A BALBIR SINGH AND ANR.

v.

STATE OF PUNJAB

NOVEMBER 10, 1994

B [DR. A.S. ANAND AND FAIZAN-UDDIN, JJ.]

Indian Penal Code, 1860—Sections 302/34—Murder—Inflicting blows with gandasa on head of deceased—Injury to brain—Intention to cause death—Held offence u/s 302/34.

C *Air Force Act, 1950—Sections 72, 124 and 125—Criminal Procedure Code, 1973—Section 475—Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1952—Jurisdiction of Criminal Court—Accused in 'active service' of Air Force—Trial for murder case—Option to try such as accused by a court martial is with Air Force authorities—No option or*
D *right with accused person to claim trial by a particular forum—Inherent jurisdiction of Criminal Courts to take cognizance of civil offence however not taken away.*

Air Force Act, 1950—Sections 72, 124 and 125—Criminal Procedure Code, 1973—Section 475—Criminal Courts and Court Martial (Adjustment
E *of Jurisdiction) Rules, 1952—Member of Air Force in 'active service'—Trial for murder case—Notice to Air Force Authorities about pendency of criminal case—No particular form of notice prescribed—Authorities to be made fully aware of pendency of case against such a member of the force.*

Air Force Act, 1950—Sections 4 (1), 9, 72, 124 and 125—Notification
F *No. S.R.O. 8-E. on 5.12.1962—Active Service—Definition—Can a person governed by the Act be deemed to be 'on active service' while on casual leave—Held, Yes.*

The appellants were held guilty of the offence u/s 302/34 IPC and sentenced to suffer life imprisonment. The complicity of the appellants
G **in the crime resulting in the death of the deceased had been satisfactorily established. The special leave petition has been filed against the judgment of conviction and sentence as recorded by the trial court and upheld by the High Court.**

The appellants confined their argument to the nature of the offence
H **and the sentence and submitted that the offence for which appellant B**

could be held guilty of causing only one injury to the deceased would not be the one u/s 302/34 IPC but would fall u/s 325/34 IPC. A

Concerning the case of the appellant N, it was submitted that his trial was illegal and vitiated for lack of inherent jurisdiction of the criminal court to try the accused, who at the relevant time was in the "active service" of the Air Force and could not, therefore, have been tried by the ordinary criminal courts. It was further argued that since no notice as envisaged by Section 475 Cr. P.C and the Rules framed thereunder read with Sections 124 and 125 of the Air Force Act, 1950 was given by the criminal court to the Commanding Officer of the Unit where the appellant was serving, enabling the Air Force Authorities to exercise their option to try the appellant by the Court Martial, the right of the appellant to be tried by Court Martial had been violated, rendering his conviction and sentence bad in law. B C

Dismissing the appeal, this Court

D

HELD : 1.1. According to the medical report, the death was caused by shock and haemorrhage due to the injury to the brain which was sufficient to cause death in the ordinary course of nature. Indeed, the death did take place almost 16 days after the occurrence but keeping in view the testimony of eye witnesses it is obvious that by inflicting the blows on the head of the deceased the intention of the appellants was to cause the death of the deceased and the offence therefore was correctly found to be one u/s 302/34 IPC. Both the appellants had caused one blow each with a gandasa on the head, a vital part of the body, of the deceased and the extent of the damage as disclosed by the doctor is indicative of the force with which the blows were inflicted. Therefore, the conviction of B for the offence of murder was rightly recorded by the Trial Court and upheld by the High Court. There is no reason to take a contrary view and the conviction and sentence for the offence u/s 302/34 IPC is upheld. (427-H, 428-A-C) E F

1.2. Notification No. S.R.O. 8-E issued on 5.12.62 by the Government of India in exercise of the powers conferred by section 9 of the Air Force Act, declares that whether or not a person is covered by the definition of 'active service' as spelt out in section 4 (1) of the Act, they still would be deemed to be so wherever they may be 'serving'. Rule 9 of the leave rules for Air Force Service specifically states that casual leave counts as duty except as provided for in Rule 10 (a). It G H

A therefore follows that a person subject to the Act would be deemed to be 'on active service' even when he is on 'casual leave'. (430-D, G)

