

CHAPTER 3

SUPERINTENDENCE AND CONTROL—CRIMINAL COURTS

(The instructions contained in this Chapter do not apply to the Union territory of Delhi.)

PART A—CONTROL

1. (i) In regard to the Criminal administration, all Criminal Courts are subordinate to the High Court.

Controlling Authority.

(ii) In districts other than those in which the experiment of the separation of the Judiciary from the Executive is being tried, every Magistrate, other than the Magistrate of the District is subordinate to the Magistrate of the District for all purposes including that of administrative control. A Sub-Divisional Magistrate has similar powers of control over other Magistrates in his sub-division.

In non-separated districts.

(iii) In the districts in which the experiment of separation of the Judiciary from the Executive is being tried, the Judicial Magistrates and the Additional District Magistrate are under the administrative control of the District and Sessions Judge who is competent to grant them leave.

In separated districts.

(iv) To start with, the Judiciary and Executive have been separated by executive orders in the districts of Gurgaon, Ambala, Simla, Jullundur and Hoshiarpur. The Judicial Magistrates are transferable only in these districts. In these districts, the officers doing judicial and executive work have been divided into two categories, namely, those who do judicial work only and those who do no criminal judicial work and work under the Deputy Commissioner. Officers doing judicial work are under the direct control of the Additional District Magistrate who also does not do any executive work, and performs all the judicial duties of the

Distribution of functions.

District Magistrate, except those relating to security cases, grant of pardons, classifications of prisoners and detenues and action under section 144 of the Criminal Procedure Code. For the more important duties of the Additional District Magistrates in the separated and non-separated districts, see Punjab Government letter No. 9062-G (C) 54/35339, dated the 8th December, 1954, to all Deputy Commissioners in the Punjab.

Casual leave.

(v) In Districts in which the Judiciary has been separated from the Executive, District and Sessions Judges can grant casual leave to Additional District Magistrates and Judicial Magistrates up to ten days at a time subject to the general instructions on the subject issued from time to time. The Additional District Magistrates can similarly grant casual leave to Judicial Magistrates up to 4 days at a time.

Control over the subordinate staff of criminal courts.

(vi) At present the subordinate staff of the Criminal Courts is under the control of the Deputy Commissioners. Though the Government has no objection in principle to the transfer of control over this subordinate staff, this step has been deferred till the complete separation of the judiciary from the executive takes place.

Control of Sessions Judge over District Magistrate and other Magistrates.

2. Magistrates are subordinate to the Sessions Judge "extent and in the manner expressly provided in the Code" (Section 17, Criminal Procedure Code).

District Magistrates should comply with all requisitions for records, returns, and information made by Sessions Judges with regard to any case appealable to the Court of Sessions or referable by that court to the High Court, whether decided by the District Magistrate or by other Magistrates of the district, or made by Sessions Judges under orders of the High Court in the exercise of their duty and Superintendence over the subordinate Courts. They should also render any explanation which Sessions Judges may require from them, and obtain, and submit any explanation which Sessions Judges may require from

subordinate Magistrates in order to assist the Appellate Courts in respect of the classes of cases above referred to.

3. In all matters relating to the criminal administration the Sessions Judge is the ordinary official channels of communication between the Magistrates and the High Court and is required, moreover to see that the Rules and Orders of the High Court are duly carried out within his Sessions Division and if necessary, to bring to the notice of the High Court any matter requiring attention.

Subordination of Magistrates to Sessions Judge.

4. Whenever a District Magistrate or a Sessions Judge proposes to issue a circular order to the Magistrates subordinate to him dealing with judicial matters (other than mere office routine such as the distribution of work) he must send a draft of the proposed circular to the High Court for approval and may not issue it until such approval is obtained.

Circular orders issued by District Magistrate or Sessions Judge.

No circular addressed to the Magistrates, concerning even a routine matter, should contain orders to the Police or Prosecuting Agency, as these can be issued separately.

5. The following instructions to District Magistrates (or with necessary modifications, to the Additional District Magistrates, in districts in which the experiment of separation of the judiciary from the executive is being tried) are issued with the full approval of the State Government :-

Duty of District Magistrate (or the Additional District Magistrate in the separated districts) re. proper administration of criminal justice.

