

Part 4

Karuppa Gounder v. D. Sekar
(S. Nagamuthu, J.)

379

2012 (3) CTC 379

IN THE HIGH COURT OF MADRAS

S. Nagamuthu, J.

Crl.O.P. Nos.7520 & 7521 of 2012 & 1157 of 2010

10.5.2012

Crl.O.P. No.7520 of 2012:

Karuppa Gounder

.....Petitioner

Vs.

D. Sekar 2. Chinnammani @ Eswari 3. T. Palanisamy 4. P.N. Chinnasamy 5. N. Ayyavoo, Regional Deputy Tahsildar, Gobichettipalayam, Erode District. **6. D. Devaraj**, Senior Daughtsman, Department of District Land Survey and Registers, District Collector Officer, Erode District. **7. K.T. Sakthivel Nambiyur Firka Surveyor [In-charge]**, Nambiyur, Gobichettipalayam, Erode District. **8. P. Elangovan**, Inspector of Police, Nambiyur Police Station, Nambiyur, Gobichettipalayam Taluk, Erode District.....**Respondents**

Crl.O.P. No.7521 of 2012 :

Karuppa Gounder

.....Petitioner

Vs.

S. Ezhilarasi 2. Chinnammani @ Eswari 3. T. Palanisamy 4. P.N. Chinnasamy 5. N. Ayyavoo, Regional Deputy Tahsildar, Gobichettipalayam, Erode District. **6. D. Devaraj**, Senior Daughtsman, Department of District Land Survey and Registers, District Collector Officer, Erode District. **7. K.T. Sakthivel Nambiyur Firka Surveyor [In-charge]**, Nambiyur, Gobichettipalayam, Erode District. **8. P. Elangovan**, Inspector of Police, Nambiyur Police Station, Nambiyur, Gobichettipalayam Taluk, Erode District.....**Respondents**

Crl.O.P. No.1157 of 2010:

P. Gopinath

.....Petitioner

Vs.

Rajkumar, Inspector of Police, Pennagaram Police Station, Dharmapuri District-636 810. **2. Ms. Surumbar Kuzhali**, Sub-Inspector of Police, Pennagaram Police Station, Dharmapuri District-636 810.....**Respondents**

Administrative Law — Circular cannot override provisions of enactment — High Court issued administrative Circular conferring power upon Chief Judicial Magistrates to entertain private Complaints against Police personnel — As per Sections 11 & 14 of Cr.P.C., Chief Judicial Magistrate is competent to define jurisdiction of Magistrates — As of now every Magistrate, having local jurisdiction, shall have power to take cognizance — Held, neither CJM nor High Court can deprive powers of Magistrate by means of an administrative order or Circular — Circular is invalid and unenforceable — Quashed in exercise of power under Section 482 of Cr.P.C.

Code of Criminal Procedure, 1973 (2 of 1974), Sections 11, 12, 14, 190 & 200 — Judicial Magistrates are competent to entertain private

Complaints against Police officials — Circular dated 22.5.2003 conferring power upon Chief Judicial Magistrate declared as invalid and unenforceable as being contrary to order in force — CJM shall define local jurisdiction of Judicial Magistrate, however, subject to control of High Court — Once local jurisdiction is so defined by CJM under Section 14 of Cr.P.C., then Judicial Magistrate shall exercise all powers of Magistrate within their local limits so defined — Admittedly no Special Court was established to try cases involving offences against Police personnel — In order to give effect to orders made under Section 14, said Circular preventing Magistrate to entertain Private Complaints against Police personnel was quashed.

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 — Quashing of Administrative Circular — *Suo moto* exercise of inherent power — Scope — High Court issued Circular dated 22.5.2003 empowering CJM to entertain private Complaints against Police personnel — Orders issued under Section 14 defined local limits of Judicial Magistrates — Held, in absence of modified or varied order made under Section 14 by means of yet another order under Section 14, Administrative Circular is invalid — In order to give effect to order in force, Circular is liable to be quashed even in absence of challenge.

Facts : Private Complaint against Police personnel filed before Judicial Magistrate returned for presenting before Court of Chief Judicial Magistrate. Conflicting stands taken by different Courts raising question as to who among two is empowered to entertain such Complaint against Police personnel and to take cognizance of offence.

Held : A holistic reading of Sections 11 & 14 of the Code would make it *ipso facto* clear that Judicial Magistrates constituted under Section 11 of the Code shall exercise all or any of the powers with which they may respectively be invested as per Section 14 of the Code. Section 14 of the Code requires that the local jurisdiction of Judicial Magistrates should be defined by the Chief Judicial Magistrate concerned, however, subject to the control of the High Court. If once the local jurisdiction is so defined by the Chief Judicial Magistrate, then, the Judicial Magistrates shall exercise all the powers of a Magistrate within the local limits of the areas so defined. If the order of the Chief Judicial Magistrate defining the local limits imposes any restrictions on the general powers of the Magistrates, such Magistrates shall exercise only such restricted powers. This is understandable from Section 14 of the Code. [Para 16]

