

SPECIAL ADDRESS
BY
HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI,
ACTING CHIEF JUSTICE, HIGH COURT OF MADRAS,
AND PATRON-IN-CHIEF, TNSJA
AT
THE TWO DAYS' SPECIAL TRAINING PROGRAMME
FOR DISTRICT JUDGES AND
REFRESHER COURSE FOR CIVIL JUDGES (BATCH-I)
ON
14.06.2014 AT TNSJA, CHENNAI

My Lord Hon'ble Mr. Justice Dipak Misra, Judge, Supreme Court of India, Madam Mrs. Suprama Misra, my esteemed brother Mr. Justice M. Jaichandren, President, Board of Governors, Tamil Nadu State Judicial Academy, my Brother and Sister Judges of the High Court, Registrar General and other Registrars of the High Court, Member Secretary, Tamil Nadu State Legal Services Authority, Director, Tamil Nadu State Judicial Academy, participant-Judicial Officers, members of the Print and Visual Media, Ladies and Gentlemen,

It is, indeed, a very happy occasion as we have in our midst My Lord Justice Misra gracing the function. My Lord Justice Misra is my mentor and my guide. In fact, I have taken up the assignment of judicial administration only on his guidance. I must admit that His Lordship's presence on this occasion raises the level of gladness to a new height, as

it coincides with the very first training programme of the year 2014-2015 being conducted by the Tamil Nadu Judicial Academy. I express my heartfelt gratitude to His Lordship and Madam Mrs.Misra for being with us on this occasion.

On the address which I am assigned to present, I would like to say a few words as regards the relevant Constitutional provisions vis-à-vis criminal jurisprudence and management of court work, both judicial and administrative. It is a Refresher Course Training Programme.

The Constitution of India, as you all know, is the highest law of the land. It is also called as the '**Grundnorm**'. It is a German word, which means 'Basic Norm' or 'Fundamental Norm'. The fundamental norms constitute the underlying basis for any legal system. That is the basic Constitutional principles. Any process of law, whether procedural or substantial, has to be in consonance with the Constitutional principles. If it is not so, it is unconstitutional, as is clearly provided in Article 13(2).

There are certain provisions in the Constitution which are very important, and which you all must understand and assimilate. That is Articles 14, 15 and 17. That is very important. The Constitution provides that untouchability is an offence.

Article 20, 21 and 22 (Protection in respect of conviction).

Article 22, you all deal everyday clearly provides the basic principle that no person shall be convicted of any offence except for violation of law

in force at the time of commission of an offence. He cannot be subjected to a penalty greater than what is provided at the time of commission of the offence. Further, he cannot be punished twice over for the same offence. This is the basic principle which you all judicial officers must keep in mind.

Second is Article 21, you all know, which stipulates that no person shall be deprived of his life or personal liberty except according to the procedure as established by law.

Some instances have come, where the judicial officers have given completely a go-by to the procedural aspect that is enshrined in the Constitutional principles.

Article 22 that is also being misused. You being the protector of the Constitution must understand. It guarantees protection against arrest and detention in certain cases. It provides that a person who is arrested for an offence shall not be detained in custody without being informed of the grounds for his arrest and he shall not be denied the right to consult and/or defended by a legal practitioner of his choice. This you will have to follow. It further lays down that any person who is arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of his arrest. Beyond the said period, his arrest is treated as without authority.

We all know, Right to Silence, this is a very important aspect. This concept came in United Kingdom also, where if an Advocate advises to

keep silent, one cannot force – either the judicial officer or the prosecuting agency –one cannot compel him to speak against himself. However, there is a risk. They can plead that my counsel has advised me to keep silent. And if it is pleaded by an accused that I am advised to keep silent, a counsel / a lawyer can be examined or cross-examined. But this is not the case in India. This matter was referred to the Law Commission of India. The Law Commission, in turn has advised not to examine counsels or cross-examine. It is not practicable in India.

The same basic principles of the Constitution which you are all going to hear at length are enshrined in the Cr.P.C. Take for example Section 161(2), which says you cannot force him to answer a question against him. Section 313(3) – the accused shall not render himself liable to punishment by refusing to answer such questions. You cannot draw inference against his silence.

But in Australia, if an accused maintains silence, an inference can be drawn against him.

