

CHAPTER I

GENERAL POWERS AND JURISDICTION

In pursuance of the scheme of separation of the Judiciary from Executive, two categories of the Magistrates have been created.

They are:--

- (1) Executive Magistrates.
- (ii) Judicial Magistrates.

Broad Division of Magisterial functions:--

Judicial Magistrates are under the control of the High Court and Executive Magistrates are under the control of State Government.

Broadly speaking, the functions of a Magistrate, which are essentially Judicial in nature, have been entrusted to the Judicial Magistrates, while the functions, which are executive or administrative in nature, have been allotted to the Executive Magistrates.

Division of Executive Magistrates:--

Unlike the Judicial Magistrates, the Executive Magistrates, have not been graded as Executive Magistrates, First Class and Executive Magistrates, Second Class.

The Executive Magistrates may, however, be divided under the following four heads:--

- i) Dist. Magistrate:- U/S. 20(1);
- ii) Addl. Dist. Magistrate:- U/S. 20(2);
- iii) Sub Divisional Magistrate:- U/S. 20(4);
- iv) Spl. Executive Magistrate:- U/S. 21.

Appointment of Executive Magistrates:--

Executive Magistrates are appointed by the State Govt. Executive Magistrates may be appointed not only for every District, but also for every Metropolitan Area vide Section 20(1).

Revised set up of Criminal Courts:-- Executive Magistrates are criminal courts within the meaning of this Code vide Section 6(iv). When the Executive Magistrate acts Judicially say, for instance, when he hold inquiry U/S. 116 in connection with a security proceeding, he functions as a court. But when he does something purely administrative or executive in nature, then he does not perform the role of a Court. e.g. When an Executive Magistrate in exercise of the powers vested in him U/s. 129 commands an unlawful Assembly to disperse, he does not do so in the capacity of a Criminal Court, but by virtue of the office that he holds.

Section 6:-- Classes of Criminal Courts:-- Besides the High Courts and the courts constituted under any law, other than this Code, there shall be in every State the following classes of criminal courts, namely:--

- i) Courts of Sessions;
- ii) Judicial Magistrates of First Class and; in any Metropolitan area, Metropolitan Magistrates;
- iii) Judicial Magistrates of Second Class; and
- iv) Executive Magistrates.

Section 20(1):-- In every District and in every Metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

Section 20(2):-- The State Government may appoint any Executive Magistrate to be an Addl. Dist. Magistrate, and such Magistrate shall have¹ (such) of the powers of a District Magistrate under this code or under any other law for the time being in force² (as may be directed by the State Govt.).

Section 20(3):-- Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer who succeeds temporarily to the Executive administration of the District, such officer shall, pending the orders of the State Govt., exercise all the powers and perform all the duties respectively conferred and imposed by this code on the District Magistrate.

Section 20(4):-- The State Government may place an Executive Magistrate in charge of a Sub Division and may relieve him of the charge as occasion requires; and

1. Substituted by Act 45 of 1978, Section 20 (w.e.f. 18-12-78)

2. Inserted by Act 45 of 1978, Section 20 (w.e.f. 18-12-78)

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the Magistrate so placed in charge of a Sub Division shall be called the Sub Divisional Magistrate.

Section 20(5):--Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any powers of an Executive Magistrate in relation to a Metropolitan Area.

The State Government may place any Magistrate in charge of a Sub Division and may relieve him of the charge as occasion requires. Such Magistrates shall be called Sub Divisional Magistrates. The State Government may delegate its powers under this section to the District Magistrate.

It is important to note that in the matter of appointment of Executive Magistrates, the High Court has no role to play.

The District Magistrate and the Addl. District Magistrate are two different and distinct authorities. Even though the latter may be empowered under sub-section (2) of S.20 to exercise all or any of the powers of a District Magistrate, but by no stretch of reasoning can an Addl. District Magistrate be called a District Magistrate as per the expression used in S.20(1).³ An Addl. Dist. Magistrate is an Officer below the rank of District Magistrate.⁴

As per the grammatical meaning of the second sentence of Section 20(2), State Government is entitled to delegate all the powers of a District Magistrate to Addl. District Magistrate, whether under the Code, or under any other laws, which are in force at the date, when the Magistrate exercises those powers.⁵ The Addl. District Magistrate can exercise the powers of a District Magistrate [under S.20(2)] only when, the State Government has conferred those powers on him. Where the jurisdiction of Addl. District Magistrate is challenged on the ground of lack of power, it is for the State Government to produce the notification or other direction, which empowers the Addl. District Magistrate to act.⁶ Hence Addl. District Magistrate may be invested with all or any of such powers by State Government.⁷ But the mere fact that an Addl. District Magistrate can exercise the powers of District Magistrate for several purposes does not necessarily invest him with authority to exercise all the District Magistrate's powers. A distinction must be made between delegated powers