With the above legal back ground, if we look into the scenario in the State of Tamil Nadu and Union Territory of Puducherry, it has not been brought to my notice that any Chief Judicial Magistrate in the State of Tamil Nadu or Union Territory of Puducherry has defined the power of the Judicial Magistrates in his local area restricting it only to the cases other than the cases against Police personnel. Thus, as of now, as per the local jurisdiction defined by the respective Chief Judicial Magistrate, in the State of Tamil and the Union Territory of Puducherry, every Magistrate having local jurisdiction shall have power to take cognizance upon any private Complaint irrespective of the fact that either all or some of the accused are Police officials. [Para 21]

As per this provision, a Chief Judicial Magistrate is competent to give special orders in respect of distribution of business among the Judicial Magistrates subordinate to him. But, it needs to be emphasised that such distribution of business shall not be inconsistent with the Code. Therefore, under the guise of distributing the business among the Judicial Magistrates who are subordinate to him, even the Chief Judicial Magistrate cannot over look the local jurisdiction of the Judicial Magistrates as defined in Section 14 of the Code. Thus, it is abundantly clear that if once the local limits of the areas is defined under Section 14 of the Code, the same can be modified or varied only by means of yet another order under Section 14 of the Code. So long as the order defining the local limits of the areas of a Judicial Magistrate is in force, by means of an administrative order or Circular, neither the Chief Judicial Magistrate nor the High Court can deprive the Magistrate of such powers. [Para 23]

From the foregoing discussions, I hold that the Circular in question issued by the High Court is invalid and unenforceable. I further hold that the power to take cognizance of offences on a private Complaint against the Police personnel lies only with the Judicial Magistrate having local jurisdiction as defined under Section 14 of the Code and not with the Chief Judicial Magistrate. [Para 30]

The next question is, when there is no challenge made to the validity of the Circular, whether it would be permissible for this Court to quash the said Circular in the present Criminal Original Petitions. Though it has not been contended by any of the learned Counsel that this Court cannot quash the said Circular for want of challenge, I deem it necessary to deal with the said question also. The inherent power, saved under Section 482 of the Code of Criminal Procedure, shall include power to make an order as may be necessary to give effect to any order under this Code. As I have already stated, there are orders issued under Section 14 of the Cr.P.C. by every Chief Judicial Magistrate in the State defining the local limits of the Judicial Magistrates subordinate to the respective Chief Judicial Magistrate. These orders are to be given effect to. But because of the Circular in question, the Magistrates are prevented from exercising their powers as defined under Section 14 of the Code in respect of Complaints against Police personnel. In order to obviate the impediment, I am of the view that it is necessary to declare that Complaints against Police personnel are to be entertained only by the respective Judicial Magistrates concerned, having local jurisdiction and not by the Chief Judicial Magistrates. Having declared so, I have to necessarily further declare that the Circular is not valid and, therefore, the same is liable to be quashed. Though there is no express challenge to the said Circular, by implication, the Petitioners have assailed only the validity of the Circular. Even otherwise, this Court can invoke the inherent jurisdiction *suo motu*. It is because of this reason, I heard the learned Standing Counsel for the High Court and also the learned Public Prosecutor. If the Circular is not quashed, it is likely to continue to cause hurdle to the Judicial Magistrates to take cognizance of offences on private Complaints against Police personnel. Therefore, I am bound by law to show no hesitation to quash the said Circular in exercise of the inherent power. [Para 31]

Administrative Law — Mode of conferring power cannot be construed as source of power — Section 32 of Cr.P.C. empowers High Court to issue order either by name or in virtue of their offices or clauses of officials generally by their official titles — Held, this provision deals only with mode of conferring power and does not deal with source of power of High Court.

Mr. V. Ayyathurai, the learned Standing Counsel for Madras High Court would make a reference to Section 32 of the Code which speaks of mode of conferring powers which reads as follows:

“32. *Mode of conferring powers.*— (1) In conferring powers under this Code, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.” [Para 24]

The learned Standing Counsel would submit that it is only in exercise of the power under the above provision, the said Circular has been issued conferring power upon the Chief Judicial Magistrates to take cognizance on private Complaints against the Police personnel. I find it difficult to be persuaded by the said argument. In my considered opinion, in the given context, reference to Section 32 of the Code is highly misplaced. In this regard, we may refer to the judgement of the Hon’ble Supreme Court in *State of Gujarat v. Chaturbhuj Maganlal*, 1976 (3) SCC 54 wherein it has been held as follows:

“23. Be that as it may, Section 39 of the Code of Criminal Procedure, 1898 and Section 32 of the Code of Criminal Procedure, 1973, are concerned with the mode of conferring power. Power may be conferred on any person either by name or in virtue of his office, or ‘on classes of officials generally by their official title’. The special mode or the general mode of conferring the power applies to the conferment of power both for a general purpose or a special purpose. *The mode of conferring power is not to be confused with the purpose of the power, as seems to have been done in the cases taking the narrow view.*” [Emphasis supplied]

