

## **ROLE OF JUDICIAL OFFICERS IN CRIMINAL JUSTICE ADMINISTRATION**

Speech delivered by Hon'ble Mr. Justice P.Sathasivam,  
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Tamil Nadu is my home State and I am always delighted to be back here. Today, in particular, I find myself embraced by intense nostalgia to be back at a place where I began my career. I feel elated and immensely happy in addressing you, the youngest members of judiciary who will be part of the foundational edifice of the machinery of criminal justice in our country. You may have limited jurisdiction in terms of sentencing and nature of offence, yet you constitute the basis of pyramid of our judicial structure. In your domain resides the daunting task of administering swift justice at the grassroots and reassuring public confidence in our legal system.

At the Academy, you have undergone training in assessing evidence, decision-making, judgment writing and case management. At the same time your curriculum focuses on Judicial Accountability, Judicial ethics and conduct, Sensitivity training in contemporary social issues and Personality Development. You are now ready to utilise this training and translate it into action. I must say, the role of judge is neither that of mute spectator nor a neutral umpire, but that of an active player embodying the right spirit of ensuring justice.

### **MAGISTRATE: THE KINGPIN IN CRIMINAL JUSTICE ADMINISTRATION**

Criminal Justice reflects the responses of the society to crimes and criminals. The key components engaged in this role are the courts, police, prosecution, and defence. Administering criminal justice satisfactorily in a democratic society governed by rule of law and guaranteed fundamental

rights is a challenging task. It is in this context that the subordinate judiciary assumes great importance. The role of magistrate is effectively summed up in the words of Former Chief Justice Ranganath Mishra in a writ petition relating to conditions of subordinate judiciary in the case of ***All India Judges' Association vs. Union of India (1992) 1 SCC 119***

Where he observes:

*“The Trial judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the proceedings in court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personalities, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful”.*

Mentioning the high expectations of society from the judges, he further advices:

*“A judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn and be courageous enough to acknowledge his errors”.*

Right to speedy trial is implicit in the right to life and liberty guaranteed by **Article 21** of the Constitution of India. However, there is a huge pendency of criminal cases and inordinate delay in the disposal of the same on the one hand and very low rate of conviction in cases involving serious crime.

As per the latest amendment, Section 309 of the Cr.PC has been inserted with an explanation to its sub-clause. With an aim to speed-up trials, the amendment states that no adjournment should be granted at the party's request, nor can the party's lawyer being engaged in another court be ground for adjournment. Section 309 contains a mandatory provision that in every inquiry or trial the proceedings shall be held as expeditiously as possible and in particular when the examination of witnesses has once

begun the same shall be continued from day to day until all witnesses in attendance have been examined unless the court finds the adjournment of the case beyond the following day to be necessary for reasons to be recorded. When the enquiry or trial relates to an offence under Section 376 to 376D IPC, the same shall be completed within a period of two months from the date of commencement of the examination of witnesses.

The introduction of Plea Bargaining included under sections 265A to 265L of the Code of Criminal Procedure has also been noticed very effectively. Judicial Officers must be aware of “offences affecting the socio-economic condition of the country” for the purpose of Section 265A. A judge should be well versed with the latest amendments and further developments which take place in law and put them into practice to give effect to the intent of the legislature which is to speed up the process of delivering justice.

Section 165 of the Indian Evidence Act grants sweeping powers to the Judge to put questions. The rationale for giving such sweeping powers is to discover the truth and indicative evidence. Counsel seeks only client’s success; but the Judge must watch justice triumphs. If criminal court is to be an effective instrument in dispensing justice, Presiding Officer must cease to be a spectator and mere a recording machine. He must become an active participant in the trial evincing intelligence and active interest by putting questions to witness in order to ascertain the truth.

The Code of Criminal Procedure delineates the powers and functions of judicial magistrates at every stage both pre-trial, during trial and post-trial. I am confident that you are aware of these provisions and the same require no repetition. However, I wish to remind you that these powers and functions bestowed upon you are to be exercised as public trust in full compliance with the Constitutional mandates of fair and speedy trial for both the accused and the complainant.

Criminal system to be truly just must be free of bias. There should be judicial fairness otherwise the public faith in rule of law would be broken.