1.3. A conjoint reading of section 475 Criminal Procedure Code. Sections 124 and 125 of the Air Force Act and the Rules 3 to 6 of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, B 1952, shows that when a criminal court and court martial have each jurisdiction in respect of the trial of the offence, it shall be in the discretion of the officer commanding the group, wing or station in which the accused is serving, to decide before which forum the proceeding shall be instituted. Thus the option to try a person subject to the Air Force Act who commits an offence while on "active service" C is in the first instance with the Air Force authorities. In case, the Air Force authorities decide either not to try such a person by a court martial or fail to exercise the option within the period prescribed by Rule 4 of the 1952 Rules, the accused can be tried by the ordinary criminal court. An accused person has no option or right to claim trial D by a particular forum. However, in case of conflict of jurisdiction, the issue shall be resolved by the Central Government u/s 125 (2) of the Act and the decision as to the forum of trial by the Central Government in that eventuality shall be final. (434-E-H, 435-A, G)

1.4. The Criminal Courts are not deprived of their inherent E jurisdiction to take cognizance of civil offences under the code by any of the provisions of the Act or Section 475 Cr.P.C. and the rules framed thereunder. (435-H, 436-A)

Ajit Singh v. *State of Punjab,* AIR (1970) P and H 351 (FB); affirmed.

F 1.5. The object of giving a notice as envisaged by the Air Force Act and the 1952 Rules to the authorities under the Act is to make them fully aware of the pendency of a criminal case against a member of the force and to afford them an opportunity to exercise their discretion of having the member of the force tried either by the court martial or to allow the ordinary criminal court to proceed with the trial. Though the G provisions of the Act and the Code referred to are mandatory in character in so far as they require that the authorities under the Act shall be given the first option to decide, no particular form of notice has been prescribed either under the Act, the Rules or the Code. Whether or not the authorities have been made fully aware and put on notice by the criminal court to enable them to exercise their option, would H depend upon the facts and circumstances of each case. It is the

substance and not the form of notice which is relevant and important. All that the law envisages is that the authorities under the Act must be made fully aware of the nature of offence, status of the victim and the pendency of the criminal case against a member of the force on 'active service'. Where full and complete 'information' is provided to the authorities, the requirement of law would stand complied with, irrespective of the fact whether the information was given by way of a notice or otherwise. (436-H, 437-A-D) A B

Superintendent and Remembrance of Legal Affairs **v.** *Usha Ranjan Roy Choudhury,* **AIR (1986) SC 1855, distinguished.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 544/93. C

(Appeal by special Leave against the Judgment and Order dated the 9th February, 1993 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 107-DB of 1991)

U.R. Lalit and Prem Malhotra for the Appellants. D

Ms. Rupinder Wasu for R.S. Suri for the Respondent.

The Judgment of the Court was delivered by

DR. ANAND, J. Balbir Singh, Major Singh, Nachhattar Singh, Bachan Singh and Kabul Singh were convicted by the learned Addl. Sessions Judge for an offence under Section 302/149 IPC and sentenced to suffer life imprisonment and to pay a fine of Rs. 2000 each and in default thereof to undergo further rigorous imprisonment for six months. All the accused persons were also convicted for an offence under Section 147 IPC and sentenced to suffer one year's rigorous imprisonment. Major Singh was also convicted for an offence under Section 325 IPC and directed to undergo rigorous imprisonment for two years' and to pay a fine of Rs. 500 and in default thereof to further undergo rigorous imprisonment for 4 months. Balbir Singh, Bachan Singh, Kabul Singh and Nachhattar Singh were also convicted for an offence under Section 325/149 IPC and sentenced to suffer rigorous imprisonment for two years' each and to pay a fine of Rs. 500 each and in default to suffer 4 months rigorous imprisonment vide judgment dated 15.2.1991. E F G

On appeal filed by the convicts against their conviction and sentence, Balbir Singh and Nachhattar Singh, the appellants herein were held guilty of the offence under Section 302/34 IPC and sentenced to suffer life H

A imprisonment and to pay a fine of Rs. 2000 each and in default thereof to suffer rigorous imprisonment for six months. The conviction and sentence of Major Singh for the offence under Section 325 IPC was also upheld. The remaining co-accused of the appellants were acquitted of all the charges. The conviction and sentence of the appellants for an offence under Section 325/149 IPC was also set aside.