As has been held by the Hon’ble Supreme Court, this provision deals only with the mode of conferring power on persons specially by name or in virtue of their offices or classes of officials generally by their official titles. Thus, in my considered opinion, this provision does not deal with source of power of the High Court to confer any power or special power on the Chief Judicial Magistrate as has been attempted to be done by the Circular under consideration. On the contrary, this provision deals only with the mode of conferring power. The said Circular itself does not refer to Section 32 of the Code at all. Assuming that the same is purported to have been issued under Section 32 of the Code, as contended by the learned Standing Counsel Mr. V. Ayyathurai, I am of the view that as discussed above, the said Circular is wholly without jurisdiction. [Para 25]

Constitution of India, Article 50 — Separation of powers — Independence of judiciary — Judiciary enjoys absolute independence in dispensation of Justice — Such judicial independence without interference of any other organ has been declared as one of basic feature of Constitution — Judiciary, by observing absolute discipline, has played a vital role in Nation building — Every Judicial Officer is independent in his own sphere of activity — No other agency including High Court can interfere with his judicial function.

The judiciary, we have in this country, enjoys absolute independence in dispensation of justice. It does not suffer from any interference at the hands of any

other organ or the instrumentality of the State or any other external force. Such judicial independence has been declared as one of the basic features of the Constitution. With such unbridled independence, and, at the same time, by observing absolute discipline, the judiciary has played a vital role in the nation building. The contribution of each organ of the judiciary cannot be undermined. In this judicial system, every Judicial Officer is independent in his own sphere of activities. No other agency, including the High Court, can interfere with his judicial functions. If one has to call a Chief Judicial Magistrate more responsible, it goes without saying, that by implication, he portrays the Judicial Magistrates as less responsible. This approach is totally erroneous. Irrespective of the position in the hierarchy, every organ of the judiciary has proved his/it's responsibility. Therefore, the very argument that the Chief Judicial Magistrate is comparatively more responsible than the Judicial Magistrates deserves to be summarily rejected. [Para 28]

CASES REFERRED

All India Judges Association v. Union of India, 1992 (1) SCC 119	9
All India Judges Association v. Union of India, Writ Petition (C) No.1022 of 1989, dated 21.03.2002	9
State of Gujarat v. Chaturbhuj Maganlal, 1976 (3) SCC 54.....	25
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N. Manokaran, Advocate for Petitioner in Cr.O.P. Nos.7520 & 7521 of 2012.

P.G. Thiyagu, Advocate for Petitioner in Cr.L.O.P. No.1157 of 2012; V. Ayyathurai, Standing Counsel for Madras High Court; I. Subramaniam, Senior Counsel/Public Prosecutor - Amicus Curiae assisted by M. Maharaja, Additional Public Prosecutor and K.P. Ananthkrishnan, Government Advocate (Crl. Side).

Cr.O.P.1157/2010 ALLOWED — W.Ps.7520 & 7521/2012 DISMISSED WITH DIRECTION

Prayer : Cr.L.O.P. No.7520 of 2012: Petition filed under Section 482 of the Code of Criminal Procedure praying to issue a direction to the learned Chief Judicial Magistrate, Erode to entertain the Complaint of the Petitioner dated 08.02.2012 made in C.M.P.SR. No.625 of 2012 on his file and proceed in accordance with law as held in para 15 of the judgement of a Division Bench of this Court in *A. Vinayagam case* [2000 (1) CTC 225].

Cr.L.O.P. No.7521 of 2012 : Petition filed under Section 482 of the Code of Criminal Procedure praying to issue a direction to the learned Chief Judicial Magistrate, Erode to entertain the Complaint of the Petitioner dated 08.02.2012 made in C.M.P.SR. No.627 of 2012 on his file and proceed in accordance with law as held in para 15 of the judgement of a Division Bench of this Court in *A.Vinayagam case* [2000 (1) CTC 225].

Cr.L.O.P. No.1157 of 2010 : Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the docket order dated 07.08.2009 made in unnumbered C.C.SR No.2359 of 2009 by the learned District Munsif-cum-Judicial Magistrate, Pennagaram, Dharmapuri District and consequently direct him to take cognizance of offence committed by the Respondents and commit the same to the Competent Court.

JUDGMENT

1. A Complaint against a few Police personnel was filed before a learned Judicial Magistrate, having local jurisdiction. The learned Magistrate declined to entertain the Complaint and returned the same to the Complainant for presenting before the Court of Chief Judicial Magistrate. This order is, of course, in tune with a Circular issued by the Madras High Court. In a different case, a Complaint against a few Police personnel and few others was filed before the Chief Judicial Magistrate. The learned Chief

Judicial Magistrate also declined to entertain the Complaint and returned the same for presenting the said Complaint against the non-Police personnel before the learned Judicial Magistrate having local jurisdiction. These two conflicting stands taken by two different Courts have raised an important question, as to who among the two is empowered to entertain a Complaint against Police personnel and to take cognizance of the offences.

