A KADRA PAHADIYA AND ORS. ETC.

v.

STATE OF BIHAR ETC.

MARCH 19, 1997

B [A.M. AHMADI, CJI. AND B.N. KIRPAL, J.]

Criminal Procedure Code 1973—Sections 13(1), 18(1)—Appointment of Special Judicial Magistrates and Special Metropolitan Magistrates—Validity of—Upheld—Not violative or arbitrary—Provision "who holds or has held any C *post under the Government" does not mean to exclude appointment of members of subordinate judiciary—Constitution of India, Art. 14.*

Section 13(1), 18(1)—Appointment of Special Judicial Magistrates and Metropolitan Magistrate—For disposal of petty cases pending for long period—State Government directed to issue appropriate letter of requests to D *respective High Courts—Directions issued.*

The Petitioners filed writ petitions seeking a direction that adequate appointments of Special Judicial Magistrates and Special Metropolitan Magistrates should be made in the States for the disposal of petty cases. The Petitioners contended that the dockets of the Magistrates all over the E **country were swollen on account of petty cases which could be disposed of by the appointment of Special Judicial Magistrates and Special Metropolitan Magistrates in sufficient members and when these cases are taken out of the regular courts, they will be free to dispose of serious cases faster and that would meet the requirement of speedy justice, that when** F **cases are pending in such large numbers, there is no justification for not using a part of the system envisaged under Sections 13 & 18 of Cr. P.C. 1973 that it betrays indifference and lack of concern for speedy disposal of cases, and that there was no justification for the Government for not invoking the provisions even after resolutions were adopted in this behalf** G **by the Conference of Chief Ministers and Chief Justice in 1993 and endorsed by the Law Ministers' meeting in 1994.**

In the meanwhile in 1984, on a challenge to the validity of Sections 13 and 18 of the Cr.P.C., the Madras High Court declared the provisions as unconstitutional in as much as they confined the appointments to H **persons holding or having held any post under the Government. The High**

Court was of the view that the classification was arbitrary and not based on an intelligible differentia and therefore violative of Article 14 of the Constitution. The rules framed to give effect to the provisions of the code were also held to be violative of the Constitution. A

Disposing of the Writ Petitions, the Court

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HELD : 1. The decision of the High Court is based on a narrow reading of the sub-sections. The subsections merely enable the High Court to appoint persons, other than judicial officers, who hold or have held any post under the Government and who possess the qualification and experience in relation to legal affairs as may be specified by the High Court. Parliament has taken care to leave the questions of specifying the requirements for the appointment to the High Court. There is, therefore, no warrant for placing a narrow construction on the words 'who holds or has held any post under the Government, to confine them to appointments of Government servants, present or past only, and to exclude members belonging to the subordinate Judicial Services. Special provision in the nature of an enabling provision had to be made because without such a provision, appointment of Government servants, past or present, could not have been possible. Care has also been taken to ensure that the appointments are made of persons who have the necessary qualification and experience in relation to legal affairs which the High Court considers necessary for the exercise of power that may be conferred on the appointee. Furthermore, the duration of appointment has been restricted to one year at a time which would give the High Court an opportunity to observe the work of the appointee to enable it to decide whether or not to extent the appointment for a further period, if the workload justifies such continuance. The High Court fell into an error in thinking that sub-sections 13(1) and 18(1) of the Code totally exclude appointment of members of the subordinate judiciary as Special Judicial Magistrates/Special Metropolitan Magistrates. [45-C-D, 45-E-H, 46-A-C] C D E F

M. Narayanaswamy v. *State of Tamil Nadu,* (1984) Cr.L.J. 1583, overruled. [46-B-C] G

2. There can be little doubt that when the calendars of criminal courts (Magistracy) in most of the States, barring a few geographically small States, are clogged and as a result, trail of cases is delayed, there is no justification for not setting a part of the machinery envisioned by the H