B

On 10.8.1993, the special leave petition in so far as Major Singh is concerned was not pressed and the same was dismissed. Balbir Singh and Nachhattar Singh were, however, granted leave.

According to the prosecution case, on 21st May, 1988 at about 6.00
C p.m. the appellants and their co-accused, variously armed attacked Hazara Singh at about 6.00 p.m. Balbir Singh and Nachhattar Singh were allegedly armed with a gandasa each while Major Singh was armed with a takwa. The accused caught hold of Hazara Singh and dragged him towards the house of the appellants. On his raising noise, his father Pritam Singh and brother Karamjit Singh were attracted and they rushed to the spot to rescue Hazara
D Singh. Balbir Singh appellant gave a blow with the gandasa hitting Pritam Singh on the right side of his head. Nachhattar Singh appellant also gave a gandasa blow on the head of Pritam Singh who then fell down. Major Singh gave a blow on the head of Hazara Singh and thereafter all the assailants fled away with their respective weapons. The injured were removed to the hospital at Ludhiana. Pritam Singh was declared unfit to make a statement.
E He succumbed to his injuries on 31st of May, 1988. The post-mortem on the dead body of Pritam Singh was conducted by Dr. A. Sahni, who opined that the death was caused due to injuries to the brain, which were sufficient in the ordinary course of nature to cause death. Hazara Singh PW7 was medically examined at the dispensary by Dr. Hari Krishan who found one
F lacerated wound on his head. The first information report was recorded on the basis of the statement of Hazara Singh PW7 recorded on 22.5.1988. The prosecution examined a number of witnesses to establish the guilt of the accused. The appellants in their statements under Section 313 Cr.P.C. denied all the circumstances appearing in the prosecution evidence against them and stated that they had been falsely implicated in the case on account
G of their enemity with Hazara Singh PW7 whom they had opposed in the elections for the post of Sarpanch. Nachhattar Singh, appellant pleaded *alibi* and stated that at the relevant time he was posted in Tezpur (Assam) at CPS Security Station Air Force and had got leave in April 1988 for appearing in the examination of Masters in Physical Education at the Nagpur University and in that connection he had remained at Dhantoli
H (Nagpur) from 14.4.1988 to 22.5.1988 and had gone back from Nagpur on

22.5.1988 and joined his Unit at Tezpur (Assam) on 25.5.1988. He further stated that it takes 3 days to reach Dhantoli and another 3 days from Dhantoli to Tezpur and that on the date of occurrence he was not in the village. Rajinder Prashad Dwivedi DW2 was examined by him in support of his plea of *alibi*. Nachhattar Singh also tendered in evidence a copy of the Degree obtained by him in the discipline of Physical Education.

Both the Trial Court and the High Court very minutely considered the prosecution evidence and critically analysed the same and found that the prosecution had successfully established the case against the appellants and Major Singh beyond a reasonable doubt. No infirmity has been pointed out in the evidence of Hazara Singh and Karamjit Singh PWs before us either. Our independent analysis of their evidence shows that both Hazara Singh and Karamjit Singh are trustworthy and truthful witnesses whose evidence stands corroborated by the other material on the record including the medical evidence. In our opinion, the complicity of the appellants and Major Singh in the crime resulting in the death of Pritam Singh has been satisfactorily established.

Mr. U.R. Lalit, the learned senior counsel appearing for Balbir Singh appellant, faced with the unimpeachable evidence led by the prosecution, confined his arguments to the nature of the offence and the sentence and submitted that the offence for which Balbir Singh could be held liable for causing only one injury to the deceased would not be the one under Section 30/34 IPC but would fall under Section 325/34 IPC and therefore his conviction and sentence needs to be modified.

Dr. A. Sahni PW8 had found the following injuries on the dead body of Pritam Singh.

> 1. *Partially* healed wound scar 15 cms long on the right fronto parietal region but the wound was open 3 cms on the front port.
>
> 2. *Pareitally* healed wound scar 5 cms long on the right frontal region 3 cms away from injury no. 1 on the medial side wound was open in the middle.