2. The above question has arisen in the following circumstances. The Petitioner in Criminal Original Petition No.1157 of 2010 filed a private Complaint before the Judicial Magistrate, Pennagaram, Dharmapuri District, against an Inspector of Police by name Mr. Rajkumar and a Sub-Inspector of Police by name Mrs. Surumbar Kuzhali, alleging that they had committed offences under Sections 341, 323, 324, 294(b) & 506(ii) of I.P.C. The Petitioner also alleges that these offences arise out of Human Rights Violation to be tried as per the provisions of the Protection of Human Rights Act, 1993. The learned Judicial Magistrate by order dated 07.08.2009, has returned the same stating that he has no jurisdiction to take cognizance of the said offences as the accused are Police personnel. Challenging the said order, the Petitioner has come up with this Criminal Original Petition.

3. The Petitioner in Criminal Original Petition No.7520 of 2012 filed a private Complaint before the learned Chief Judicial Magistrate, Erode, against a few Police officials and other officials from other departments alleging that they had committed offences punishable under Sections 120-B, 463, 464, 468, 109 & 201 of I.P.C. The learned Chief Judicial Magistrate returned the said Complaint by an order dated 13.02.2012, stating that a private Complaint against Police officials alone can be entertained by the Chief Judicial Magistrate, whereas in this case, some of the accused are not Police officials. Challenging the said order, he has come up with this Criminal Original Petition.

4. The Petitioner in Criminal Original Petition No.7521 of 2012 filed a private Complaint against an Inspector of Police and other officials including a private individual. The learned Chief Judicial Magistrate, Erode returned the private Complaint on similar grounds. Challenging the same, he has come up with this Criminal Original Petition.

5. Since, common legal issues are involved in these Petitions, they were heard together and they are disposed of by this common order. No notice was ordered to the Respondents as they are not entitled for notice at this stage.

6. When these matters were heard, since I was informed that there is in force, an Administrative Circular of this Court issuing instructions to the Subordinate Judiciary that all Complaints against Police personnel shall be entertained only by the Chief Judicial Magistrates, I issued a direction to the Registrar General of this Court to place the Circular, if any, and also to

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submit his remarks. In pursuance of the same, the Registrar General has submitted a report on 17.04.2012 and also produced the Circular in R.O.C. No.1062/2003/F1 (P.Dis.25/2003) dated 22.05.2003. The said Circular reads as follows:

CIRCULAR

Sub: Complaint - Private Complaint against Police Officials - To be filed before the Chief Judicial Magistrate Court in their respective Districts - Instructions Issued.

Read: P.Dis.No.597/60, dated 03.09.1960.

* * *

Instructions are enumerated at page 369 of the Criminal Rules of Practice and Circular Order, 1958 relating to Private Complaints against Police Officials. Before 1988, any Magistrate other than a Sub-Divisional Magistrate or District Magistrate (*sic*) taking a cognizance of a case on a private Complaint against member (*sic*) of the Police Officials. Consequent to the upgradation of the erstwhile post of Judicial Magistrate of Second Class and integration with that of the Judicial Magistrate of First Class w.e.f 06.10.1988, all the Magistrates in their respective jurisdiction of torture and harassment by the member of Police Officials and dispose of them in accordance to law (*sic*).

Consequent to the implementation of the Orders of the Supreme Court, dated 21.03.2003 in W.P. No.1022/89, and creation of the Court of the Chief Judicial Magistrate in the cadre of Civil Judge (Senior Division), the matter of conferring power to Chief Judicial Magistrate, has been considered.

After due deliberation, it is resolved to issue the following Instructions:

“All the Complaints against Police person (*sic*) be filed before the Court of Chief Judicial Magistrate only and the Chief Judicial Magistrate concerned shall take cognizance of the matter and dispose of the same as per the provisions and laid down therefor.” (*sic*)

The receipt of the Circular is to be acknowledged at once.

HIGH COURT, MADRAS

Sd/-xxxxxxxx

DATED : 22.5.2003

REGISTRAR GENERAL”

7. Since the above Circular has emanated from the High Court, I directed the Registrar General to submit the views of the High Court. The Registrar General has, in turn, instructed Mr. V. Ayyathurai, the learned Standing Counsel for the Madras High Court to make his submissions. Considering the importance of the question involved, I, also, requested the learned Public Prosecutor Mr. I. Subramaniam to assist this Court as *Amicus Curiae*.

8. I have heard Mr. N. Manokaran, the learned Counsel for the Petitioner in Crl.O.P. No.7520 & 7521 of 2012 and Mr. P.G. Thiyagu, the learned

Counsel for the Petitioner in CrI.O.P. No.1157 of 2010; Mr. V. Ayyathurai, the learned Standing Counsel for Madras High Court and Mr. I. Subramaniam, the learned Senior Counsel/Public Prosecutor - *Amicus Curiae*, assisted by Mr. M. Maharaja and Mr. K.P. Ananthakrishnan and also perused the records carefully.