A Code into motion. The basic idea in providing for the appointment of Judicial Magistrates, second class, is to ensure that petty cases do not occupy the time of the regular magisterial courts. So also the idea underlying the provision for the appointment of Special Judicial Magistrates/Special Metropolitan Magistrates under Sections 13(1) and
B 18(1) respectively, is to relieve the regular courts of the burden of trying those cases which could be disposed of by such Magistrates. Parliament has advisedly left the decision as to the choice of power to be conferred on such Magistrates with the High Court. Once a request is received from the Central/State Government by the High Court, the ball is entirely in the High Court, and it is the High Court and the High Court alone which has to decide
C on the number of appointments to be made, the choice of personnel to be entrusted with such power, and the extent of power to be conferred on such persons. It is the High Court which has to specify the qualification and/or experience that would be required for the discharging of duties by such Magistrates. As pointed out earlier, the period for which such appointments
D may be made must not exceed one year at a time, which shows that these are not appointments by way of regular entry into service, and are meant to be short-duration appointments to reduce the burden of pendency in regular Courts. The appointees should view the call as a social obligation and not employment; indeed as a social service to society. That is the spirit of Sections 13 and 18 and every appointee must take the call in that spirit and not expect
E payment as if they are in the service of the concerned State/Union Territory. That is the reason why the said two provisions expect persons who have retired or are about to retire from Government service to be appointed to help clear the pendency. Viewed from this angle, retired Judicial Officers, Officers of the registry of District Courts and High Courts, as well as other Government
F servants who have the specified experience and qualification, can be requested to accept appointments as part of social service and they may be paid a fee to meet their out-of-pocket expenses and honorarium. The High Courts will find any number of public spirited retired persons available to extend a helping hand to the Criminal Justice System in the country. The High Courts must be extremely careful in the conferment of power and should do so based
G on the qualification and experience of each appointee.

[46-G-H, 47-A-H]

3. Unless a machinery is set up to ensure that such cases will not pile up once again after the system is put on an even keel by the withdrawal
H of such cases, such a measure will not serve any purpose but will, instead,

send a wrong signal to the offenders that they can commit such infractions with impunity as nothing will happen to them, and ultimately the cases would be withdrawn. That will bring about more indiscipline in society rather than create a culture of discipline which is so vital for national growth. But, if an adequate machinery of the type envisioned by Section 13 and 18 of the Code is placed in position to ensure that cases do not pile up in future and then the cases are withdrawn with a view to placing the system on an even keel, it will achieve the desired objective to bring about discipline in society and eradicate crime. That is because the wrong-doer will know that he will be immediately hauled up before a Magistrate and would be punished if found guilty. If the load of such petty crimes is taken out of the regular courts, those courts would have time to deal with more serious crimes rather than have their time consumed by such petty cases. Besides, petty cases would also be disposed of with speed if sufficient number of Second Class Magistrates and Special Judicial/Special Metropolitan Magistrates are appointed. With such a huge pendency, it is difficult to understand the indifference in utilising this machinery envisioned by the Code. [48-G-H, 49-A-D]

(The Court gave directions to all States for appointment of Special Magistrates and for speedy disposal of petty cases.) [49-E-H, 50-A-D]

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 5943 of 1980. Etc.

(Under Article 32 of the Constitution of India.)

K.T.S. Tulsi, Additional Solicitor General, K.N. Shukla, Dr. Rajeev Dhavan, Tapas Ray, Mukul Mudgal, Pramod Dayal, Ms. Shashi Kiran, B.K. Prasad, K.S. Bhati, Ms. A. Subhashini, Uma Nath Singh, B.S. Banthia, Ashok K. Srivastava, Yashank Adhyaru, I.M. Nanavati, Ms. H. Wahi, Ms. S. Hazarika, Ms. N. Mukherjee, Ms. N. Singh, Ms. Manjeet Kaur, D.N. Mukherjee, Ranjan Mukherjee, Gopal Singh, Kailash Vasdev, C.K. Sasi, D.M. Nargolkar, P. Parmeswaran, Y.P. Mahajan, V. Pahwa, A.N. Dawn Dipti Choudhary, B.B. Singh, Aruneshwar, Gupta, M.P. Jha, Shakeel Ahmad, K.R. Nagaraja, A.S. Pundir, R.K. Mehta, G. Prabhakar, T. Anil Kumar and Ms. Indu Malhotra for the appearing parties.