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3. *Hari Chand Agarwal v. Batala Engineering Co.* AIR 1969 SC 483 (1969) 1 SCJ 872 : 1969 Cr.L.J. 803; *Ajaib Singh v. Gurubachan Singh*, AIR 1965 SC 1619 : (1965) 2 SCJ 96 : (1965) 2 Cr.L.J. 553
 4. *Ajaib Singh v. Gurubachan Singh*, AIR 1965 SC 1619: (1965) 2. SCJ.96: (1965) 2 Cr. L.J. 553
 5. *In re Kalu*, AIR 1953 Bom 401 at 401,402: 55 Bom L.R. 404: 7 A Cr.D. 245: 54 Cr. L.J. 1576: 8 DLR Bom. 127: 1 LR. 1953 Bom. 793: 22 Bom.
 6. *Neki Ram v. State* 1977 All Cr. C.56 (57): 1977 U.P. Cr. D. 59
 7. *Hari chand Agarwal v. Batala Engineering Co.* 1965, Punj 141 (Supp) 718: A.I.R. 1966 Punj 141, reversed in AIR 1969 SC 483 (1969) 1 SCJ 872: 1969 Cr. LJ 803

and powers vested by virtue of a legislative enactment.⁸ Where the State Government has delegated its power of detention to District Magistrates, the power cannot be exercised by an Addl. District Magistrate.⁹

Under Section 20(4):--There could be only one, and not two or more Sub Divisional Magistrates in charge of a Sub Division. The position under the old Code (Sect.13) was also that there could be only one Sub Divisional Magistrate in charge of a Sub Division.¹⁰

Section 21:--Special Executive Magistrates:--The State Government may appoint for such term as it may think fit, Executive Magistrates, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrates, as it may deem fit.

Section 22:--Local Jurisdiction of Executive Magistrates:--(1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Executive Magistrate shall extend throughout the District.

It shows that a Magistrate appointed to act as an Executive Magistrate in a district has jurisdiction over the entire district, unless his powers have been restricted to a certain local area only.¹¹

Unless it is specifically shown that the territorial jurisdiction of an Executive Magistrate has been curtailed and restricted, the presumption is that his jurisdiction extends throughout the District. Such restriction may be imposed by the District Magistrate by defining the local limits of each Executive Magistrate. This authority of District Magistrate is, however, subject to the control of the State Government. A Sub Divisional Magistrate can also exercise his powers in the whole District, unless there is a specific order, which restricts the exercise of those powers only within the Sub Division.¹²

8. *Gyani Kartar Singh v. Rex*, AIR 1050 Ajmer 12 : 51 Cr.L.J. 771.
9. *Prabhu Lal Ram v. Emperor*, AIR 1944 Nag. 84 at 87.
10. *Gajadhar Lal v. Sujan Chand*, AIR 1958 M.P. 184 : 1957 MPC 671 : 1958 MP L.J. 1 : 1958 Jab.L.J. 13 : 1958 Cr.L.J. 897; *Lakshmi v. State*, AIR 1962 All. 165 : 1961 All.L.J. 875, (1961) 1 Cr.L.J. 389 : 1961 All WR (HC) 664.
11. *Sarat Chunder Roy v. Bepin Chandra Roy*, ILR 29 Cal. 389; *Balakrishnan Nair v. Sulochana Amma*, 1961 KLT 690, *Kanhalya v. Nilkantha*, ILR 1965 M.P. 347 etc.
12. *Om Prakash v. State*, AIR 1962 All. 157 at 158 : 1961 All. WR (HC) 579 : 1961 All Cr.R. 357 : (1962) Cr.L.J. 388 : I L R (1962) : (1961) 1 Cr.L.J. 304 : 1960 Pat,

Likewise, an Officer appointed as an Executive Magistrate for the whole District, but put in charge by the District Magistrate of a particular Taluk only, is NOT WITHOUT JURISDICTION, if he exercises jurisdiction in other Taluks of the same District.¹³

Likewise, an Executive Magistrate, though ON LEAVE and NOT IN THE DISTRICT in which he has been exercising jurisdiction, is a "Magistrate" within the meaning of Section 26 of Indian Evidence Act. A confession made in the presence of such person is admissible.¹⁴

Section 23:--Subordination of Executive Magistrate:--(1) All Executive Magistrates, other than the Addl. District Magistrates shall be subordinate to the District Magistrate, and every Executive Magistrate other than the Sub Divisional Magistrate exercising powers in a Sub Division shall also be subordinate to the Sub Divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

All Executive Magistrates, other than Addl. District Magistrate, employed in a District shall be subordinate to the District Magistrate and all Executive Magistrates attached to a Sub Division shall be subordinate to Sub Divisional Magistrate i.e. they shall be inferior in rank,¹⁵ and subordinate in respect of all their powers, whatever their nature.¹⁶

Addl. District Magistrate is not subordinate to the District Magistrate. However he is an Officer below the rank of the District Magistrate.