On dissection he found clotted blood on the right fronto parietal region and part of frontal and parietal bone was missing. According to Dr. Sahni PW8, the death was caused by shock and haemorrhage due to the injury to the brain which was sufficient to cause death in the ordinary course of nature. During the cross-examination, Dr. Shani, PW8 stated that the

A depressed fracture is normally caused by a blunt weapon. He went on to say "*it is incorrect to suggest that the injury to the brain was only likely to cause death and not sufficient to cause death.*" Indeed, the death did take place almost 10 days after the occurrence i.e. on 31st May, 1988 but keeping in view the testimony of PW7 Hazara Singh, PW10 Karamjit Singh and Dr. Sahni PW8, it is obvious that by inflicting the blows on the head of B the deceased the intention of the appellants was to cause the death of Pritam Singh and the offence therefore was correctly found to be one under section 302/34 IPC. Both the appellants had caused one blow each with a gandassa on the head, a vital part of the body, of the deceased and the extent of damage as disclosed by Dr. Sahni PW8 is indicative of the force with which the blows were inflicted. In our opinion, therefore, the conviction of Balbir C Singh for the offence of murder was rightly recorded by the Trial Court and upheld by the High Court. We do not find any reason to take a contrary view and consequently, uphold his conviction and sentence for the offence under Section 302/34 IPC.

Coming now to the case of Nachhattar Singh, Mr. Poti, the learned D senior counsel appearing for him submitted that the trial of Nachhattar Singh was illegal and vitiated for lack of inherent jurisdiction of the criminal court to try Nachhattar Singh, who at the relevant time was in the "active service" of the Air Force and could not therefore have been tried by the ordinary criminal courts. It was argued that since no notice as envisaged E by Section 475 Cr. P.C. and the Rules framed thereunder read with Sections 124 and 125 of the Air Force Act, 1950 was given by the Criminal Court to the Commanding Officer of the Unit where the appellant was serving, enabling the Air Force authorities to exercise their option to try the appellant by court martial, the right of the appellant to be tried by court martial had been violated, rendering his conviction and sentence bad in law. F Though, before the Trial Court no such plea was raised, it appears that this plea was raised before the High Court and after a detailed discussion, the High Court found on the facts and circumstances of the case, that no infirmity was attached to the trial of Nachhattar Singh by the ordinary criminal court and his conviction and sentence did not call for any G interference.

With a view to appreciate the submissions raised by Mr. Poti, it is necessary to first notice some of the relevant provisions of the Air Force Act, 1950 (hereinafter 'the Act'), the provisions of Section 475 of the Code of Criminal Procedure and Criminal Courts and Court Martial (Adjustment H of Jurisdiction) Rules, 1952 (hereinafter the '1952 Rules').

Section 72 of the Air Force Act (which corresponds to Section 70 of the Army Act) provides as under:

> 72. Civil offences not trial by court martial - A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences—
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> (a) while on active service, or
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> (b) at any place outside India, or
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> (c) at a frontier post specified by the said Government by notification in this behalf.

The Section on its plain language, lays down that where a person subject to the Act is charged with the offences listed therein while on "active service" he shall be deemed to be guilty of an offence against the Act and could be tried by a court martial irrespective of the fact that the victim is *not* subject to military, naval or air force law.

Section 4 (i) defines Active Service and provides:

> 4 (i) "active service", as applied to a person subject to this Act, means the time during which such person -
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> (a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or
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> (b) is engaged in air force operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or
>
> (c) is attached to, or forms part of, a force which is in military occupation of any foreign country;

The above definition, however, is not exhaustive. The Central Government has the power to enlarge the definition by a declaration issued under Section 9 of the Act. Section 9 reads as follows :

A 9. Power to declare person to be an active service - Notwithstanding anything contained in Cl. (i) of Sec. 4, the Central Government may, by notification, declare that any person or class of persons subject to this Act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law B for the time being in force, be deemed to be on active service within the meaning of this Act.

The Government of India in exercise of the powers conferred by Section 9 issued notification No. S.R.O. 8-E on 5.12.1962 declaring "that all persons subject to the said Act, shall, wherever they may be serving be C deemed to be on "active service" within the meaning of the said Act, for the purposes of the said Act and of any other law for the time being in force."