The Judgment of the Court was delivered by

A **AHMADI, CJ.** Writ Petition No. 5943/80, along with Writ Petition No. 57 of 1979 (*Hussainara Khatoon*) was placed for final disposal on 4.8.1995. On that day the latter was finally disposed of but insofar as the former petition is concerned, counsel drew our attention to the point raised in his written submission in regard to the appointment of Special Judicial
B Magistrates and Special Metropolitan Magistrates under Sections 13 & 18 of the Code of Criminal Procedure, 1973, (hereinafter called 'the Code') respectively. The disposal of the petition was deferred for considering this question.

Mr. Mukul Mudgal contended that the dockets of the Magistrates all
C over the country were swollen on account of petty cases which could be disposed of by the appointment of Special Judicial Magistrates and Special Metropolitan Magistrates in sufficient numbers and once these cases are taken out of the regular courts, the regular courts would be free to dispose of serious cases faster, and that would meet the requirement of speedy
D justice. He submitted that when cases are pending in such large numbers, there is no justification for not using a part of the system envisaged by the Code According to him, it betrays indifference and lack of concern for speedy disposal of cases.

E At this stage, it would be proper to mention the facts of Writ Petition No. 298/94 - yet another public interest litigation - based on an article published in the magazine, "India Today", in its issue dated 31.7.1994, with the caption "Ordeal of Innocents" by Sri Ruben Banerjee, narrating how rape victims are detained in Remand Homes for long periods, and are
F virtually undergoing imprisonment. Remand Homes are protective homes for women run by the State Government, in which *inter alia*, destitute victims of rape are received with a view to ensuring their safe custody, particularly where the victim is a minor and has no guardian who can be trusted with her custody. This also enables the Court to obtain their testimony during the trial of the offender, without there being hurdles such
G as the non-availability of the prosecutrix, or tampering by the accused by means of threats or allurement. What is reported by Sri Ruben Banerjee in his article is that nearly 150 rape victims are languishing in three Remand Homes in the State of West Bengal awaiting their release, which usually gets delayed if the trial of the accused is prolonged. Apart from giving an
H over-all view, the article also mentions three cases viz. those of Sarbani

Ghosh, Rukhsana Khatoon and Swapna Mazumdar. Although the article was found sufficient to initiate proceedings under the writ jurisdiction of the court, we thought it proper to put Sri Ruben Banerjee to oath before issuing any notice to the State of West Bengal. Sri Ruben Banerjee filed an affidavit in support of his article and, *inter alia*, disclosed the real names of three victims mentioned in his article which was necessary for us to set in motion the process of law. The State of West Bengal filed an affidavit of the Director of Social Welfare without seriously disputing the state of affairs mentioned in the article. The three women mentioned in the article were ordered by the local courts of Session Section to be released on 29.7.1994, 4.7.1995 and 10.1.1995 respectively, subsequent to their attaining majority. The State also filed a list of inmates in various Remand Homes for girls which discloses that barring exceptions, most inmates are minors and the trial of the cases in which they are witnesses still remain pending. In respect of some inmates in District Shelter, Nadia, their ages have been omitted in the lists. Some inmates of these Remand Homes had already attained majority (18+). To illustrate, the girls at serial Nos. 18 & 23, are both aged 19 and have been interned since 1994. The woman at serial No. 21 is aged 40 and has been in the institution since April, 1994. The information submitted shows that they are victims of some offence or the other but it does not disclose why such women who have already attained majority have not yet been released. The information reveals that despite this the disposal of their criminal cases has still been delayed, e.g., the inmate at serial no. 1 came in the remand home of Liluah in 1987 and was still there on 30.7.1995 awaiting completion of trial of the accused. There are various other instances of the same kind. This brings into sharp focus the unhappy state of affairs in the criminal justice system existing in the State. In the meantime other writ petitions received from various jails concerning prolonged detention of prisoners were in progress. This case was also taken up after those matters.

