

Efficacy Of Courts Under Present Criminal Justice Administration

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INTRODUCTION

The Administration of Criminal Justice System is a vital part of the criminal courts particularly the efficacy of the courts based on the Criminal Justice Administration. India has 29 States and 7 Union territories and each one of the states and union territories have their own set of criminal rules of practice. For example, the criminal court administration starts at 10.30 A.M. and no Judge or Magistrate can occupy the dice after 11 A.M and this has been prescribed in the Tamil Nadu Criminal rules of practice and this power has been exercised by the Chartered High Court of Madras by invoking Section 477 of the Criminal Procedure Code, 1973. Further, the trial courts and the appellate courts play a major role in the administration of justice and it starts from the Magistrate Court, Chief Judicial Magistrate Court, Assistant Session Judge and Session's Judge. The above categories of the Courts administers the justice through their respective court cases. While so, the section 19 of the Indian Penal Code speaks about the Judge and illustration (d) of the said section explains that a Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another court, is not a Judge. But the committal magistrate has the power of issuing summons and warrant and supply copies to the accused during the preliminary registration of the case and it is a quasi-trial administration of justice. Further, section 105 of Criminal Procedure Code says that, Judge or Magistrate has the power to summon an accused person, issue warrant of arrest for the accused person and summon any person requiring him to attend and produce a document or thing, or to produce it and search warrant and these are done by the Magistrate for the efficacy of administration justice. Hence, comparison of the section 19, illustration (d) of IPC and section 105 of the Criminal Procedure code, it comes to the conclusion that the committal magistrate is also Judge till the committal procedure completed for the efficacy of the criminal justice administration.

TRIAL COURT: CRIMINAL JUSTICE ADMINISTRATION

MAGISTRATE COURT

The administration of the justice by the Magistrate court that acquittal should not be benefit of doubt and it should be Honorary acquittal, then criminal justice system will be in efficacy or otherwise in the form of formal only. One case pertaining to wordy quarrel between the de facto complainant and accused yuvaraj and another. During the quarrel the de facto complainant sustained injury and given a complaint to the complainant police and the complainant police registered the case under section 294(b), 341, 324, 506(ii) and after filing of the charge sheet the learned Judicial Magistrate takes the cognizance of the case and gives a calendar case No.19/2015 and summons issue and accused appeared and along with de facto complainant filed the compoundable petition that was dismissed and thereafter the de facto complainant examined as PW1 and given deposition that during quarrel really don't know who caused injury to the de facto complainant and falsely given the complaint against the accused and after through perusal of the trial court comes to the conclusion that accused is not involved in this case and finally acquitted in the case.³ Hence the trial court even though acquitted the accused in this case and the words of the judgment no speaks of the Honorary acquittal and it's speak about that accused not all involved in this case. Therefore, it needs to be Honorary acquittal and accused in this case can go for Government job by the efficacy of the criminal justice administration.

One case pertaining to the cheque bounce of Rs. 70,000/- case and the complainant filed the case and the court has taken the cognizance of the case and given as Summary trial case number and after through evidence the court comes to the conclusion that to convict the accused and finally sentenced to undergo rigorous imprisonment of two months and to pay a fine of Rs. 1,000/- and in default simple imprisonment for 15 days⁴. This trial court filed to note administer the criminal

³Cc.no.19/2015 on the file of the Learned Judicial Magistrate, Sholinghur, Tamil Nadu.

⁴STC no.287/2006 on the file of the learned Judicial magistrate II, Vellore, Tamil Nadu.

justice system how it means the section 138 of the Negotiable Instrument Act, 1881 is very clear that twice the cheque amount to be ordered. But in contra the trial court has not exercised the power of section 357 of the criminal procedure code says that order to pay compensation. Finally, the trial court failed to administer the criminal justice system.

Case pertaining to the theft of sand and the court convicted the accused on the basis of plead guilty under sections 379,430 of IPC and sentenced to undergo simple imprisonment of 5 days for each section of offence of IPC⁵ and more particularly the trial court mentioned the incarceration of the accused from 17.11.2014 to 21.01.2014 and failed to note the period of incarceration of the accused to be ordered to set off from incarceration period totally and this clearly shows that failure of the criminal justice administration and non-application of the mind.

SESSIONS COURT: ADMINISTRATION OF CRIMINAL JUSTICE

The trial court convicted the accused under section 302 of IPC for the offence of murder and convicted on the sole witnesses and sentenced to undergo imprisonment of life and ordered to pay a fine of Rs. 5,000/- and in default of fine amount means sentenced to undergo simple imprisonment of 6 months⁶ and now the accused in jail and preferred the criminal appeal before the Hon'ble High court of Madras in CrI.A.660/2017 and is now pending and in contradiction to that judgment of the Hon'ble Supreme court and the same was applied in the case of Sambu@Tamilnilavu vs state represented by the Inspector of Police, Kolathur police station, Salem District in (2017) 2 MLJ 632- the evidence of PW1 is highly doubtful in the absence of corroboration from any other source on material particulars, it will not be safe to rely on the evidence of PW1 and sustain the conviction. The trial court failed to administer the criminal justice system because the mitigating and aggravating circumstances were not discussed and also about the victim compensation scheme and failed to direct the district legal authority to award the

⁵Calendar case No.30/2015 on the file of the learned Judicial Magistrate V, Tamil Nadu.