Thus, the effect of the notification is that whether or not a person is covered by the definition of "active service" as spelt out in Section 4 (i) of the Act they still would be deemed to be so wherever they may be D "serving". Can a person governed by the Act be deemed to be 'on active service' while on casual leave? The answer to the question can only be found by a reference to the leave rules governing the Armed Forces read with the provisions of the Act.

The Central Government has framed certain rules regarding the E conditions of leave of the persons subject to Army Act and it would be profitable to refer to some of the relevant rules dealing with "casual leave". Relevant portion of Rule 9 of the leave Rules for service provides as follows:

"9. Casual leave counts as duty except as provided for in F Rule 10 (a)."

Rule 9 of the Leave Rules (supra) thus specifically states that casual leave counts as duty except as provided for in Rule 10 (a). It therefore follows that a person subject to the Act would be deemed to be "on active service" even when he is on *casual leave*. Learned counsel for the parties, G in view of this legal position, did not dispute that the appellant, though on casual leave, would be deemed to be on 'active service' in view of the notification dated 5.12.1962 (supra).

The next question that arises for our consideration is as to what the ordinary criminal court is required to do when a person in "active person" H of the Air Force is brought, before it for trial for any of the offences listed

in Section 72 of the Act (supra). It is here that Section 475 Cr.P.C., the 1952 rules and Section 124 and 125 of the Air Force Act come into operation. Section 475 Cr.P.C. reads as follows :

> 475. Delivery to commanding officers of persons liable to be tried by Court-martial. - (1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950) and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a Court to which this Code applies or by a Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applied or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by a Court-martial.
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> Explanation - In this section -
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> (a) "unit" includes a regiment, corps, ship, detachment, group, battalion or company,
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> (b) "court-martial" includes any tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.
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> (2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use this utmost endeavours to apprehend and secure any person accused of such offence.
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> (3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situated within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial.

A Sections 124 and 125 of the Air Force Act provide :

124. Choice between Criminal Code and Court-martial - When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of [the Chief of the Air Staff], the officer
B commanding any group, wing or station in which the accused prisoner is serving or such other officer as may be prescribed to decide before which Court the proceedings shall be instituted, and, if that officer decides that they should be detained in air force custody.

C 125. Power of Criminal Court to require delivery of offender - (1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in Sec. 124 at his option, either to deliver over the offender to the nearest Magistrate
D to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or
E shall forthwith refer the question as to the Court before which the proceedings are to be instituted for the determination of the Central Government whose order upon such reference shall be final.

Rules 3, 4, 5 and 6 of the Criminal Courts and Court Martial
F (Adjustment of Jurisdiction) Rules, 1952 provide :

"3. Where a person subject to military, naval or air force is brought before Magistrate and charged with an offence for which he is liable to be tried by a Court-martial, such Magistrate shall not proceed to try such person or to inquire
G with a view to his commitment for trial by the Court of Session or the High Court for any offence triable by such Court, unless -

(a) he is of opinion, for reasons to be recorded, that he should so proceed without being moved thereto by
H competent military, naval or air force authority, or

(b) he is moved thereto by such authority. A

4. Before proceeding under Clause (a) of Rule 3, the Magistrate shall give a written notice to the Commanding Officer of the accused and until the expiry of a period of -

(i) three weeks, in the case of a notice given to a Commanding Officer in command of a unit or detachment located in any of the following areas of the hill districts of the State of Assam, that is to say - B

(1) Mizo,

(2) Naga Hills, C

(3) Garo Hills,

(4) Khasi and Jaintia Hills, and

(5) North Cachar Hills; D

(ii) seven days in the case of a notice given to any other Commanding Officer in command of a unit or detachment located elsewhere in India, from the date of service of such notice, he shall not

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(a) convict or acquit the accused under Section 243, 245, 247 or 248 of the Code of Criminal Procedure 1898 (Act 5 of 1989), or hear him in his defence under Sec. 244 of the said Code; or

(b) frame in writing a charge against the accused under Section 254 of the said Code; or F

(c) make an order committing the accused to trial by the High Court or the Court of Session under S. 213 of the said Code; or

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(d) transfer the case for inquiry or trial under Sec. 192 of the said Code.