On 4.8.1995, the learned counsel for the petitioners drew our attention to Section 6(4) of the Code which contemplates appointment of Judicial Magistrates of the IInd Class. Section 13 contemplates appointment of Special Judicial Magistrates by the High Court if requested by the Central or the State Government so to do, and Section 18 contemplates appointment of Special Metropolitan Magistrates by the High Court if requested by the Central or the State Government so to do.

A We may reproduce Sections 13 and 18 at this stage :

"13. Special Judicial Magistrates. - (1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by; or under this Code on a Judicial Magistrate of the first or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area :

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction."

"18. Special Metropolitan Magistrates. - (1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan Magistrate, in respect to particular cases or to particular classes of cases, in any metropolitan area within its local jurisdiction :

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Metropolitan Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

(3) The High Court or the State Government, as the case may be, may empower any Special Metropolitan Magistrate to exercise, in

any local area outside the metropolitan area, the powers of a Judicial Magistrate of the first class." A

A brief legislative history for the introduction of Sections 13 and 18 in the Code may not be out of place. Before the enactment of the Code, a system Honorary Magistrate in addition to regular stipendiary Magistrates was available. These Honorary Magistrates came from all walks of life. It was expected that, by virtue of their education, experience and contact with people, they would be able to deal with and effectively dispose of cases involving petty offences. This introduced the idea of participation of citizen in the administration of criminal justice. The institution of Honorary Magistrates was, therefore, functional in character and was considered to be a useful and valuable adjunct to the regular courts, particularly in the Metropolitan cities. Unfortunately, the institution of Honorary Magistrates came in for widespread and serious criticism within a short time. The criticism of misuse and abuse of the system led to the Law Commission recommending the appointment of Special Judicial Magistrates and Special Metropolitan Magistrates, vide Sections 13 and 19 of the draft Criminal Procedure Code. Section 13 of the draft Code provided for the appointment of Special Judicial Magistrates from amongst persons holding or who had held any judicial office under the Union or a State or possessed such other qualification as may be prescribed by the High Court. Similar was the position in respect of Section 19 of the draft Criminal Procedure Code, which provided that a person holding or who has held as judicial post or any other person who possessed other qualifications as may be prescribed, could be appointed a Special Metropolitan Magistrate. The Law Commission had taken note of the experience of the judicial post for the purpose of appointment and conferment of power of Special Judicial Magistrates and Special Metropolitan Magistrates with the object of securing the expeditious disposal of criminal case. The Joint Select Committee also took note of the criticisms against the system of Honorary Magistrates and expressed the view that that proper way to deal with the arrears of petty criminal cases was to appoint sufficient number of stipendiary Magistrates as a wholesome deletion of the institution of Honorary Members would give rise to problems in some States. The Joint Select Committee suggested that provision be made for the appointment of Special Metropolitan Magistrates and Special Judicial Magistrates with certain modifications in the earlier system. One of the suggestions was that the appointees should either be persons in Government service or those who have retired from B C D E F G H

A Government service. As a result of these deliberations, the two provisions, Sections 13 and 18 came to be enacted in their present form.

