal Procedure Code, was obtained by the complainant to proceed against them. The application made on behalf of the five remaining accused was, however, dismissed and

the proceedings were directed to continue against them. Feeling aggrieved by the said order, the five accused instituted revision petition in the Court of Additional Sessions Judge, Rupnagar, which was allowed by him. It is against this order that the complainant filed the present revision petition in this Court.

(5) The learned Additional Sessions Judge, Rupnagar, has recommended,—*vide* his order, dated 29th November, 1978, to the High Court for quashing the commitment order against them as no sanction under section 132, Criminal Procedure Code, was obtained by the complainant before launching the prosecution against the petitioners before him. The question which needs determination in the present two petitions is whether the provisions of section 132, Criminal Procedure Code (hereinafter referred to as the Code) are attracted to the present case. It is necessary to analyse the provisions of section 132 of the Code which are in the following terms:—

> "132(1) No prosecution against any person for any act purporting to be done under section 129, section 130 or section 131 shall be instituted in any Criminal Court except—
>
> (a) with the sanction of the Central Government where such person is an officer or member of the armed forces;
>
> (b) with the sanction of the State Government in any other case.
>
> * * * * *.

From the reading of this provision, it is plain that if any person does any act purporting to be done under section 129, 130 or 131, no prosecution can be initiated against him except with the sanction of the Central Government where such person is an officer or member of the armed forces and with the sanction of the State Government in any other case. Before the respondents can get the benefit of section 132 of the Code. the Court is to see whether their action was under sections 129, 130 or 131. Here we are concerned only with section 129 of the Code as the respondents are not the members of the armed forces but are the members of the police force. Section 129 of the Code is in the following terms:—

> "129. (1) Any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in charge,

any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons, who form part of it, in order to disperse such assembly or that they may be punished according to law."

From the reading of this provision, it is evident that any Executive Magistrate or officer in charge of a police station or, in the absence of such officer, any police officer, not below the rank of sub-inspector, may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse and then it is the duty of the members of such assembly to disperse in obedience to the command of such officer and if, in spite of such command, any such assembly does not disperse or, without being so commanded, if it conducts itself in such a manner as to show a determination not to disperse, any such officer referred to in sub-section (1) of section 129 of the Code may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces, for the purpose of dispersing such assembly. If necessary, he can arrest and confine the persons, who form part of such assembly in order to disperse it.

(6) Before any force can be used, those pre-requisites are to be satisfied. Firstly, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace. Secondly, such assembly is ordered to be dispersed and thirdly, in spite of such orders to disperse, such assembly does not disperse. None of these

pre-requisites is satisfied from the perusal of the complaint and the other evidence on the record. The learned Additional Sessions Judge has assumed these facts which do not spell out of the allegations in the complaint. At this stage, the Court, is to look into the allegations in the complaint filed by the complainant. The complaint *prima facie* shows that the respondents and their companions opened fire on the Jatha people without any provocation as soon as they came out of the premises of the Gurdwara. They came out of the Gurdwara premises on the assurance that no harm would be done to them. In consequence of this assurance, the Jatha people came out of the Gurdwara and as soon as they came out, the respondents and their companions opened fire indiscriminately as a result of which 576 persons died on the spot and 2/3 persons died subsequently in the hospital and many of them received serious injuries. Unlawful assembly is defined in section 141 of the Indian Penal Code, which is reproduced as under:—

> "141. An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is—
>
> *First.*—to overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or
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> *Second.*—To resist the execution of any law, or of any legal process; or
>
> *Third.*—To commit any mischief or criminal trespass, or other offence; or
>
> *Fourth.*—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
>
> *Fifth.*—By means of criminal force, or show of criminal force, to compel any person to do what he is not

legally bound to do, or to omit to do what he is legally entitled to do."

From the reading of this provision, it is evident that an assembly would be unlawful if five or more persons have a common object to overawe, by criminal force or show of criminal force, the Central or any State Government or Parliament or the legislature of any State or any public servant in the exercise of the lawful power of such public servant; or to resist the execution of any law or of any legal process; or to commit any mischief or criminal trespass or other offence; or by criminal force or by show of it to any person to take a forcible possession of any property or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or by criminal force or show of criminal force to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. From the allegations in the complaint, as I have observed earlier, the Jatha which had come after doing a social service in the Gurdwara near Anandpur Sahib did not constitute an unlawful assembly. The Jatha had stayed in the Gurdwara Parivar Vichhora Sahib for the night. It was a cold night. Since adequate quilts were not provided to them, so there was some altercation in the morning with the Sewadar of that Gurdwara. Except that, nothing happened at the Gurdwara and the Jatha people started peacefully towards their destination and it was when they were on their way that the respondents along with other companions intervened and wanted them to go to the police station for which they had no lawful authority at the time. Even if they had such a legal authority, the allegations in the complaint show that there was no need to use force. The leader of the Jatha, Sant Chanan Singh, volunteered that they may be arrested. But in spite of this, the respondents and their companions chose to open fire indiscriminately to kill innocent citizens. Section 46 of the Code deals with the arrest of a person by a police officer. This section is in the following terms:—

"46. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person, who is not accused of an offence punishable with death or with imprisonment for life."