⁶Sessions case No.133/2014 on the sessions court II, Kancheepuram, Tamil Nadu.

compensation under section 357A of criminal procedure code and about the accused family how to mitigate milieu for the bread winner of the family income to lead the life. Hence this court failed to administer the criminal justice administration.

MAHILA COURT: ADMINISTRATION OF CRIMINAL JUSTICE

In this court the charges framed against the accused under sections 363, 366 of IPC and section 6 read with 5(m) of the protection of children from sexual offence Act. The case of the prosecution is that, the accused kidnapped the victim child and taken into the dry pit and gagged the mouth of the victim and committed the penetrative sexual assault on the victim. Finally, the court convicted the accused by way of hearing the proposed sentence and under section 363 of IPC the accused is convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- and in default to undergo one month of simple imprisonment. Under section 366 of IPC the accused is convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 2,000/- and in default to undergo two months of simple imprisonment. Under section 6 r/w 5(m) of the POCSO Act, the accused is convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 2,000/- and in default to undergo two months of simple imprisonment. To administer the criminal justice system this court invoked the section 357-A (1) and (2) of the criminal procedure code to award the compensation to the victim for ensuring the message to the victim that was not forgotten by Indian Criminal Justice System. Therefore, the District Legal Services Authority, Vellore is hereby recommended to decide the quantum of payable to the victim as compensation⁷. But the court has not discussed any steps to the accused family to mitigate out of the prejudice and has not recommended any steps to safeguard the family of the accused from the incarceration milieu period. It has to recommend the source of income to the accused family and if done it means the effective criminal justice administration.

⁷Special sessions case No.18/2015 on the file of the MagalirNeethiMandram, Vellore, Tamil Nadu.

In a case pending before the Hon'ble Madras High Court and the case pertaining to rape on dumb victim, magistrate failed to see the victim is in the list of witnesses and committed the case for trial to the Principal Sessions Court and the same court also made over the case to the Mahila Court and the Mahila Court added the victim during the trial stage and whether the victim can secure the ends of Justice through this method of the criminal Justice Administration System⁸. Adding the victim during the trial stage, in case it is fatal and more particularly it shows that inefficacy of the court to administer the criminal justice system. Further, victim is dumb and in the Indian Evidence Act, section 119 speaks about the witness unable to communicate and it should be video graphed and further section 164(5A) of the criminal procedure code speaks about the same that is should be video graphed but committal court failed to add the victim and the trial court also failed to videograph the deposition of evidence and victim of the dumb should be assisted by the special educator and that was not done by the trial court during the trial and it vitiates the inefficacy of the criminal justice administration.

HIGH COURT: ADMINISTRATION OF CRIMINAL JUSTICE

In a classic judgment that weighed the cry for justice of a six-year-old girl who had lost her mother, grandmother as well as great grandmother in a case of triple murder for gain alongside the future of three minor children of two convicts sentenced to death for the crime, the Madras High Court on 25.10.2017 commuted their punishment to life sentence and ordered that they should not be let out of prison for 30 years. It is punishment for the accused through the retributive theory. Further observing that the High Court takes the role of *parens patriae* of the families of death convicts as well as victims of crime while deciding such cases, a Division Bench of Justices P.N. Prakash and C.V. Karthikeyan directed the District Legal Services Authority at Vellore and Namakkal to send their team of advocates to ensure that the children of the convicts were educated in schools without disclosing their background. The District Legal Services Authority was also asked to assist the

⁸Criminal Appeal No.561/2017 pending on the file of the Madras High Court.

wives of the two convicts in eking out a livelihood. The judges hoped that the positive initiatives taken by the court would propel the convicts, who had been sentenced to life in another triple murder case too, to reform themselves.

The present case relates to the murder of B. Sindhu, a doctor, her mother T. Sathyavathi and grandmother Visalakshi. The convicts slit the victim's throats at their residence in Mullai Nagar, in Namakkal on October 13, 2011 before decamping with 28 sovereigns of gold jewellery worn by them. Delivering the judgement, the court said it could not shut its eyes to the plight of the families of the convicts as well as victims. The High court rightly and sparingly administered the criminal justice system in this case. This shows the efficacy of the court administration to balance between ensuring justice and reformation to convicts family.⁹