It was contended that having regard to the pendency of a large number of cases in criminal courts all over the country, it is essential that the infrastructure contemplated by these provisions should be put to use B so that, to begin with, sufficient number of Special Judicial Magistrates and Special Metropolitan Magistrates could be appointed, without unduly burdening the exchequer, for the disposal of cases which are triable summarily under Sections 260 and 261 of the Code as well as cases which fall in table I under Section 320 of the Code (compoundable by the parties). The C counsel further submitted that there was no justification for the State Governments and the Central Government for not invoking the afore-mentioned provisions even after resolutions were adopted in this behalf by the Conference of Chief Ministers and Chief Justices in 1993 and which were later endorsed by the Law Minister's Meeting held in Calcutta on 17.11.1994. The Court, therefore, directed the issuing of notices to all the D State Governments, except Jammu & Kashmir, as well as the Central Government to indicate whether or not the concerned states had invoked the aforesaid provisions and if not, the reasons therefor. The State Governments were also required to indicate how many traffic cases, or cases which fall in table I under Section 320 of the Code, were pending in E their States. The Central Government was required to submit similar information in regard to the Union Territories. The Governments were given time upto 15.9.1995 to submit the required information and the matter was directed to be listed on 22.9.1995 for orders.

F The Court carefully examined the information received from each State. So far as the State of Madhya Pradesh was concerned, it had not taken any action to request the High Court under Section 13 and 18 of the Code on the plea that it had forwarded a proposal to the Central Government to amend Section 13 of the Code. This explanation did not satisfy us. So far as Delhi was concerned, there were more two lakh cases pending G in the Magisterial Courts which which had been distributed amongst 88 Metropolitan Magistrates who were required to work from 2.00 p.m. to 5.00 p.m. on every working Saturday. This would show that the time of 88 Metropolitan Magistrates had to be expended for petty cases. Despite such an arrangement, having regard to the huge number of traffic cases, a large H number of them remained pending. We noted with disapproval the lack of

initiative on the part of the administration in getting Special Metropolitan Magistrates appointed for clearing these petty cases and for placing the highly paid Metropolitan Magistrates for the disposal of petty matters. The State of U.P. had not taken any such initiative. The State of West Bengal did not come out with any response. The State of Karnataka disclosed that it had already taken the initiative by writing to the High Court, but the High Court had not taken action in the appointment of the Special Judicial Magistrates. So far the State of Kerala was concerned, the High Court of Kerala informed the State Government that in the prevailing circumstances there was no need for appointment of Special Judicial Magistrates and/or Special Metropolitan Magistrates in the State. We directed the High Court of Kerala to inform us as to whether there was no pendency of traffic cases or other petty cases within the category of sections 206 and 260 of the Code which could justify such a stand. The state of Himachal Pradesh had already invoked the afore-mentioned provisions and the High Court had, after framing rules regarding such appointments, conferred powers on three officers. So far as the State of Bihar is concerned, the Government had taken steps and the High Court had decided to confer such powers on suitable persons. The notification, however, had not been issued and it was not known how the power was proposed to be exercised. The Registrar of the High Court of Patna was therefore, required to explain the situation. In the State of Punjab, the matter was pending with the High Court and the appointments were yet to be made. The High Court of Punjab & Haryana has framed the necessary rules. Later, the Registrar of the High Court informed us that six such appointments have been made. The State of Assam has appointed 97 IAS Officers as Special Judicial Magistrates. The States which had not responded to our direction were given further time.

A B C D E F

The Registrar, High Court of Calcutta, Appellate side, vide his letter dated 14.12.1995, reported that the High Court had taken several steps for withdrawal of petty cases, appointment of Special Magistrate etc. and that the efforts had slowed down because the Government, upon the withdrawal of all petty cases more than five years old, had opined that the existing Courts could cope with the reduced volume of work, and that steps were now being taken to frame rules.