9. At the beginning, let us now have a look into the circumstances under which the Circular mentioned above came to be issued by the High Court. A reading of the said Circular would show that the basis for issuance of the said Circular is to implement the judgement of the Hon'ble Supreme Court in Writ Petition (C) No.1022 of 1989 dated 21.02.2002. I have the benefit of going through the said judgement of the Hon'ble Supreme Court. The said judgement was on a Writ Petition pertaining to the working conditions of the members of the subordinate judiciary through out the country. As seen from the judgement itself, it was the third round before the Hon'ble Supreme Court. In the said judgement, the Hon'ble Supreme Court has referred to an earlier judgement in *All India Judges Association and others v. Union of India and others*, 1992 (1) SCC 119, wherein the Hon'ble Supreme Court had issued as many as eight directions, all relating to the working conditions of the subordinate judiciary. Out of the above eight directions, many were subsequently implemented. A Review Petition was filed by the Union of India before the Hon'ble Supreme court to review the said judgement. Accordingly, the judgement was reviewed and while clarifying the earlier judgement, six further directions were issued. These directions also relate only to the working conditions of the subordinate judiciary. Thereafter, in pursuance of the directions issued, First National Judicial Pay Commission under the Chairmanship of Justice K.J. Shetty was constituted. The Committee's recommendations were implemented. In the judgement in Writ Petition (C) No.1022 of 1989 [*All India Judges Association and others v. Union of India and others*] dated 21.03.2002, the Hon'ble Supreme Court issued certain directions in respect of pay scale of the Subordinate Judicial Officers and also issued further directions for filling up the existing vacancies and for the increase in the strength of the judges in a phased manner.

10. In the above report, Justice K.J. Shetty had recommended that the Chief Judicial Magistrate and Chief Metropolitan Magistrates should be in the cadre of Additional District Judge. But, the Hon'ble Supreme Court did not agree with the same. In the judgement, referred to above, among other things, the Hon'ble Supreme Court directed that the Chief Metropolitan Magistrates and the Chief Judicial Magistrates should be only from amongst the Civil Judges [Senior Division]. The Hon'ble Supreme Court further considered the nature and duties of the Chief Judicial Magistrates and the Chief Metropolitan Magistrates and held that the only difference being their location, the posts of Chief Judicial Magistrate and Chief Metropolitan Magistrate have to be equated and they have to be placed in the cadre of Civil Judge [Senior Division]. Except the above, I am unable to find any

direction in respect of the jurisdiction of the Judicial Magistrates, Chief Judicial Magistrates and Chief Metropolitan Magistrates. To be beyond any doubt, I have gone through the entire judgement of the Hon'ble Supreme Court line by line. I do not find anything in the judgement touching upon the local jurisdiction of a Judicial Magistrate or Chief Judicial Magistrate relating to Complaints against Police personnel.

11. But, the Circular under discussion states that consequent to the implementation of the above judgement of the Hon'ble Supreme Court and creation of the Chief Judicial Magistrates in the cadre of Civil Judge [Senior Division], the matter of conferring the power to the Chief Judicial Magistrate was considered by the High Court and accordingly it was resolved to issue instructions that all Complaints against the Police personnel shall be filed only before the Chief Judicial Magistrate and the Chief Judicial Magistrate alone shall take cognizance of the offences and dispose of the same as per the provisions of the Code. In my considered opinion, this Circular runs counter to the express provisions of the Code of Criminal Procedure dealing with the jurisdiction of the Judicial Magistrates and Chief Judicial Magistrates. It is obvious that any Circular issued contrary to such express provisions of the legislation is undoubtedly void. The reasons for my conclusion are hereinbelow.

12. Chapter II of the Code of Criminal Procedure deals with Constitution of Criminal Courts and Offices. Section 6(ii) of the Code mandates that in every State, there shall be Judicial Magistrates of the first class and in any metropolitan area, Metropolitan Magistrate. Section 11 of the Code mandates as follows:

“11. Courts of Judicial Magistrates.— (1) In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by Notification, specify:

Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.

(2) The Presiding Officers of such Courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.”

13. Section 12 of the Code mandates constitution of Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc., which reads as follows:

“12. *Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.*— (1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

(3) (a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-Divisional Judicial Magistrate and relieve him of the responsibilities specified in this Section as occasion requires.

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-Divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.”

14. Section 14 of the Code deals with the local jurisdiction of Judicial Magistrates which reads as under:

“14. *Local Jurisdiction of Judicial Magistrates.*— (1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under Section 11 or under Section 13 may exercise all or any of the powers with which they may respectively be invested under this Code.

Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.

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

(3) Where the local jurisdiction of a Magistrate, appointed under Section 11 or Section 13 or Section 18, extends to an area beyond ‘the District, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.”

15. Here, I have avoided reference to the Chief Metropolitan Magistrate, Additional Chief Metropolitan Magistrate and Metropolitan Magistrates since the Circular under discussion, does not deal with their jurisdiction.

16. A holistic reading of Sections 11 & 14 of the Code would make it *ipso facto* clear that Judicial Magistrates constituted under Section 11 of the Code shall exercise all or any of the powers with which they may respectively be invested as per Section 14 of the Code. Section 14 of the Code requires that the local jurisdiction of Judicial Magistrates should be defined by the Chief

Judicial Magistrate concerned, however, subject to the control of the High Court. If once the local jurisdiction is so defined by the Chief Judicial Magistrate, then, the Judicial Magistrates shall exercise all the powers of a Magistrate within the local limits of the areas so defined. If the order of the Chief Judicial Magistrate defining the local limits imposes any restrictions on the general powers of the Magistrates, such Magistrates shall exercise only such restricted powers. This is understandable from Section 14 of the Code.