One of the cardinal principles of criminal law is that everyone is presumed to be innocent unless his guilt is proved beyond reasonable doubt in a trial before an impartial and competent court. Justice requires that no one be punished without a fair trial and judicial officers play their part in ensuring the same.

### **FAIR TRIAL TO ACCUSED: CO-RELATIVE DUTIES OF MAGISTRATE**

It is well settled today that the accused has fundamental right to know the grounds of his arrest, right to legal aid in case he is indigent, right to consult his lawyer and such other rights guaranteed by Constitution and equivalent safeguards incorporated in CrPC. Let's pause here and dwell more on the corresponding duties of a magistrate in ensuring fair trial to the accused.

Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest and no one shall be detained in custody beyond the said period without the authority of a magistrate. The magistrate can pass order of remand to authorise the detention of the accused in such custody as such magistrate thinks fit, for a term not exceeding 15 days in the whole. Justice Bhagwati summed up the purpose of these safeguards in ***Khatri II vs State of Bihar (1981) 1 SCC 627***

*“This healthy provision enables the magistrates to keep check over the police investigation and it is necessary that the magistrates should try enforcing this requirement and where it is found disobeyed, come down heavily upon the police... There is however, no obligation on the part of the magistrate to grant remand as a matter of course. The police have to make out a case for that. It can't be a mechanical order”.*

Right to know the ground of arrest is conferred the status of fundamental right under article 22(1). It is reasonable to expect that grounds of arrest communicated in language understood by the accused. Further, the accused has right to inform his friend or relative of his arrest.

Arrest of a person is a denial of an individual's liberty which is fundamental to one's existence. The fundamental rights will remain mere promise if Magistrates do not ensure compliance of the same. Hence, magistrates have been given the fundamental duty under amended section 50A of the Criminal Procedure to satisfy that the police has informed the arrested person of his rights and made an entry of the fact in book to be maintained in the police station.

There have been frequent complaints about the police's non-compliance of the above mentioned requirements. The magistrates are empowered under section 97 to issue search warrant which is in the nature of a writ of habeas corpus for rescue of a wrongfully confined person by intervention of police directed by a magisterial order. If magistrate has reason to believe that any person is confined under circumstances that amounts to an offence, he may issue a search warrant and person if found shall be immediately taken before a magistrate.

The accused has a right to be medically examined and if such a request is made, the Magistrate shall direct examination of the body unless he considers it is made for purpose of delay or defeating the ends of justice. In ***Sheela Barse vs State of Maharashtra (1983) 2 SCC 96***, it was held by the Hon'ble Supreme Court that the arrested accused person must be informed by the magistrate about his right to be medically examined in terms of section section 54. In this case, High court directed magistrates to ask the arrested person as to whether he has any complaint of torture or maltreatment in police custody.

The state under constitutional mandate is required to provide free legal aid to an indigent accused person and this arises not only when the trial commences but when the accused is for the first time produced before the magistrate, as also when he is remanded from time to time. In ***Anil Yadav v State of Bihar 1982 (2) SCC 195*** commonly referred to as ***Bhagalpur Blinding case***, the judicial magistrates failed in their duties to inform blinded prisoners of their rights. As a result, the Supreme Court had

to cast a duty on all magistrates and courts to promptly and duly inform the indigent accused about his right to get free legal aid as without this the right may prove to be illusory. The right to legal aid today is enshrined in Article 39A and further institutionalised with the coming into force of the Legal Services Authorities Act, 1986. This assumes more significance as denial of the same may even vitiate the trial at later stage.

Further, in ***Hussainara Khatoon V Case (1980) 1 SCC 108*** it was held that it is the duty of the magistrate to inform the accused that he has a right to be released on bail on expiry of statutory period of 90 or 60 days as the case may be. Suffice is to say that magistrates are the best persons to oversee that the accused is not denied his rights.

We must not forget that ensuring criminal justice requires cooperation of the two arms of the state directly involved i.e. the judiciary and the police machinery. While direct interference is not desirable in investigation process, the magistrate is kept in the picture at all the stages of the police investigation. On a conjoint reading of section 57 and 167 of the Code, it is clear that the legislative intention was to ensure speedy investigation after a person has been taken in custody. It is expected that investigation is completed within 24 hours and if not possible within 15 days. The role of magistrate is to oversee the course of investigation and prevent abuse of law by investigating agency. However, you must understand that your role is complementary to that of police. In doing so, you must preside without fear or favour.