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Later, we received information from other States. Orissa had 27,300 traffic/motor vehicle cases, 33,657 cases coming under table-I of section

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320 of the Code and offences triable under Section 260 and 261 of the Code. We are told that the Chief Minister, Orissa had requested the High Court for appointment of Special Judicial Magistrates. In the Union Territories of Daman & Diu, Dadra and Nagar Haveli, as well as in Lakshadweep, since the amount of litigation was meagre, the Union of India submitted in an affidavit that there was no need to invoke the aforementioned provisions. The State of Sikkim took the same stand. The Government of Andhra Pradesh had already invoked the relevant provisions and the High Court of Andhra Pradesh had framed the necessary rules and notified the same on 28.3.1979. The State of Nagaland informed the Court that in view of the special situation in the State, where several other high ranking executive officers besides the Judicial Magistrates, were performing the duties of Judicial Magistrates, there was no need to invoke the provisions of Section 13 & 18 of the Code. The State of Mizoram informed the Court that the total member of traffic cases in the State was only 55 and that a good number of Enforcement Officers under the Transport Department and quasi-Judicial Officers had been empowered to adjudicate and compound traffic offences, thereby leaving hardly any traffic offences to be tried by ordinary criminal courts. All the same, the Government of Mizoram had initiated the process under Section 13 and 18 of the Code. The State of Gujarat had also initiated action and the High Court had framed rules. The High Court of Guwahati informed the Court that the Government of Assam had, from time to time, recommended the names 'of Executive Officers for consideration for appointment of Special Judicial Magistrates and that about 100 Officers have so far been appointed as Special Judicial Magistrates. The Government of Jammu & Kashmir informed the Court that the Courts of Special Judicial Magistrates had already been set up under Section 14 of the State Code of Criminal Procedure.

By an affidavit dated 27.10.1995, the Deputy Secretary, Department of Law, Government of Madhya Pradesh reported that the Government of Madhya Pradesh, vide its order dated 20.9.1995, has accorded sanction to appoint 29 Special judicial Magistrates, IInd Class. The High Court of Madhya Pradesh Jabalpur has framed the required rules.

The Kerala High Court informed this Court, vide an affidavit dated 31.10.1995, that the Government of Kerala has made no request except the communications sent pursuant to the order of the Court of 4.8.1995. In the

light of the directions of the Supreme Court in the order dated 22.9.1995, the Acting Chief Justice had directed the Standing Committee of the Hon'ble Judges of the High Court of Kerala to consider the proposal for establishment of Special Courts to deal with compoundable offences. Some more time was requested for making necessary proposals to the State Government.

The Registrar, High Court of Delhi, in his letter dated 8.1.1996, submitted that the powers of Special Metropolitan Magistrates had been conferred on five Officers whose names were sent by the State Government for disposal of traffic cases on the spot, and that the High Court also proposes to set up atleast ten regular Courts of Special Metropolitan Magistrates for fresh institution of traffic cases and for this purpose, has requested the Government of the National Capital Territory of Delhi to provide suitable accommodation. So far as the State of U.P. is concerned, the situation is progressing in the reverse direction. The State had nearly 300 Special Judicial Magistrates till 28.2.1977, when they were merged with the cadre of Munsiffs. At present no Special Judicial Magistrates, except Executive Magistrates upon whom the powers of Judicial Magistrates of 2nd Class or 1st Class has been conferred from time to time by the High Court under Section 13, are functioning.

The State of Maharashtra informed the Court by an affidavit that the State had invoked the provisions of Section 13 & Section 18 of the Code and that the Hon'ble Chief Justice and Judges had appointed within or for the local area comprised in greater Bombay, 43 Special Metropolitan Magistrates and 75 Special Judicial Magistrates in different districts of the State.

The State of Nagaland informed this Court by an affidavit that it had not yet appointed Special Judicial Magistrates in terms of Section 13 of Cr.P.C. and that besides Judicial Officers, the administrative officers in the rank of Deputy Commissioner and Addl. Deputy Commissioners are also exercising judicial powers for administering criminal and civil justice in various districts by virtue of their appointment in accordance with the Rules for Administration of Justice & Police in Nagaland 1937. The State further averred that other executive officers were also given powers of Judicial Magistrates, 1st Class or second class, as defined by the Code. Till the date of the affidavit, the Government was still collecting full and

A complete information about the number of traffic cases and those falling in Section 320 of the Code.

