

Role Of The Magistrate In Criminal Proceedings

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ABSTRACT

Often people forget the role magistrates play in a criminal proceeding. Any person who is arrested is first brought in front of the magistrate. Thus, it is up to the magistrate to either send him to police custody or judicial custody. The author, through this article, has emphasized the significant powers that a magistrate has, from ordering an investigation to taking up the investigation into his own hands. The author has explored various concepts like default bail and test identification parade, the magistrate's role in conducting identification parade. Finally, the author has laid down the different stages in which the magistrate regulates the police investigation by keeping a tight vigil on its activities.

1. INTRODUCTION

The criminal justice system in India has always been a hot topic to debate. Many people blame the judiciary for not taking active steps for ensuring that justice is done in a fast and efficient manner. Some people blame the whole system by saying that the entire system is prolonged and thus does not cater to the needs of society. Nevertheless, many people do not reflect on the real issue: the efficiency of the investigating officers and the role of the magistrate while ensuring a fair and just investigation are meted out. In this article, the author reflects upon the role of the magistrate during the criminal proceedings. The magistrate is the first place where an arrested person is brought. Thus magistrate is the protectors of the rights of the arrested person. The article also explores the various statutory provisions, with relevant case laws, which throws a light on the role of the magistrate at various stages of the investigation.

2. CRIMINAL INVESTIGATION AND THE MAGISTRATE

Even before a person is brought before the magistrate, an investigation is conducted by the investigating officer (hereinafter referred to as IO); the investigation is nothing but an attempt to discover the truth and bring the real perpetrators in front of the courts. The investigation involves collecting substantial pieces of evidence, recording the statements of the witness and collecting all-important material that forms part of the case and is relevant to ensure that the judge reaches out to the right decision. After the investigation stage comes the inquiry stage, which is under the domain of the judge. Inquiry is the stage where the magistrate sees whether the investigation is done professionally and efficiently. Under an adversarial system, it is pertinent to note that the powers are very efficiently distributed, necessary for justice delivery. The judges in a traditional adversarial system are kept away from the investigation process for the very fact that it might taint their decision-making process. A judge has to hear the case impartially and fairly so that no injustice is done. Thus it is presumed that if he actively takes part in the investigation process, then he might establish a preconceived opinion which he might reflect in his judgment. Thus, every organ of the criminal justice system is entirely independent in its sphere.

3. PROACTIVE MAGISTRACY AND ITS ROLE IN TODAY'S TIME

Under the adversarial system, it is a well-established system that the investigating officer will collect the pieces of evidence and conduct the investigation fairly and reasonably. The judge will examine the evidence and ensure that investigation is done without prejudices. All the parties are expected to abide by the rules laid down and act in a manner prescribed by law. However, the reality is far less straightforward, as it is rightly said that if the man were a perfect angle, then external controls would be unnecessary. However, in reality, he is not, and that is why in the real world, the Magistrate acts like an external control that checks whether the Police authorities are investigating a legally sustainable way or not.

The investigation may be hampered in various ways like non-examination of vital witness, not applying the forensic methods, poor handling of the medical documents, not registering the FIR etc. In the current times when most of the excesses are bound to happen during an investigation, the magistrate must assume a more pro-active role in investigation to safeguard the individual rights and liberties of the citizens.

4. STAGES OF MAGISTERIAL INQUIRY

Stage 1- After the Registration of FIR

Stage 2- Role of a magistrate when the IO affects an arrest, and on the production of the arrested person before the magistrate, question whether to grant Police custody or Judicial Custody.

Stage 3 – Magisterial inquiry when statements of witnesses are recorded u/s 164 of CrPC, and other examination like medical documents and test, taking handwriting specimens

Stage-4- Monitoring of investigation

Stage 5- After the filing of police reports u/s 173

5. ROLE OF THE MAGISTRATE WHEN FIR HAS BEEN LODGED

As soon as an FIR has been lodged, the criminal justice system comes into force. Section 157 of the CrPC mandates the police to send a copy of an FIR to the nearest Magistrate. The provision enables the Magistrate to keep a vigil on the excessive power of the police and ensure that the safety of the accused is maintained. As per the Delhi High Court rules, once an FIR has been sent to him, the magistrate must endorse that FIR and mention the date, time and place of receipt. This has been made so that the registration and time of the FIR can be ascertained more correctly. In case the police authorities, after filing the report, indicates that no investigation is necessary, the magistrate can order a necessary investigation or, if it deems fit, take the matter into his own hands and conduct an inquiry; however, the latter power is very rarely exercised mainly due to the load amount of cases already in hand, but in cases where the magistrate thinks that he must intervene then he can use his power to find out the truth by himself.