17. The Proviso to Section 11 of the Code would state that if a Special Court of Judicial Magistrate is established to try any particular case or particular class of cases, then, no other Court of Magistrate in such local area shall have Jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established. From this Proviso, it is crystal clear that a Magistrate, whose local limits of areas have been defined by the Chief Judicial Magistrate under Section 14 of the Code, or the Special Judicial Magistrate, if any, as the case may be, alone shall be competent to take cognizance of any offence committed within his local jurisdiction.

18. Of course, the Hon'ble Supreme Court in *Trisans Chemical v. Rajesh*, 1999 (8) SCC 686 has held that cognizance of an offence taken by a Magistrate having no local jurisdiction shall not vitiate the proceedings. In the said judgement the Apex Court has also observed as follows:

“The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is, therefore, a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance, he may have to decide as to the Court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier.”

The above judgement of the Hon'ble Supreme Court should be understood in the context in which it was decided. It will be too much to expect a Magistrate to examine the question of his jurisdiction closely at the initial stage when the accused have not made their appearance before the Court. More over, in some cases, the question of territorial jurisdiction of the Court is somewhat complicated which can be decided by bilateral hearing only. At the time when the Magistrate receives the Complaint, what is expected of him is the *prima facie* satisfaction about his having jurisdiction. If the learned Magistrate is *prima facie* satisfied that he has no territorial jurisdiction, then he is bound to return the Complaint for presentation to the proper Court as provided in Section 201 of the Code. The said provision reads as follows:

“201. Procedure by Magistrate not competent to take cognizance of the case.— If the Complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, —

(a) if the Complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the Complaint is not in writing, direct the complainant to the proper Court.

19. The above provision would leave no doubt that a Magistrate having no local jurisdiction shall not take cognizance and instead, he shall return the Complaint. However, if the Magistrate, who has no local jurisdiction, has, either due to the complexity of the territorial jurisdiction or due to inadvertence, erroneously taken cognizance of the offence, the same will not vitiate the entire proceedings. After all it is only an irregularity and not an illegality. Section 460(e) of the Code envisages that such irregularity shall not vitiate the proceedings. The said provision reads as follows:

“460. *Irregularities which do not vitiate proceedings.*— If any Magistrate not empowered by law to do any of the following things, namely:

(a)

(b)

(c)

(d)

(e) To take cognizance of an offence under clause (a) or clause (b) of subsection (1) of Section 190;

(f)

(g)

(h)

(i) erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.”

20. In *Trisans Chemical's case* cited supra, since the Complaint was erroneously entertained by a Magistrate having no local jurisdiction, the Hon'ble Supreme Court held that the said order of the Magistrate taking cognizance shall not stand vitiated. But the said judgement should not be misunderstood as though the Hon'ble Supreme Court has declared that cognizance can be taken by any Magistrate irrespective of the fact whether he has jurisdiction or not. Thus, it is undoubtedly clear that it would be appropriate only for a Judicial Magistrate having local jurisdiction or a Special Judicial Magistrate, as the case may be, to take cognizance of any offence, either on a Police report or on a private Complaint.

21. With the above legal back ground, if we look into the scenario in the State of Tamil Nadu and Union Territory of Puducherry, it has not been brought to my notice that any Chief Judicial Magistrate in the State of Tamil Nadu or Union Territory of Puducherry has defined the power of the Judicial

Magistrates in his local area restricting it only to the cases other than the cases against Police personnel. Thus, as of now, as per the local jurisdiction defined by the respective Chief Judicial Magistrate, in the State of Tamil and the Union Territory of Puducherry, every Magistrate having local jurisdiction shall have power to take cognizance upon any private Complaint irrespective of the fact that either all or some of the accused are Police officials.

22. Mr. V. Ayyathurai, the learned Standing Counsel for Madras High Court would lay emphasis on Section 12 of the Code in an attempt to draw support to the Circular under discussion. According to the said provision, basically, a Chief Judicial Magistrate or Additional Chief Judicial Magistrate is a Judicial Magistrate of first class. A Judicial Magistrate of first class is only appointed as Chief Judicial Magistrate. The Judicial Magistrates shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate. Sub-section (2) of Section 15 states as follows:

15. Subordination of Judicial Magistrates. (1)

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.

23. As per this provision, a Chief Judicial Magistrate is competent to give special orders in respect of distribution of business among the Judicial Magistrates subordinate to him. But, it needs to be emphasised that such distribution of business shall not be inconsistent with the Code. Therefore, under the guise of distributing the business among the Judicial Magistrates, who are subordinate to him, even the Chief Judicial Magistrate cannot overlook the local jurisdiction of the Judicial Magistrates as defined in Section 14 of the Code. Thus, it is abundantly clear that if once the local limits of the areas is defined under Section 14 of the Code, the same can be modified or varied only by means of yet another order under Section 14 of the Code. So long as the order defining the local limits of the areas of a Judicial Magistrate is in force, by means of an administrative order or Circular, neither the Chief Judicial Magistrate nor the High Court can deprive the Magistrate of such powers.