The High Court of Gujarat informed this Court that on receipt of a letter from the Government. It had considered the matter and had agreed in principle for appointment of Special Metropolitan Magistrates under B Section 13 & 18 of Code. The Government has also sanctioned honorariums to be paid to the Special Metropolitan Magistrates and staff to be appointed for the said courts. The High Court had also framed Rules for the purpose. The matter was pending for creation of posts of Special Judicial Magistrates and Special Metropolitan Magistrates and for their C staff.

The Registrar, High Court of Madras, filed an affidavit dated 30.10.1995 stating that the High Court, in exercise of powers conferred by Sections 13 & 18 of the Code read with Section 477(1)(d) framed the Tamil Nadu Special Judicial Magistrates and Special Metropolitan Magistrate D Qualification Rules, 1974 and that 122 Special Judicial Magistrates were functioning in the State.

Pondicherry and Andaman & Nicobar Islands are also taking steps.

Before we proceed further, we must deal with the constitutional E validity of these two provisions. These two sections were challenged as unconstituional before the High Court of Madras in *M. Narayanaswamy* v. *State of Tamil Nadu,* (1984) Cr.L.J. 1583, which declared Sections 13(1) and 18(1) to be unconstitutional inasmuch as they confined the appointments to persons holding or having held any post under the Government. F In the view of the High Court, the classification was arbitrary and not based on an intelligible differentia and was, therefore, violative of Article 14 of the Constitution. The High Court felt that the judicial temperament and the disposition to render expeditious justice in criminal cases cannot be the exclusive virtue of only those who hold or have held any post under the Government. Further, the High Court pointed out that a Government G servant, if he had not any connection with judicial work during his employment with the Government, would be inexperienced and unfit to discharge the function as a Special Judicial Magistrate or a Special Metropolitan Magistrate. Therefore, the holding of any post under the Government, according to the High Court, does not bear any reasonable relation what- H soever with the object of the legislation. The High Court, therefore, held

that the classification was not only arbitrary, but also irrational and totally unrelated to the object with which the appointments as Special Judicial Magistrate and Special Metropolitan Magistrate were to be made and powers were to be conferred upon them for discharge of their functions as such. The High Court expressed the view that Sections 13(1) and 18(1) of the Code, insofar as they confined the appointment and conferment of powers of Special Judicial Magistrates and Special Metropolitan Magistrates to any person who holds or has held any post under the Government, are arbitrary and violative of Article 14 of the Constitution of India. The rules framed to give effect to the provisions of the Code were also held to be violative of the Constitution.

We find it difficult to uphold this approach of the High Court because it is based on a narrow reading of the said two sub-sections. In the first place, it may be noticed that both the sub-sections confer power on the High Court to make the appointments and confer such of the powers as it deems proper from the whole bundle of powers conferrable by or under the Code on a Judicial Magistrate of the first or second class or conferrable on a Metropolitan Magistrate as the case may be. The choice of power to be conferred on the appointees under these two provisions is left to the sole discretion of the High Court. The proviso to each sub-section makes it clear that the appointee must possess such qualification and experience in relation to legal affairs as the High Court may by rules specify. Thirdly, the words "who holds or has held any post under the Government" do not necessarily exclude judicial officers belonging to the subordinate judiciary of a State/Union Territory. The sub- sections merely enable the High Court to appoint persons, other than judicial officers, who hold or have held any post under the Government and who possess the qualification and experience in relation to legal affairs as may be specified by the High Court. Parliament has taken care to leave the question of specifying the requirements for appointment to the High Court. There is therefore, no warrant for placing a narrow construction on the words 'who holds or has held any post under the Government' to confine them to appointments of Government servants, present or past only, and to exclude members belonging to the subordinate Judicial Services. Special provision in the nature of an enabling provision had to be made because without such a provision, appointment of Government servants, past or present, could not have been possible. Care has also been taken to ensure that the appointments are made of persons who have the necessary qualification

A and experience in relation to legal affairs which the High Court considers necessary for the exercise of power that may be conferred on the appointee. Furthermore, the duration of appointment has been restricted to one year at a time which would give the High Court an opportunity to observe the work of the appointee to enable it to decide whether or not to extend the appointment for a further period, if the workload justifies such continuance. We are, therefore, of the opinion that the High Court fell into an error in thinking that sub-section 13(1) and 18(1) of the Code totally exclude appointment of members of the subordinate judiciary as Special Judicial Magistrates/Special Metropolitan Magistrates. We, therefore, overrule the said decision.