6. LAW OF ARREST

Arrest deprives a person of his life and personal liberty, and hence utmost importance has to be given to the cases where an arrest has been made inappropriately. The police authorities can arrest a person in a specific situation without the warrant of the court. Thus it becomes necessary that this power of the police is not used arbitrarily. The police have the power to arrest a person without a warrant under section 41(1)(b) of the CrPC if it feels that the person accused has committed an offence punishable up to 7 years or less. However, this power is not to use because the police feel it has the right to do it. The police have to substantiate its arrest with proper reasons why they needed to arrest the person. As per section 41(1)(b), the police have the power to arrest if the following conditions are satisfied-:

- A) The police believe that the person has the ability to commit more offence if not arrested immediately.
- B) The arrest is necessary for proper investigation
- C) If the person is not arrested, then he might tamper with some evidence
- E) To prevent the accused from making some inducement, threats, or promise any person associated with the case to dissuade him from disclosing facts to the police.
- F) If the person is not arrested, then his presence in the court cannot be ensured.

All these criteria have to be fulfilled if a person is to be arrested, and the reasons have to be deduced in writing. All this is done so that objectivity and rules out arbitrariness replace the subjective decision of arrest. From the above interpretation, it is clear that if the prosecution cannot satisfy the magistrate as to why the arrest was necessary, then the accused would be discharged.

7. MAGISTRATE AND ITS POWER IN RELATION TO POLICE REMAND

Magistrate, after deciding whether the arrest of the accused is necessary or not, then decides on whether the accused should be granted police remand just on ipse dixit of police. The supreme court in *Arnesh Kumar vs State of Bihar* [2014 8 SCC 273] has highlighted that no magistrate should grant police remand just on the saying of the police. The magistrate should give a reasoned decision and not a mechanical one. However, our magistrates are more inclined to give police remand just on the mere saying of the police, which is reflected in the overcrowding in jails.

8. SAFEGUARD AGAINST THE ARREST

The magistrate has the duty to ensure that a proper arrest memo is prepared, medical examinations of the accused is done and see that the accused is brought to the magistrate within 24 hours. It has to ensure that other guidelines in the *DK Basu* case are also followed. The FIR copy is to be uploaded on the internet within 48 hours except when serious offences and privacy issues are involved.

9. IMPORTANCE OF CASE DIARIES

From time to time, the Supreme Court has retreated an essential source of evidence and thus be maintained scrupulously and efficiently. The magistrate is required to make sure that the case diary is duly scrutinized and contain the statement of witness u/s 161 of the Crpc. The Delhi High Court rules mandate that the magistrate should sign each and every page of the case diary as a token to show that he has seen them. This ensures that no fabrication or alteration of the case diary is not done.

10. PRINCIPLES OF NATURAL JUSTICE

In every legal hearing, it is expected that both the parties would be heard, and no one would be condemned unheard. However, sometimes there might be situations when the accused or any party cannot hire a lawyer to represent himself and prepare a proper defence. In that case, the Magistrate can appoint a legal representative who would be representing the accused. This is done through the Legal Aid Department of every State, and the magistrate also ensures that all the relevant documents are supplied to the accused and his lawyer so that they can prepare a good defence. The role of the magistrate does not end here. If the magistrate feels that the accused is not represented correctly, it can communicate it to the concerned legal aid department and appoint a new lawyer. In this way, the magistrate ensures that rule of *Audi alteram Partem* is followed.

11. THE CONCEPT OF DEFAULT BAIL

Once the accused is arrested, he can be sent to police remand for the maximum period of 15 days and then to Judicial custody for 45 days if the offences punishable for 10 years or less and of 75 days in case offences punishable with imprisonment above 10 years. If the investigation is still not complete and the accused is still in JC, then he or she is entitled to default bail or statutory bail. The main purpose of this provision is to keep the police on their toes and ensure that police completes the investigation in a time-bound manner. In case the police do not complete, then the accused is released on default bail on the 60th day of the investigation. The magistrate is also required to dispose of the bail application on the same day. Later on, the filing of the charge sheet on the 61st day, the prosecution cannot say that investigation is complete, and the accused should not be released on bail now. The Supreme Court has held that this statutory right of the accused cannot be taken away. The magistrate is also to ensure that the charge sheet should be filed according to section 173 and not in a hasty manner.