### **RECORDING CONFESSIONS & DYING DECLARATION**

Confessions and dying declarations recorded by magistrate constitute valuable evidence as they may form the basis of conviction of the accused. Although there is no hard and fast rule as to proper manner of recording the same, the Magistrate must follow certain broad guidelines to ensure that the document inspires confidence of the court assessing it.

Just as the FIR recorded is of great importance because it is the earliest information given soon after the commission of a cognisable offence before there is time to forget, fabricate or embellish. Similarly the confession made to magistrate is highly valuable evidence. Section 164 empowers magistrate to record even when he has no jurisdiction in the case. Before recording any such confession, the magistrate is required to explain to the person making confession that

- a) He is not bound to make such a confession
- b) If he does so it may be used as evidence against him

These provisions must be administered in their proper spirit lest they become mere formalities. The magistrate must have reason to believe that it is being made voluntarily. You must exercise your judicial knowledge and wisdom to find out whether it is voluntary confession or not. The magistrate must see that the warning is brought home to the mind of the person making the confession. If the recording continues on another day, a fresh warning is necessary before a confession is recorded on the other day.

After giving warnings, the magistrate should give him adequate time to think and reflect. There is no hard and fast rule but the person must be completely free from possible police influence. Normally such a person is sent to jail custody at least for a day before his confession is recorded. How much time for reflection should be allowed depends on circumstances in each case.

The act of recording confession is a solemn act and in discharging such duties the magistrate must take care to see that the requirements of law are fully satisfied. The magistrate recording the confession must appreciate his function as one of a judicial officer and he must apply his judicial mind to the task of ascertaining that the statement the accused is going to make is of his own accord and not on account of any influence on him.

A dying declaration is an admissible piece of evidence under section 32 of Indian Evidence Act as it is the first hand knowledge of facts of a case by the victim himself. I myself have held in ***Surinder Kumar vs. State of Haryana (2011) 10 SCC 173***, a case relating to wife burning, that if the dying declaration is true and voluntary, it can be basis of conviction without corroboration. Thus, proper recording of the dying declaration by the magistrates assumes significance. There is no exhaustive list of procedures to be followed rather depends on case to case basis. It may be recorded in the form of question and answers in the language of the deceased as far as practicable. Before proceeding to record the dying declaration, the magistrate shall satisfy himself that the declarant is in a fit condition to make a statement and if medical officer is present, a fitness certificate should be obtained. It is the duty of the magistrate to ensure the making of a free and spontaneous statement by the declarant without any prompting, suggestion or aid from any other justice. If possible, at the conclusion of recording, the declaration must be read out to the declarant and signature must be obtained symbolic of correctness of the same.

### **LAW ON ELECTRONIC EVIDENCE**

The proliferation of computers, the social influence of information technology and the ability to store information in digital form have all required Indian law to be amended to include provisions on the appreciation of digital evidence. In the year 2000 Parliament enacted the Information Technology (IT) Act 2000, which amended the existing Indian statutes to allow for the admissibility of digital evidence. The IT Act is based on the United Nations Commission on International Trade Law which adopted the Model Law on Electronic Commerce together with providing amendments to the Indian Evidence Act 1872, the Indian Penal Code 1860 and the Banker's Book Evidence Act 1891, recognizing transactions that are carried out through electronic data interchange and other means of electronic communication. Digital knowledge has become prerequisite for effective judgship.

## **SUMMARY TRIALS: ROLE OF MAGISTRATES IN DELIVERING SWIFT JUSTICE**

The magistrates are empowered to deal with summons cases and few specific warrant cases in a summary way with the clear intention of ensuring speedy justice. They can give an abridge version of regular trial in offences like petty thefts, house trespass, cattle trespass, insult to provoke breach of peace and other such offences punishable with imprisonment not exceeding 2 years.