5. Where within the period of seven days mentioned in Rule 4, or at any time thereafter before the Magistrate has done any act or made any order referred to in that rule, the H

A Commanding Officer of the accused or competent military, naval or air force authority, as the case may be, gives notice to the Magistrate that in the opinion of such authority, the accused should be tried by a Court-martial, the Magistrate shall stay proceedings and if the accused is in his power or under his control, shall deliver him, with the statement B prescribed in sub-section (1) of Sec. 549 of the said Code to the authority specified in the said sub-section.

6. Where a Magistrate has been moved by competent military, naval or air force authority, as the case may be, under Cl. (b) of Rule 3, and the Commanding Officer of the C accused or competent military, naval or air force authority, as the case may be, subsequently gives notice to such authority, the accused should be tried by a Court-Martial, such Magistrate if he has not before receiving such notice done any act or made any order referred to in Rule 4, shall stay proceedings and, if the accused is in his power or under D his control, shall in the like manner deliver him, with the statement prescribed in sub-section (1) of Sec. 549 of the said Code to the authority specified in the said sub-section."

A conjoint reading of the above provisions shows that when a criminal court and court martial have each jurisdiction in respect of the trial of the E offence, it shall be in the discretion of the officer commanding the group, wing or station in which the accused is serving or such other officer as may be prescribed, in the first instance, to decide before which court the proceedings shall be instituted and if that officer decides that they should be instituted before a 'court martial', to direct that the accused persons shall be detained in air force custody. Thus, the option to try a person subject to the F Air Force Act who commits an offence while on "active service" is in the first instance with the Air Force authorities. The criminal court, when such an accused is brought before it shall not proceed to try such a person or to inquire with a view to his commitment for trial and shall give a notice to the commanding officer of the accused, to decide whether they would like to G try the accused by a court martial or allow the criminal court to proceed with the trial. In case, the Air Force authorities decide either not to try such a person by a court martial or fail to exercise the option when intimated by the criminal court within the period prescribed by Rule 4 of the 1952 Rules (supra), the accused can be tried by the ordinary criminal court in accordance with the Code of Criminal Procedure. On the other hand if the H authorities under the Act opt to try the accused by the 'Court Martial' , the

criminal court shall direct delivery of the custody of the accused to the authorities under the Act and to forward to the authorities a statement of the offence of which he is accused. It is explicit that the option to try the accused subject to the Act by a court martial is with the Air Force authorities and the accused person has *no option or right to claim trial by a particular forum.* The option appears to have been left with the Air Force authorities for good and proper reasons. There may be a variety of circumstances which may influence the decision of the Air Force authorities as to whether the accused be tried by a court martial or by a criminal court. This Court in *Ram Sarup* v. *Union of India,* AIR (1965) SC, 247 opined:

> "In short, it is clear that there could be a variety of circumstances which may influence the decision as to whether the offender be tried by a Court-martial or by an ordinary Criminal Court, and therefore it becomes inevitable that the discretion to make the choice as to which Court should try the accused be left to responsible military officers under whom the accused be serving. Those officers are to be guided by considerations of the exigencies of the service, maintenance of discipline in the army, speedier trial, the nature of the offence and the person against whom the offence is committed."

There appears to be sound logic to give the first option to the authorities under the Act to decide whether the accused should be tried by the Court-Martial or the Criminal Court. The defence of the country being of paramount importance, the Air Force authorities would know best as to whether the accused should be tried by the court martial or by the ordinary criminal court because the trial by the ordinary criminal court would necessarily involve a member of the force being taken away for trial by the ordinary criminal court and not being available to the authorities and the like considerations. However, in the event the criminal court is of the opinion, for reasons to be recorded, that instead of giving option to the authorities under the Act, the said Court should proceed with the trial of the accused, without being moved by the competent authority under the Act and the authorities under the Act decide to the contrary, the conflict of jurisdiction shall be resolved by the Central Government under Section 125 (2) of the Act and the decision as to the forum of trial by the Central Government in that eventuality shall be final.