12. REMAND TO POLICE CUSTODY

The magistrate seldom grants full 15 days of police custody envisaged u/s 167 of Crpc because of the simple reason that this provision seriously impacts the individual's personal liberty. Therefore, when granting police custody, the police or the prosecution has to give logical and necessary reasons why police custody is required. Just because the accused has assisted in verifying the information is not a ground for seeking police remand. Thus, if some recovery is to be made, or larger conspiracy is to be detected, or facilitating the arrest of the co-accused is to be done, it is then that police remand can be granted.

13. ROLE OF THE MAGISTRATE IN CASE OF JUVENILES

While dealing with juveniles, the magistrate is guided by the principle of parens-patriae, which means in the child's best interest. It is well established that if a person is below 18 years of age, he must be judged by Juvenile Justice Board (JJB) and not the regular courts. Once a plea of juvenility is raised, the magistrate must observe Section 7A of the JJ Act and rule 12 of the Delhi Juvenile Justice Rules, 2009. If on a mere appearance of the accused he is found to be a juvenile, he will be immediately transferred to an observation room or order production to the JJB. The Documents which are looked for ascertaining the juvenility of the person are as follows

- a) Birth certificate of the first school attended (Not the playschool)
- b) Birth certificate issued by the municipalities, panchayats
- c) Any matriculation certificates
- d) Moreover, if any of these documents is not found, only the medical board will ascertain the age; if the medical board cannot reach a concrete solution, then a 1- year advantage is given to the accused on a lower side.

While determining the age, the magistrate is not required to go through long inquiry procedures, neither there are lengthy cross-examinations; determination of age is a summary procedure to be completed within 30 days, only in very exceptional cases when some vexed question of fact is involved then and then the only magistrate takes time and follows proper detailed inquiry.

14. MAGISTRATE ROLE IN RECORDING STATEMENT OF WITNESS U/S 164 OF CRPC AND TEST IDENTIFICATION PARADE

Recording of witness is an important part of any investigation. It allows the investigation officers to get closure to the truth and allows them to capture the witness's testimony, which can be used during trials to corroborate evidence. However, our own Indian legal system

gives significantly less importance to statements or police confessions because most of these statements are not taken voluntarily; sometimes, the police authorities use force or coercion to get the statements to wrap up the investigation and close the case. This shows the lacunas which are police system is dealing with. Nevertheless, sometimes these statements are relied upon if it was a dying declaration or if some recovery was made, which is instrumental to the case. Section 164 provides for recording statements before the magistrate; However, it is not a substantial piece of evidence. This statement still comes in handy once the trial commences, as these statements can be corroborated with the other evidence that can be used to contradict in cross-examinations. The statements recorded under section 164 puts a bar on the person who gives the statement not to retract his statements; if he does, then this hampers the prosecution case to a great extent. Secondly, not everyone is entitled to give statements under 164, application by the police or the IO for the recording of statements has to be made, thus recording statements under this section is depended upon the IO if he or she thinks that statements are an essential piece of evidence then they move forward with it. However, there is an exception to the procedure mentioned above, and that is in case of offences against women, like rape, sexual harassment then, in that case, the magistrate ought to record the statement of the victim as soon as the matter is brought before it, and the application filing procedure is done away with. In India, it is seen that in sexual offences against women, the police authorities have failed to perform their duties, and hence the victim suffers right from the investigation stage. Thus, this exception makes sure that the magistrate is not a mute spectator when the police are negligent. The Supreme Court drew one more exception in the case of Mahabir Singh vs State of Haryana [AIR 2001 SC 2503] wherein the Supreme Court highlighted that statement under section 164 can be made by an accused without any prior application by IO if he has to make any confessions. However, the magistrate ought to verify the accused's identity and consider whether the investigation is complete or not.

15. TEST IDENTIFICATION PARADE

Test Identification is the process to check the truthfulness of the witness and identify the unknown person. If a request for TIP is made, it ought to be kept in mind by the magistrate that the accused is brought before it in the muffled face and his free consent is taken; the magistrate ought to look into the fact that the images of the accused are not shown to the witness before conducting TIP to block any chances of influence that might happen and might reflect in the decision of the witness. Lastly, the magistrate ought to ensure that appropriate legal representation is given to the accused when the police made a narco analysis request.