24. Mr. V. Ayyathurai, the learned Standing Counsel for Madras High Court would make a reference to Section 32 of the Code, which speaks of mode of conferring powers which reads as follows:

“32. Mode of conferring powers.— (1) In conferring powers under this Code, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.”

25. The learned Standing Counsel would submit that it is only in exercise of the power under the above provision, the said Circular has been issued conferring power upon the Chief Judicial Magistrates to take cognizance on private Complaints against the Police personnel. I find it difficult to be persuaded by the said argument. In my considered opinion, in the given context, reference to Section 32 of the Code is highly misplaced. In this regard, we may refer to the judgement of the Hon'ble Supreme Court in *State of Gujarat v. Chaturbhuji Maganlal*, 1976 (3) SCC 54, wherein it has been held as follows:

“23. Be that as it may, Section 39 of the Code of Criminal Procedure, 1898 and Section 32 of the Code of Criminal Procedure, 1973, are concerned with the mode of conferring power. Power may be conferred on any person either by name or in virtue of his office, or ‘on classes of officials generally by their official title’. The special mode or the general mode of conferring the power applies to the conferment of power both for a general purpose or a special purpose. *The mode of conferring power is not to be confused with the purpose of the power, as seems to have been done in the cases taking the narrow view.*” [Emphasis supplied]

As has been held by the Hon'ble Supreme Court, this provision deals only with the mode of conferring power on persons specially by name or in virtue of their offices or classes of officials generally by their official titles. Thus, in my considered opinion, this provision does not deal with source of power of the High Court to confer any power or special power on the Chief Judicial Magistrate as has been attempted to be done by the Circular under consideration. On the contrary, this provision deals only with the mode of conferring power. The said Circular itself does not refer to Section 32 of the Code at all. Assuming that the same is purported to have been issued under Section 32 of the Code, as contended by the learned Standing Counsel Mr. V. Ayyathurai, I am of the view that as discussed above, the said Circular is wholly without jurisdiction.

26. As we have already referred to, as per the Proviso to Section 11 of the Code, if a Special Court of Judicial Magistrate is established in respect of any case or class of cases, then, to that extent, automatically, the power of the Magistrate having local jurisdiction shall be excluded. But, admittedly, in the State of Tamil Nadu and Union Territory of Puducherry, in no place, there is any such Special Court of Judicial Magistrate established to try the cases involving offences alleged against the Police personnel. A Chief Judicial Magistrate cannot be construed as a Special Judicial Magistrate. In other words, the said Circular cannot have the effect of constituting a Chief Judicial Magistrate as a Special Judicial Magistrate. A Special Judicial Magistrate is the one who shall be subordinate to the Chief Judicial Magistrate. Thus, a Chief Judicial Magistrate cannot be two-in-one.

27. The learned Senior Counsel Mr. I. Subramaniam, would vehemently state that the Circular under discussion should be ignored as void. He would

point out that on Police reports against Police officials, cognizance is taken only by the respective Judicial Magistrates having local jurisdiction. When that be so, there can be no reason to direct that the Judicial Magistrate, having local jurisdiction shall have no power to take cognizance of offences, on private Complaints against Police personnel. Thus, according to him, the Circular is unreasonable. In order to counter the said argument, Mr. V. Ayyathurai, the learned Standing Counsel for the High Court, would submit that past experience has shown that it is embarrassing for Police officials to face the trial before the Court of Judicial Magistrates to which they frequently visit as prosecuting officers. This cannot be countenanced because, they frequent the Chief Judicial Magistrate Courts as well, in their official capacity. Further, according to him, Chief Judicial Magistrates are, comparatively, more responsible than the Judicial Magistrates. He would further submit that the High Court, on the administrative side, therefore, would have thought it fit to confer such power to take cognizance of offences against the Police personnel, on the Chief Judicial Magistrates. This argument is not only strange, but also ridiculous.

28. The judiciary, we have in this country, enjoys absolute independence in dispensation of justice. It does not suffer from any interference at the hands of any other organ or the instrumentality of the State or any other external force. Such judicial independence has been declared as one of the basic features of the Constitution. With such unbridled independence, and, at the same time, by observing absolute discipline, the judiciary has played a vital role in the nation building. The contribution of each organ of the judiciary cannot be undermined. In this judicial system, every Judicial Officer is independent in his own sphere of activities. No other agency, including the High Court, can interfere with his judicial functions. If one has to call a Chief Judicial Magistrate more responsible, it goes without saying, that by implication, he portrays the Judicial Magistrates as less responsible. This approach is totally erroneous. Irrespective of the position in the hierarchy, every organ of the judiciary has proved his/its responsibility. Therefore, the very argument that the Chief Judicial Magistrate is comparatively more responsible than the Judicial Magistrates deserves to be summarily rejected.