In our opinion, on a construction of the various provisions referred to above the Criminal Courts are not deprived of their inherent jurisdiction to

A take cognizance of civil offences under the Code. Before the Full Bench of the Punjab and Haryana High Court in *Ajit Singh* v. *State of Punjab,* AIR (1970) Pb. and Har., 351 it was argued on behalf of the appellant therein, who was in 'active service' of the Air Force, that on account of the non-compliance with the provisions of Section 125 of the Act and Section 549 Cr.P.C. (corresponding to Section 475 of the Code), the committal of the B appellant and his trial held in pursuance thereof must be held to be without jurisdiction. The Full Bench repelled the argument and opined:

> "No room is left for doubt about the legal position being that the inherent jurisdiction which a Magistrate has to take cognizance of civil offences under the Code of Criminal C Procedure is not taken away by any provisions of the Army Act (and, therefore, of the Air Force Act), and of Section 549 of the Code of Criminal Procedure and the rules made thereunder. What those provisions, envisage is concurrent jurisdiction in the Criminal Courts and the court-martial and an arrangement for the proper exercise of such jurisdiction D including, when necessary, a way of resolving a conflict of jurisdiction.....
>
> and went on to hold:
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> that the contention raised on behalf of the appellant that the E trial was vitiated by lack of jurisdiction in the Magistrate and the learned Additional Sessions Judge must be rejected as untenable."

In our opinion, the view of the Full Bench is correct and we agree with it and hold that the inherent jurisdiction under which the criminal courts F have to take cognizance of civil offences is not taken away by any of the provisions of the Act or Section 475 Cr.P.C. and the rules framed thereunder.

We are also unable to agree with Mr. Poti, in the facts and circumstances of this case, that there was any non-compliance with the G provisions of Sections 124 and 125 of the Air Force Act read with Section 475 Cr.P.C.

The object of giving a notice as envisaged by the Act and the 1952 Rules to the authorities under the Act is to make them fully aware of the pendency of a criminal case against a member of the force and to afford H them an opportunity to exercise their discretion of having the member of

the force tried either by the court-martial or to allow the ordinary criminal court to proceed with the trial. Though the provisions of the Act and the Code referred to above are mandatory in character in so far as they require that the authorities under the Act shall be given the first option to decide whether to try the accused by court martial or allow his trial by the ordinary criminal court, *no particular form of notice* has been prescribed either under the Act, the Rules or the Code. Whether or not the authorities have been made fully aware and put on notice by the criminal court to enable them to exercise their option, would depend upon the facts and circumstances of each case. It is the substance and not the form of notice which is relevant and important. All that the law envisages is that the authorities under the Act must be made fully aware of the nature of the criminal case against a member of the force on 'active service', so that the authorities under the Act may exercise their option whether or not to try the accused by a court martial. Where full and complete "information" is provided to the authorities, the requirement of law would stand complied with, irrespective of the fact whether the information was given by way of a *notice* or otherwise.

In the present case, from the scrutiny of the record of the committing Court, it transpires that in execution of the warrant of arrest issued by the committing Magistrate on 28.7.1988, the Air Force authorities had themselves delivered Nachhattar Singh, appellant to the custody of ASI Daljit Singh PW15 who had carried the said warrant issued by the competent Magistrate, for execution on 10.8.1988. PW15 Daljit Singh, ASI deposed at the trial that while he was posted at police station Dharamkot in the month of August, 1988, he had obtained the warrants of arrest of he appellant and went to Tezpur (Assam) and *after obtaining necessary permission from the Air Force authorities* served the warrants on appellant Nachhattar Sing. The Air Force authorities then delivered the custody of Nachhattar Singh to him and after taking the custody of Nachhattar Singh from the Air Force authorities, he brought him to police station Dharamkot on 15.8.1990 to face his trial in the criminal court. There was no challenge in the cross-examination of PW15 either about the obtaining of the necessary permission from the Air Force authorities to serve the warrant on the appellant or about the delivery of the custody of the appellant by the Air Force authorities for being taken to police station Dharamkot for trial by the ordinary criminal courts under the Code. Handing over and taking over certificate signed by Shri Vijay Prakash, Flying Officer, Station Adjutant No. 11 Wing, Air Force and by ASI Daljit Singh was placed on the record before the committing Magistrate. The conduct of the Air Force authorities in handing over the custody of the appellant to the police authorities for