One Jyoti Prakash Sahoo was sentenced to life in jail for murder attempt in 2002. When he was arrested on November 28, 2002 for firing at a person in Jobra locality of Cuttack. But the police in the charge sheet, inexplicably mentioned his age as 20. Sahoo was one of the four accused arrested for the crime and sent to lock-up. They were all convicted in 2005 by a trial court in Cuttack. Subsequently three of them were granted bail but not Sahoo, as he was the prime accused. Unaware of the Juvenile Justice Act, Sahoo filed an appeal against the sentence in the Orissa high court in 2005 but never pleaded that police had given incorrect birth detail. Rakesh Malik, Sahoo's counsel said "I took up the case in 2015 and while studying the documents I found that my client had been a minor in 2002 and should have been treated as juvenile. Thereafter, Sahoo's counsel filed the petition before the court that Sahoo to be released under the Juvenile Justice Act, the Division Bench of Justices I. Mahanty and K.R. Mohapatra ordered the juvenile justice board to submit the report and after thorough investigation from matriculation mark sheet, school transfer certificate and also questioned then Principal of Sahoo's school and a few others. The report established that Sahoo was juvenile at the time of the crime. The court set aside the sentence imposed by the trial court and ordered immediate release after 15

⁹R.T. No.2/2017 on the file of the Madras High Court.

years of incarceration¹⁰. But the court not ordered any compensation to the saho because of the inefficacy of the trial court and the committal magistrate failed to note that saho was juvenile at the time of committing the crime and same was followed by the trial court and finally convicted sans look into the age of the saho and defence counsel also not pleaded the same and finally after 15 years saho released from the jail on the basis of the juvenile justice board report. Here as per section 19 illustration (d) IPC the magistrate acted as neutral sans using the power of the judge and it has to be declared as unconstitutional and contrary to law.

SUPREME COURT: ADMINISTRATION OF CRIMINAL JUSTICE

The administration of the justice in the case cruelty by the Hon'ble Supreme court gives a direction to prevent misuse of section 498A of IPC the appellant in this case approached the High court against the summons and the High court found that no ground to interfere with the order of the summoning and dismissed petition. The Supreme Court thought to prevent the misuse of section 498A, as acknowledged in certain studies and decision and further in the involvement of civil society in aid of administration of justice is one of the steps apart from investigating officers and concerned trial courts to be sensitized. Necessary to facilitate closure of proceedings where genuine settlement reached instead of parties being required to move High Court only for that purpose. In every district one or more family welfare committees constituted by District Legal Services Authorities and complaints under section 498A and other connected offences may be investigated only by designated investigating officer or area. In cases where settlement reached, it will be open to District and Sessions Judge or other senior judicial officer nominated by him in district to dispose of proceedings including closing of criminal case, if dispute primarily relates to matrimonial discord. If bail application filed with at least one clear day's notice to public prosecutor/complainant, on the same day be decided as far as possible on same day. In respect of persons ordinarily residing out of India impounding of passports or issuance of Red corner notice should not be routine. Open to District

¹⁰Reported in Times of India dated 15-10-2017

Judge or designated senior judicial officer nominated by the District Judge to club connected cases between parties arising out of matrimonial disputes so that holistic view taken by court to whom such cases entrusted. Personal appearance of family members and particularly outstation members may not be required. The trial court ought to grant exemption from personal appearance or permit appearance by video conferencing sans adversely affecting progress of trial. Directions will not apply to offences involving tangible physical injuries or death. The view taken by the Supreme Court in this case to reduce the docket explosion in the court and further curtail the abuse of process of the false case against the family member and the court rightly administer the criminal justice to the welfare of the society.¹¹

CONCLUSION

The criminal justice administration system mainly in India divided into the session division contains Session's court and Magistrate courts is not working at efficacy mode. Even though section 357 of Criminal procedure code speaks about order to pay compensation and trial court never ordered any compensation except invoking section 357A of Criminal procedure code and ordered fine only and not imposed any compensation either to the victim or to the acquitted person or convict. The magalir neethi mandram used that power sparingly sans hesitation. The courts should mention the acquittal is benefit of doubt or Honorable acquittal. Then the multiplicity of docket explosion will be curtailed. Recently the Madras High Court used the inherent power to order the district legal service authority in Namakkal and Vellore to form the team of advocates to help the convict family children sans showing the background. This shows the efficacy administration of the criminal justice system. With regard to section 498A of IPC the cruelty offence has to reconsider by way of rethinking by the Hon'ble Supreme Court and directed to form the committee and if the committee suggests then the police has to file the case and this is efficacy of the criminal justice administration system in India.

¹¹*Rajesh sharma and others vs state of UP and another* (2017) 3 MLJ (CrI) 602 (SC)

- With regard to compensation under the present criminal justice administration on par with section 326A provided class of IPC, to be introduced in all sections of the IPC and special law.
- When the section 19 of illustration (d) speaks that committal, Magistrate is not a Judge and committal procedure should be avoided and like special court according to punishment contained in the sections and on par with sections of 28 and 29 of the criminal procedure code the first schedule has to be amended.
- The filing of the charge sheet to be ordered accordingly on par with special court powers and then delay of justice to avoid because of the committal court. Then, the administration of the criminal justice system will prevail all over India.
- By way of rethinking on criminal justice system in India and avoid overcrowding of the convict and to reduce the money of the exchequer and this has to be implemented on par with the Indeterminate sentence policy.