This section does not make an Addl. District Magistrate superior to an Executive Magistrate, who is consequently not inferior to an Addl. District Magistrate, who is also an Executive Magistrate.¹⁷ The District Magistrate and Sub Divisional Magistrate have no appellate or supervisory jurisdiction over the Executive Magistrates.

A Special Executive Magistrate appointed U/S.21 is subordinate to the District Magistrate and is also subordinate to the Sub. Divisional Magistrate within

13. *Queen Empress v. Jamsedji*, Rat Un.Cr. C.177.

14. *Faizullah v. Emperor*, 15 Cr.L.J. 6 : 38 PLR 1914 : 8 PWR 1914 Cr.

15. See the observations of West, J. in *Queen Empress v. Priya Gopal*, ILR 9 Bom. 100; also *Unnachur Beg v. Ajdunnissa Bibee* ILR 12 Cal. 473, *In the matter of petition of Padmanabha* 1 LR 8 Mad. 18 (F.B.).

16. *In the matter of the petition of Gurdoyal* ILR 2 All. 205 (F.B.).

17. *N.D. Tushnial v. Laskari* ILR 7 All. 853 (FB) : 5 A.W.N. 257.

whose Sub Division, he exercises jurisdiction. If the territorial jurisdiction of a Special Executive Magistrate extends over several districts or over several sub divisions, then he will be subordinate to all the District Magistrates of those Districts with reference to the cases arising in their respective Districts. He is also subordinate to all such Sub Divisional Magistrates with reference to the cases arising within their respective Sub Divisions. This subordination of the Special Executive Magistrate is not dependent on his place of sitting, whether that is a fixed place or not.

The power of the District Magistrate to distribute work (business) among the Executive Magistrates is confined to District Magistrates alone and this cannot be delegated to or be exercised by a Sub Divisional Magistrate. Power to make rules and give special orders cannot be exercised by Sub Divisional Magistrate or by any other Executive Magistrates.¹⁸

Section 24:—Public Prosecutors:—(1) For every High Court, the Central Government or the State Government shall after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Addl. Public Prosecutors, for conducting in such court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Addl. Public Prosecutors for the District.

Provided that the Public Prosecutor or Addl. Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Addl. Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Addl. Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as Public Prosecutor or Addl. Public Prosecutor for the district, unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub-section (5) where in a State there exists a regular cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Addl. Prosecutor only from among the persons constituting such cadre:

18. *Paramhansh Singh v. Suraj Prasad Sharma*, 1973 Pat. L.J.R. 219.

Provided that where, in the opinion of the State Government, no suitable persons is available in such cadre for such appointment that Government may appoint a person as Public Prosecutor or Addl. Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Addl. Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an Advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an Advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a Pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Addl. Public Prosecutor or an Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an Advocate.

Magistrate has no power to appoint Public Prosecutor.—Appointment of a Public Prosecutor for the District or an Assistant Public Prosecutor can be made only by the State Government. A Magistrate has no power to permit the complainant to prosecute a case in the capacity of a Public Prosecutor.¹⁹

Section 25(3):—Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a Police Officer shall not be so appointed--

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; OR

(b) if he is below the rank of Inspector.

The object of S.25(3) is to keep the prosecuting agency free from Police Department. If the administrative and disciplinary control over the Public Prosecutors was entrusted to the Officers of the Police Department, then the purpose behind Section 25 would be defeated. If the administrative and disciplinary control over the Public Prosecutors is under the hand of Superintendent of Police at District level and under the Inspector General of Police at the State level for administrative and disciplinary purposes, then it was held bad.²⁰

19. *Vinay Bhimrao Karandikar v. Maduka Yashwant Joshi*, 1981 Cr.L.R. (Mah) 542.

20. *Jaipal Singh Naresh v. State of U.P.*, 1976 Cr.L.J. 32 (All).

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U/s. 25(3):--District Magistrate can exercise this jurisdiction, where no Assistant Public Prosecutor is available for purpose of a case. Hence this appointment is for a single case and not as general appointment.²¹ In such case even a *Police Officer* in special circumstances can be appointed as per Section 25(3).

On death of Public Prosecutor or the vacancy otherwise coming into existence, if no appointment is made by the State Government for sometime, then the senior most Assistant Public Prosecutor may function as Public Prosecutor.