being produced before the criminal court for trial, is a clear indication of the exercise of the option by the Air Force authorities that they did not wish to detain the appellant in their custody under Section 124 of the Air Force Act and had opted for the trial of the appellant by the ordinary criminal court. This conclusion is reinforced by the fact that the Commanding Officer of the Air Force Station, Halwara, had subsequently also sought information from the Trial Court with regard to the fate of the case, vide his letter dated 18.2.1991. The above facts unhesitatingly show that the Air Force authorities had been made fully aware of the pendency of the criminal case against a member of the force by the criminal court and had been afforded adequate and full opportunity to exercise the option of having the appellant tried by a court martial. Since, with the full knowledge of the pendency of the criminal case against the member of the Air Force, the authorities had voluntarily delivered the custody of the appellant, for his trial by the ordinary criminal court, the authorities would be deemed to have exercised the option of not trying the appellant by a court martial. The act of the authorities in voluntarily delivering the appellant to the civil authorities for trial unmistakably show that the Air Force authorities did not intend to claim the trial of the appellant by a court martial. It is pertinent to notice here that the Air Force authorities have made no grievance at any stage that their right to decide whether or not to try the accused by court martial had been impinged upon by the criminal court in any manner. They have not questioned the validity of the trial of the appellant by the criminal court at any forum whatsoever. The right to exercise the option is with the authorities and an accused has no right to demand or choose trial by a particular forum. The authorities under the Act have made no grievance and the grievance raised by the appellant is untenable. Since, the appellant was admittedly on leave on the day of the occurrence as deposed to by PW9 G.S Gill, Warrant Officer, Air Force Station, Halwara and the victims of the offence were persons not subject to military, air force or naval law, these factors may well have weighed with and persuaded the Air Force authorities not to opt to try the appellant by court martial and to allow the criminal court to try him under the Code. We are, therefore, of the opinion that in the facts and circumstances of this case that there has been no lack of compliance with the provisions of the 1952 Rules read with Section 475 of the Code and Section 72, 124 and 125 of the Air Force Act, by the Trial Court and the trial of the appellant was not in any way vitiated.

The judgment in *Superintendent and Remembrancer of Legal Affairs, West Bengal* v. *Usha Ranjan Roy Choudhury and another,* AIR (1986) SC, 1855, relied upon by the learned counsel for the appellant is clearly distinguishable and has no application whatsoever to the facts of the present

case. In that case three accused persons who were Army Officers were charged with offences which fell within the purview of Section 52 of the Army Act. The said Section deals with the offences in respect of property and those offences could be tried both by the ordinary criminal courts as also by the court martial, since both have concurrent jurisdiction. The offence under Section 52 of the Army Act is not analogous to the offences falling under Section 72 of the Air Force Act. The Army authorities in that case had only requested for investigation to be made by the civil police. After the investigation was complete, the criminal court proceeded to try the case without giving option to the Army authorities as is envisaged by Rules 3 and 4 of the 1952 Rules to exercise their option. This Court found that the action of the Army authorities in calling for a detailed police report at the investigation stage could not amount to the authorities under the Act exercising the option *not* to try the accused by the court martial and the Army authorities could not be said to have voluntarily abandoned their option to try the accused in court martial. Moreover, in *Usha Ranjan Roy Choudhury's case* (supra) unlike the facts of the present case, the Army authorities *had not handed over the custody* of the accused to the civil authorities in execution of any warrant of arrest issued by the criminal court in that case for trial nor did the authorities keep a track of the trial of the accused by the criminal court. That judgment therefore which was rendered in the peculiar facts of that case does not advance the case of the appellant at all and is clearly distinguishable.

In view of the aforesaid discussion, we find that the conviction and sentence of the appellant are not vitiated for the alleged lack of jurisdiction of the criminal court to try the appellant, as urged by the learned counsel for the appellant.

So far as the merits of the case are concerned, we agree with the findings recorded by the Trial Court and the High Court with regard to the complicity of the appellant Nachhattar Singh in the crime and are of the opinion that his conviction and sentence under Section 302/34 IPC are well merited.

As a result of the above discussion, the appeal fails and is hereby dismissed.

A.G. Appeal dismissed.