- (1) No functions of the Deputy Commissioner can be permitted to override the proper administration of Criminal Justice, and the Deputy Commissioner should fully recognise that his duties as Chief Magistrate of the District must be given the foremost place. The peace and good order of districts depend on District Magistrates taking an active personal interest in all matters affecting the criminal administration. In order to supervise and control subordinate Criminal Courts efficiently, it is necessary that the District Magistrate should keep

himself aware of the state of crime in all parts of his district, and should be in daily touch with the course of criminal business in the courts.

To keep in touch with the work of Magistrate.

(2) The District Magistrate should, from time to time satisfy himself as to the state of business in any court and the quality of the work done by the Presiding Magistrate. Though the District Magistrate does not now hear appeals from sentences or orders of a Magistrate, he still has certain powers of revision under Chapter XXXII of the Code of Criminal Procedure which should enable him to get an acquaintance with the work of the Magistrates.

District Magistrate must try original cases.

(3) No practical experience of the difficulties of the subordinate Magistrates can be gained until the District Magistrate hears cases himself, and as long as the Deputy Commissioner remains the head of the magistracy he should be a magistrate in fact as well as in name. The Judges attach great importance to the District Magistrate's taking a considerable share in the actual magisterial work of their district in the way of trying original cases. In certain districts the increasing amount of executive and other work renders it impossible for the District Magistrate to take the same share in the trial of cases as he used to take some years ago, be there are many smaller districts where he can still do so, and even in the larger districts it is impossible for the District Magistrate to exercise the necessary control over the subordinate courts unless, by the occasional hearing of important cases, he maintains that technical acquaintance with the difficulties of courts, which is necessary for satisfactory control.

Scrutiny of monthly statements of criminal work by the District Magistrate.

(4) The District Magistrate should himself scrutinize with care, the monthly business returns and satisfy himself from them, not only that the outturn of work is sufficient and the business of the court well in

hand, but also that the quality of the work is satisfactory.

- (5) The methods described above afford only an occasional method of controlling criminal administration and in particular the monthly business statements necessarily bring to the District Magistrate's notice, only after long delay, the occasions on which his interference is desirable. Day to day supervision of the work of the subordinate courts is no less an essential part of the District Magistrate's functions, and is of even greater importance than the trying of original cases. Without this day to day supervision it is impossible for the District Magistrate to maintain that constant touch with the state of crime and criminal business which is requisite for a proper discharge of the District Magistrate's duties. The Judges attach the greatest importance to daily supervision, which must rank as one of the primary duties of a District Magistrate.

Daily supervision by District Magistrate.

- (6) For the business-like discharge of criminal work, it is necessary that all Magistrates should be punctual in their attendance at court and should remain at work during the recognized Court hours. It is similarly the duty of the District Magistrate to be punctual in his own attendance at court; and without punctuality on his part punctuality in the subordinate courts and in the Bar is not to be expected.

Punctual attendance.

- (7) A convenient and valuable source of information for the adequate supervision of criminal business is the police department English register of cognizable offences mentioned in the police Rule 24.8. This Register is placed before the District Magistrate on each working day when he is at district headquarters. It gives information not only of the action of the Police (thus enabling the District Magistrate to superintend their work but also

Police Register and its use by the District Magistrate.

affords the means of watching the progress and the results of business in Court. The practice of merely initialing this register after a hasty glance at it too commonly prevails, but a few minutes each day spent on considering the entries for the day and for preceding days will enable the District Magistrate to maintain a close touch with all branches of the criminal administration. The entries for the day bring to light at once the orders of courts which are *prima-facie*, unsatisfactory and which require the scrutiny of the District Magistrate. The register, therefore, facilitates the making of references to the High Court, and puts the Deputy Commissioner in a position at the earliest possible moment to initiate proceedings by way of appeal. It can also be used to disclose cases which have been pending for an inordinate time.

Deputy Commissioner as head of prosecuting agency.