Reading of this provision shows that a police officer or other person making the arrest shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action and if such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest. But such police officer or other person has no right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life. The learned counsel for the respondents referred to paragraphs 9 and 10 of the complaint. It was contended that in these paragraphs the allegations clearly spell out that the Jatha constituted an unlawful assembly and as such the respondents were justified in using force as envisaged in section 129 of the Code. I have perused paragraphs 9 and 10 of the complaint and do not find any merit in the contention of the learned counsel for the respondents. The contents of these paragraphs clearly show that the Jatha people were not members of an unlawful assembly. To my mind, the learned Additional Sessions Judge has misdirected himself and assumed the facts and has taken into consideration the defence of the petitioner accused, which he should not have done so. In a similar situation in *Nagraj* v. *State of Mysore* (1), it was held:—

"It is well settled that the jurisdiction of the Court to proceed with the complaint emanates from the allegations made in the complaint and not from what is alleged by the accused or what is finally established in the case as a result of the evidence recorded.

(7) Mr. Nanda, learned counsel for the respondents, has placed reliance on *Giani Ajmer Singh* v. *Ranjit Singh Grewal*, (2). This authority is of no avail to the respondents. It was held in this authority as follows:—

"If the allegations made in the complaint do not attract the protection of S. 197 or S. 132, Cr. P. C., then the Court

(1) A.I.R. 1964 S.C. 269.
(2) A.I.R. 1965 Pb. 192.

cannot throw out the complaint for want of sanction merely because the accused public servant might possibly successfully establish that he had done the act complained of in the discharge or purported discharge of his official duty."

Rather this authority supports the case of the complainant. In *Pukhraj* v. *State of Rajasthan and another,* (3), it was held:—

"The mere fact that the accused proposes to raise a defence of the act having purported to be done in execution of duty would not in itself be sufficient to justify the case being thrown out for want of sanction.

But facts subsequently coming to light during the course of the judicial inquiry or during the course of the prosecution evidence at the trial may establish the necessity for sanction. Whether sanction is necessary or not may have to depend from stage to stage."

Mr. Nanda also urged that the reference is to be made to Mr. Justice R. S. Narula's enquiry report for determining whether the sanction under section 132 of the Code was required or not. I am afraid that this contention is without any merit. Enquiry Commission is merely a fact finding authority and it is settled law that such reports cannot be used as evidence in the judicial proceedings. The report is made only for the purpose of the Government. Reference in this connection may be made to *P. V. Jagannath Rao and others* v. *State of Orissa and others* (4), wherein their Lordships of the Supreme Court held as under:—

"The enquiry cannot be looked upon as a judicial enquiry and the order ultimately passed cannot be enforced *proprio vigore.* The inquiry and the investigation by the Commission do not, therefore, amount to usurption of the function of the Courts of law. The scope of the trial by the Courts of law and the Commission of Inquiry is altogether different."

(3) 1973 Cr. Appeals Reporter 377.

(4) A.I.R. 1965 S.C. 215.

(8) For the reasons stated, the petition of the complainant is allowed and it is held that the provisions of section 132 of the Code of Criminal Procedure are not attracted to the present case. The reference made by the Additional Sessions Judge is answered in the negative. The Additional Sessions Judge, Rupnagar, is directed to proceed with the case in accordance with law.

N. K. S.

Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

ROSHAN LAL SINGLA,—*Petitioner.*

versus

DEPUTY COMMISSIONER, DISTRICT BHATINDA and others,—*Respondents.*

Civil Writ Petition No. 2417 *of* 1979

August 9, 1979.

Punjab Municipal Act (III of 1911)—*Sections* 12-*A*, 12-*B*, 12-*C*, 12-*D and* 12-*E*—*Punjab Municipal Election Rules*, 1952—*Rule* 5—*First meeting called under rule* 5 *for co-option of members—Meeting postponed without co-option and fixation of the next date—Adjourned meeting—Whether retains the character of the first meeting for the purpose of co-option.*

Held, that every meeting is entitled to adjourn itself unless if is prohibited by an express enactment. There is no express enactment either in the Punjob Municipal Act, 1911 or in the Punjab Municipal Election Rules, 1952 which bars any postponement or adjournment of a meeting called under rule 5. Once it is so, then it would be equally plain that an adjourned or postponed meeting is in effect nothing but a continuation of the original one. Therefore, if the first meeting is adjourned or postponed validly it is obvious that the subsequential meeting would partake the character of the original one. An adjourned meeting cannot possibly be equated or styled as a different—an independent or a second meeting. If it were to be so held the very purpose or meaning of an adjournment or postponement would be rendered nugatory and the distinction between the adjourned or postponed and an independent second meeting would virtually be effaced. A meeting, when