The inclusion of additional forms of crime, for example, section 138 cases under the Negotiable Instruments Act or section 498A cases under the Indian Penal Code have contributed a large number of cases in the criminal courts. Over 38 lakh cheque bouncing cases are pending in various courts in the country. Huge backlog of cheque bouncing or dishonoured cheque cases need to be speedily disposed, lest the litigants lose faith in the judicial system and the purpose of the Act be defeated. In this context, the Law Commission in its 213<sup>th</sup> Report has recommended setting up of fast track magisterial courts to for fast disposal of cheque. However, I strongly believe that if magistrates fulfill the mandate laid down in section 143 of the Act, separate courts may not be required. The provisions of section 143, as inserted in the Act in 2002, state that offences under section 138 of the Act shall be tried in a summary manner. It empowers the Magistrate to pass a sentence of imprisonment for a term up to one year and an amount of fine exceeding five thousand rupees. It also provides that if it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed, he can do so after hearing the parties and recalling any witness who may have been examined. Under this provision, so far as practicable, the Magistrate is expected to conduct the trial on a day-to day basis until its conclusion and conclude the trial within six months from the date of filing of the complaint. Further, section 147 makes the offence punishable under section 138 of the Act compoundable i.e. it can be settled between the parties. The court can note the same and record the settlement reached. In ***Damodar S Prabhu vs***

**Sayed Babalal (2010) 5 SCC 663**, the Court laid down certain broad guidelines to ensure that application for compounding is made at an early stage of trial. The guideline empowers the magistrate to

*(a) Give directions making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.*

*(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.*

The court further observed that:

*“Complaints are being increasingly filed in multiple jurisdictions in a vexatious manner which causes tremendous harassment and prejudice to the drawers of the cheque. We direct that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200 of the CrPC”.*

I have recapped section 143 of the Act and above-mentioned guidelines so that you comprehend the significance of summary trial procedure as a tool in your hands, which you must utilize to deliver swift justice. The responsibility is cast on you to act in a fair, judicious and yet balanced way to ensure that the accused also gets a fair opportunity of defending the case and, at the same time, also to ensure that this provision is not misused by the accused only for the purpose of protracting the trial or to defeat the ends of justice.

## **CROSS CASE**

In a recent case ***Dr. Mohammad Khalil Chisti vs. State of Rajasthan*** involving free fight where there was cross case, I myself observed with regret the duplication of proceedings in the same case which should have been ideally heard and disposed of together at both trial and appellate stage. You may come across similar circumstances where there are allegations and counter allegation. Where there are two different versions of same incident resulting into two criminal cases are described as “case and counter case” In such a scenario, you must try the two cases together. Trial of cross cases presents a variety of ticklish practical issues and challenges. Under section 319 of the Code, if a magistrate upon hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in connected offence he should hold trial together.

In ***State Of M.P vs Mishrilal (2003) 9 SCC 426***, both the parties lodged an FIR against each other in respect of the same incident. The Supreme Court while giving guidance as to the procedure to be adopted in such cases has observed as follows:-

*“The cross- cases should be tried together by the same court irrespective of the nature of the offence involved. The rationale behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments.”*

## **FINAL REMARKS**

To conclude, I would like to convey that a vibrant subordinate judiciary is the need of the hour. Inordinate delays, escalating cost of litigation and inequality in the system sometimes make the delivery of justice on unattainable goal. But we have to be optimistic and work together to not just uphold the rule of law, but ensure that litigant does not lose faith in the maze that our legal system has become. Young judges must brace themselves to do their part which may be onerous but fully satisfying.

Section 89 of the CPC allows judges to refer disputes for settlement through ADR procedures in cases where elements of settlement are discernible. The provisions of Section 89 should be employed wherever the opportunity arises since the same encompasses two objectives. The referral to ADR **decreases the caseload and arrears of the court** and thus increases the time, which can be devoted to contentious matters which cannot be settled through ADR methods. In addition, the regular employment of Section 89 shall also foster and promote the method of ADR.

You must not see judicial service as service in the sense of employment. The judges are not employees. They exercise the sovereign judicial power of the state as prime dispensers of justice. Working in court of law is not purely mechanical but demands ability, alertness, resourcefulness, tact and imagination. Changing dynamics of our legal system demands that judges be in continuous training and education.

If independent and efficient judicial system is to remain the basic structure of our Constitution, a competent subordinate judiciary is its indispensable link. I have full faith that you will fulfil this role dutifully and efficiently.

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