(8) The Deputy Commissioner is the head of the prosecuting agency in the district and this affords him a further opportunity for keeping in touch with the work in all Courts. It is easy for him to arrange that he; or in the districts in which the experiment of separation of judiciary from the Executive is being tried, the Additional District Magistrate; is kept informed by the prosecuting agency each day of any omission on the part of court to record the evidence of witnesses produced and to investigate promptly any complaint which may be made of dilatoriness in any particular court.

Inspection of under-trial section of the jail.

(9) Another check on unnecessary and unduly long adjournments is to be found in the constant inspection of the under-trial section of the local jail. Occasional inquiries into cases which seem to call for notice will reveal whether the adjournment appear to be justified or not.

Speedy disposal of cases.

(10) In view of sections 207A and 251A inserted in the Code by Act 26 of 1955 it is not now possible in

cases instituted on police report to send up the material witnesses with the Challan. But the District Magistrates should bring the changes made in sections 344 and 497 of the Code by the said amendment Act to the notice of all Criminal Courts and impress upon them the desirability of day to day hearings and speedy disposal of cases. Attention may also be drawn in this connection to paragraph 6 of Chapter 1-A, High Court Rules and Orders, Volume III. Should congestion occur or be threatened the Magistrate should apply promptly to the District Magistrate for sanction to fix one or more blank days in the week to be utilised for catching up with arrears, and the District Magistrate will find it convenient to receive each day from the Court Inspector a short memo showing how the system is working in each of the subordinate Courts.

- (11) All arrests made by the Police without warrant are reported to District Magistrates under section 62 of the Criminal Procedure Code, and all remand orders under section 167 passed by subordinate Magistrates are similarly reported. Both these reports should be forwarded to the Ilaqa Magistrate, who has already received the first information report. The Magistrate of the Ilaqa is, thus, in a position to know what crime is under investigation in his Ilaqa; and what cases are likely to reach his court within the next few days. The Magistrate is responsible that the completion report under section 173 of the Criminal Procedure Code is not unduly delayed, and his responsibility in this respect should be emphasized. He should insist on the prompt submission of the F.I.R. and of the arrest report and he should call for the completion report from the Superintendent of Police, if that report is unduly delayed. The District Magistrate should cause the Ilaqa Magistrate to realize that he is not a mere Judge whose duty it is simply to

Arrest reports,
remand and
completion reports.

decide cases produced before him, but that he is at all times responsible for the maintenance of the peace in the area which is made over into his charge. Every effort should be made to get the Ilaqa Magistrate to take a personal interest in and gain a thorough knowledge of his own thanas.

Senior Magistrate to exercise supervision in the absence of District Magistrates.

(12) The Deputy Commissioner's absence must necessarily interfere with his day to day supervision of the work of the subordinate courts, but the interference can be minimized if arrangements are made with the Superintendent of Police that the register of cognizable crime is submitted each day to the next senior Magistrate at Sadar. That Magistrate, if not exercising the powers of a District Magistrate is not authorized to issue orders to the Police but the object is that he should bring immediately to the notice of the District Magistrate cases in which his interference is called for, and in which magisterial records should be obtained. Similarly the senior Magistrate can be entrusted with the duties of securing the punctual attendance of subordinate Magistrates and of seeing that witnesses are not dismissed without their evidence being recorded or that Challan cases are not delayed.

Avoiding delay in filing revisions and appeals.

(13) Not infrequently cases have occurred where undue delay has taken place in reporting for revision the unsatisfactory orders of subordinate courts or in moving Government to institute appeals. The delay is largely due to reliance on the monthly business statements which may not be submitted to the District Magistrate till a considerable time after the objectionable order has been passed. District Magistrates should make free use of the register of cognizable crime for these purposes, and should take prompt action in cases where such action appears necessary. Having done so, they should arrange to be informed at once of any appeal that

may be made to the Sessions Court in a case which has been reported, and they must report promptly to the High Court first the fact of the appeal having been filed and later its results.

Attention may be drawn to the fact that Act 26 of 1955 has reduced the period of limitation for appeals from orders of acquittal from six months to three months.

(14) In conclusion the Judges are authorised by Government to remind Magistrates that the stoppage of annual increments of pay is one of the remedies in cases of serious slackness. The Judges will not hesitate to recommend the application of that remedy in any instance in which they consider it to be merited.

Consequences
of serious
slackness of
Magistrate.