29. Now, turning to the argument on special status, I am unable to find any rationale behind the Circular giving such special status to the Police personnel. It is no harm that a private Complaint against any other higher officer, for instance, even a District Collector, can be filed before a Magistrate. Then, why should a special status be given to the Police personnel alone in this regard? Why should not a Magistrate be allowed to take cognizance on a private Complaint against the Police personnel while he can very well take cognizance on a Police report against the very same Police personnel? I find no answer to these questions. Thus, the Circular

does not seek to achieve any object at all. Hence, I hold that the Circular under discussion, does not stand to the test of reasonableness also.

30. From the foregoing discussions, I hold that the Circular in question issued by the High Court is invalid and unenforceable. I further hold that the power to take cognizance of offences on a private Complaint against the Police personnel lies only with the Judicial Magistrate having local jurisdiction as defined under Section 14 of the Code and not with the Chief Judicial Magistrate.

31. The next question is, when there is no challenge made to the validity of the Circular, whether it would be permissible for this Court to quash the said Circular in the present Criminal Original Petitions. Though it has not been contended by any of the learned Counsel that this Court cannot quash the said Circular for want of challenge, I deem it necessary to deal with the said question also. The inherent power, saved under Section 482 of the Code of Criminal Procedure, shall include power to make an order as may be necessary to give effect to any order under this Code. As I have already stated, there are orders issued under Section 14 of the Cr.P.C. by every Chief Judicial Magistrate in the State defining the local limits of the Judicial Magistrates subordinate to the respective Chief Judicial Magistrate. These orders are to be given effect to. But because of the Circular in question, the Magistrates are prevented from exercising their powers as defined under Section 14 of the Code in respect of Complaints against Police personnel. In order to obviate the impediment, I am of the view that it is necessary to declare that Complaints against Police personnel are to be entertained only by the respective Judicial Magistrates concerned, having local jurisdiction and not by the Chief Judicial Magistrates. Having declared so, I have to necessarily further declare that the Circular is not valid and, therefore, the same is liable to be quashed. Though there is no express challenge to the said Circular, by implication, the Petitioners have assailed only the validity of the Circular. Even otherwise, this Court can invoke the inherent jurisdiction *suo motu*. It is because of this reason, I heard the learned Standing Counsel for the High Court and also the learned Public Prosecutor. If the Circular is not quashed, it is likely to continue to cause hurdle to the Judicial Magistrates to take cognizance of offences on private Complaints against Police personnel. Therefore, I am bound by law to show no hesitation to quash the said Circular in exercise of the inherent power.

32. The learned Standing Counsel for the High Court raised apprehension about the fate of the cases instituted already on private Complaints against Police personnel pending in various Courts of Chief Judicial Magistrates in the State. According to him, this order, quashing the Circular may be misunderstood as though the cognizance so far taken by any Chief Judicial Magistrate stands vitiated for want of jurisdiction. In my considered opinion, this apprehension has no basis. As I have already pointed out, the cognizance

taken already by any Chief Judicial Magistrate on account of the Circular shall not stand vitiated in view of Section 460(e) of the Code. Such cognizance taken is very much valid as held by the Hon'ble Supreme Court in *Trisans Chemical's case* cited supra. Thus, it is for the Chief Judicial Magistrates concerned to transfer the case to the respective Magistrates, having local jurisdiction under Section 14 of the Code, for trial.

33. Now turning to the facts of the present case in Crl.O.P. No.1157 of 2010, the learned Magistrate has returned the Complaint stating that he has no jurisdiction to entertain the Complaint. In view of the conclusions arrived at hereinabove, the said order of return is not sustainable and the same requires to be set aside. Now, it is for the Petitioner to re-present the Complaint before the said Magistrate, who shall deal with the same in accordance with law.

34. So far as Crl.O.P. Nos.7520 & 7521 of 2012 are concerned, the learned Chief Judicial Magistrate has returned the Complaints. The reason given by the learned Chief Judicial Magistrate is that these private Complaints as against Police personnel along with private individuals cannot be entertained by the Chief Judicial Magistrate. This reason assigned by the learned Chief Judicial Magistrate is not legally correct. However, the order of return does not require any interference as the Complaint cannot be entertained by the Chief Judicial Magistrate in view of the quashing of the Circular. In view of the said conclusion arrived at, now, it is for the Petitioners to re-present the Complaints before the Magistrates having local jurisdiction.

35. In the result,—

(i) The Criminal Original Petition No.1157 of 2010 is allowed and the impugned order of return passed by the learned District Munsif - *cum* - Judicial Magistrate, Pennagaram, Dharmapuri District is set aside, with liberty to the Petitioner to re-present the Complaint before the said Magistrate and on such re-presentation, the learned Magistrate shall deal with the said Complaint in accordance with law.

(ii) The Criminal Original Petition Nos.7520 & 7521 of 2012 are dismissed, however, with liberty to the Petitioners to re-present the Complaints before the learned Judicial Magistrate having local jurisdiction and on such representation, the jurisdictional Magistrate shall deal with the same strictly in accordance with law.

(iii) The Circular of the Madras High Court in R.O.C. No.1062/2003/F1 (P.Dis.25/2003) dated 22.05.2003 is hereby quashed and the Registry is directed to issue a consequential Circular.