Even in the earlier Criminal Procedure Code, there was a provision Section 342(2) – the accused shall not render himself liable to punishment by refusing to answer questions or by giving false answers to them. The next line is important – but the court and the jury, if any, may draw such inference from such refusal or answers as it thinks fit.” But this provision

has been repealed in the present 1973 Code of Criminal Procedure, keeping in line with the underlying principles of Article 21.

Now you know, there is another aspect. That is speedy and expeditious trial, which was recently considered by the Supreme Court in **Ranjan Dwivedi vs. Central Bureau of Investigation [(2012) 8 S.C.C. 495]**. After examining and giving a re-look to all old cases, it was observed, and I quote, “....In our considered view, the delay tolerated varies with the complexity of the case, the manner of proof as well as the gravity of the alleged crime. This again, depends on case-to-case basis. There cannot be a universal rule in this regard. It is a balancing process while determining as to whether the right of the accused to speedy trial has been violated or not. The length of delay in itself, is not a weighty factor.”

However, I would like to prevail upon the Judicial Officers not to give any leverage to the accused, while conducting trial proceedings, to claim later that the trial is vitiated due to delay in proceedings. In other words, the judicial officers should avoid granting unnecessary adjournments, which would pave the way for delay in disposal, and that they should take every effort to see that the cases are disposed of as expeditiously as possible.

You all know, the issue of what is the role, responsibility and status of judicial officers came up for consideration in **All India Judges' Association vs. Union of India and Others (A.I.R. 1992 S.C. 165)**. What

the highest Court of this land has laid down for our Principal District Judges and other Judicial Officers, I would like to read :-

“It is the obligation of the District Judge to operate as the captain of the team, both under his direct supervision at the headquarters and in respect of the officers located in different areas within his district..... It is the obligation of the district judge to inspect the outlying courts, maintain the proper judicial tempo and temper of functioning in his District and be responsible for the efficient running of the system”.

Here, District Judges or Principal District Judges heading the District Judiciary, please keep this principle all the time in your mind. The duty of the District Judges and also the judicial officers of other cadres is not only responsible, but also it must be carried on with utmost sincerity and dedication so that the fruits of judicial process reach the stakeholders in a proper manner and better. It is pertinent to note that the judicial officers are ordained to discharge their duties strictly as contemplated under the Constitution and other relevant statutes and at the level they are expected of.

The subordinate judiciary – today Civil Judicial Officers of the lower rung also are present, District Judges are present – is the lynchpin of our judicial system. It is the most essential part of the institution. The judicial officers at the level of District Judiciary are the one who play a vital role in

the process of implementation of not only the relevant constitutional provisions, but also the various enactments. Thus, the courts where the accused, immediately after arrest, is brought for further proceedings are to be dealt with in accordance with the criminal law. Further, in the trial proceedings, both civil and criminal, the parties appear in person and record their evidence in the presence of presiding officers, which, in turn, would be very much advantageous to the presiding officers to appreciate the evidence at the appropriate stage till pronouncement of judgment. I would like to point out that right from the stage when the proceedings of a case are instituted till the stage where a case is disposed of, they are working in a surcharged atmosphere – lawyers, parties – but you have to maintain tempo, dignity of the court as your contribution for dispensation of justice is invaluable and immeasurable.

With regard to pendency of cases, which is all doing the rounds, several measures are being suggested, discussed about. But you all have to concentrate on disposal of cases expeditiously to the best of your ability, integrity and sincerity. I request all judicial officers of the State of Tamil Nadu and the Union Territory of Puducherry to leave no stone unturned to achieve the targets. It is needless to say that you must keep abreast of all developments of law what you are facing today to improve the justice delivery system which is beneficial to the litigant public particularly.

Now we are having e-Committee System and going to have Re-engineering Process, you all contribute, we are going to have Case Information System, where maintaining more files will be done away with having minimum requirement.

At this juncture, it would be appropriate if I quote Douglas Adam, which is most apt :-

“To give real service, you must add something which cannot be bought or measured with money, and that is sincerity and integrity”.

You all have to scrupulously follow these words in your lives while discharging functions as judicial officers.

With this, now you are all eagerly waiting to listen My Lord Justice Misra. I complement all of you.

Nandri, Vanakkam.

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