

ROLE OF THE MAGISTRATE IN CRIMINAL PROCEEDINGS

*LAKSHAY KUMAR

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 have emphasised the major powers that a magistrate has, from ordering investigation to taking up the investigation into his own hands. The author has explored various concepts like default bail and test identification parade, what is the role of magistrate in conducting identification parade. Finally, the author has laid down the various stages in which the magistrate regulates the police investigation by keeping a tight vigil on its activities.

Introduction

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 whole system is very slow and thus does not cater to the needs of the society. But many people don't reflect on the real issue that is 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. Magistrate is the first place where an arrested person is brought, thus magistrate are 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 magistrate at various stages of investigation.

Criminal Investigation and the Magistrate

Even before a person is brought before the magistrate, an investigation is conducted by the investigating officer (herein after referred as IO), Investigation is nothing but an attempt to discover the truth and bring the real perpetrators in front of the courts. Investigation involves collection of important evidences, recording the statements of the witness and collection of all-important material that form part of the case and are 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 in a professional and in an efficient manner. Under an adversarial system it is pertinent to note that the powers are very efficiently distributed, which is 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 in an impartial and in a fair way so that no injustice is done, and 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 judgement. Thus, every organ of the criminal justice system is quite independent in its own sphere.

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 evidences and conduct the investigation in a fair and reasonable manner, the judge will examine the evidences 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 simple, as it is rightly said that if man was a perfect angle then external controls would be unnecessary. But in reality, he is not and that is why in the real world the Magistrate acts like a external control who checks whether the Police authorities are conducting the investigation in 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. The magistrate in the current times when most of the excesses are bound to happen during investigation must assume more pro-active role in investigation in order to safeguard the individual rights and liberties of the citizens.

Stages of Magisterial Inquiry

Stage 1- After the Registration of FIR

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

Stage 3 – Magisterial inquiry when statements of witness is 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

ROLE OF THE MAGISTRATE WHEN FIR HAS BEEN LODGED

As soon as a FIR has been lodged the criminal justice system comes into force. Section 157 of the CrPC mandates the police to send the copy of a FIR to the nearest Magistrate. The provision enables the Magistrate to keep a vigil on the excessive power of the police and ensure that safety of the accused is maintained. As per the Delhi High Court rules once a FIR has been sent to him it is mandatory for the magistrate to 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, magistrate can order necessary investigation or if it deems fit take the matter in 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 it is necessary for him to intervene then he can use his power to find out the truth by himself.

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 arrest has been made in a wrong manner. The police authorities have the power to arrest a person in specific situation without the warrant of the court, thus it becomes necessary that this power of the police is not used in an arbitrarily manner. The police has 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 be used just because the police feels it has the right to do it. The police has to substantiate its arrest with proper reasons as to why it was necessary for them 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) Arrest is necessary for proper investigation
- C) Is the person is not arrested then he might tamper with some evidence
- D) To prevent the accused for making some inducement, threats, or promise any person who is associated with the case in order to dissuade him from disclosing facts to the police.
- E) 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 the subjective decision of arrest is replaced by objectivity and rules out arbitrariness. From the above interpretation it is clear that if the prosecution is unable to satisfy the magistrate as to why arrest was necessary then the accused would be discharged.

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 the issue whether the accused should be granted police remand just on ipse dixit of police. The supreme court in **Arnesh Kumar vs State of Bihar**¹ 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.

SAFEGUARD AGAINST THE ARREST

The magistrate has the duty to ensure that proper arrest memo is prepared, medical examination 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 copy of the FIR is to be uploaded on the internet within 48 hours except in situation where the issue is of serious offences and issue of privacy are involved.

IMPORTANCE OF CASE DIARIES

*DME, GGSIPU, NEW DELHI
¹ 2014 8 SCC 273

The supreme court from time to time has retreated are an important source of evidence and thus be maintained in a scrupulous and efficient manner. The magistrate is required to make sure that case diary is duly scrutinised 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 case diary is not done.

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 is not able to hire a lawyer to represent himself and prepare a proper defence. In that case the Magistrate has the power to appoint a legal representative who would be representing the accused. This is done through the Legal Aid Department of every State, 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 being represented in a proper manner, 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 alterum Partem is followed.

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 in case 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 its 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 as well so that later on filing of the charge sheet on the 61st day the prosecution can not 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 can not be taken away. The

magistrate is also to ensure that charge sheet should be filed in accordance with section 173 and not in a hasty manner.

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 personal liberty of the individual. Therefore, at the time of granting police custody the police or the prosecution has to give logical and necessary reasons as to why police custody is required. Just because the accused has assisted in verifying the information is not a ground for seeking police remand. Thus, in case where 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.

ROLE OF THE MAGISTRATE IN CASE OF JUVENILES

The magistrate while dealing with juveniles is guided by the principle of parens-patriae which means in the best interest of the child. It is well established that if a person is below 18 years of age then he is mandatory to be judged by Juvenile Justice Board (JJB) and not the regular courts. Once a plea of juvenility is raised then the magistrate is required to observe the 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 then he is to 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 play school)
- b) Birth certificate issued by the municipalities, panchayats
- c) Any matriculation certificates
- d) And if any of these documents is not found then only the medical board will ascertain the age, if the medical board is also not able to reach to 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 procedures to be completed within 30 days, only in very exceptional cases when

some vexed question of fact is involved then and then only magistrate takes time and follows proper detailed inquiry.

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 but also allows them to capture testimony of the witness which can be used during trials to corroborate evidences. However, our own Indian legal system gives very less importance to statements or police confessions because of the fact that most of these statements are not taken voluntarily, sometimes the police authorities use force or coercion to get the statements just in order to wrap up the investigation and close the case. This shows the lacunas which are police system is dealing with. But sometimes these statements are relied upon in case it was a dying declaration or if some recovery was made which is instrumental to the case. Section 164 provides for recording of statements before the magistrate, although it is not a substantial piece of evidence but still this statement come in handy once the trial commences as these statements can be corroborated with the other evidence and 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 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 important piece of evidence then they move forward with it. However their is an exception to the above mentioned procedure 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 in case where the police is negligent. One more exception was drawn by the Supreme Court in the case of **Mahabir Singh vs State of**

Haryana² 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 identity of the accused and also to consider whether the investigation is complete or not.

TEST IDENTIFICATION PARADE

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

² AIR 2001 SC 2503