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For the assistance of the Court, Shri Rajiv Dhawan made written submissions on the implementation of Sections 13 & 18 of the Code in which he traced the history of the lay magistracy in England, Canada, Italy and India and drew up a proposal for the lay magistracy in India including therein clauses for appointment, removal, training, allowances, formation of benches, clerks, power and jurisdiction. Mr. Mukul Mudgal, assisting the Court thereafter, drew up draft rules in this regard. These draft rules were circulated for comments of all the States/Union Territories involved. Comments were submitted by the State of West Bengal and by the High Courts of Himachal Pradesh and Madras.

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The position that now emerges is that practically every State has paid attention to the provisions of Sections 13 and 18 of the Code and necessary steps have been taken by them for giving effect to these provisions by appointing suitable number of Special Judicial Magistrates/Special Metropolitan Magistrates. They have also initiated the process of framing the rules required to give effect to these provisions of the Code. It is not necessary to go into the details of the draft rules framed by Shri Mukul Mudgal or the proposals made by Shri Rajiv Dhawan, nor it is necessary to go into the comments on these proposals. No further orders are required to be made in that behalf.

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There can be little doubt that when the calendars of criminal courts (magistracy) in most of the States, barring a few geographically small States, are clogged and as a result, trial of cases is delayed, there is no justification for not setting a part of the machinery envisioned by the Code into motion. The basic idea in providing for the appointment of Judicial

Magistrates, second class, is to ensure that petty cases do not occupy the time of the regular magisterial courts. So also the idea underlying the provision for the appointment of Special Judicial Magistrates/Special Metropolitan Magistrates under Sections 13(1) and 18(1) respectively, is to relieve the regular courts of the burden of trying those cases which could be disposed of by such Magistrates. Parliament has advisedly left the decision as to the choice of power to be conferred on such Magistrates with the High Court. Once a request is received from the Central/State Government by the High Court, the ball is entirely in the High Court, and it is the High Court and the High Court alone which has to decide on the number of appointments to be made, the choice of personnel to be entrusted with such power, and the extent of power to be conferred on such persons. It is the High Court which has to specify the qualification and/or experience that would be required for the discharging of duties by such Magistrates. As pointed out earlier, the period for which such appointments may be made must not exceed one year at a time, which shows that these are not appointments by way of regular entry into service, and are mean to be short-duration appointments to reduce the burden of pendency in regular Courts. In our view, the appointees should view the call as a social obligation and not employment; indeed as a social service to society. That is the spirit of Section 13 and 18 and every appointee must take the call in that spirit and not expect payment as if they are in the service of the concerned State/Union Territory. That is the reason why the said two provisions expect persons who have retired or are about to retire from Government service to be appointed to help clear the pendency. Viewed from this angle it seems fairly clear to us that retired Judicial Officers, officers of the Registry of District Courts and High Courts, as well as other Government servants who have the specified experience and qualification, can be requested to accept appointments as part of social service and they may be paid a fee to meet their out-of-pocket expenses and honorarium. We are sure that the High Courts will find any number of public spirited, retired persons available to extend a helping hand to the Criminal Justice System in the country. The High Court, we must add by way of caution, must be extremely careful in the conferment of power and should do so based on the qualification and experience of each appointee.

Section 320 of the Code enumerates offences punishable under the Indian Penal Code which may be compounded with or without the permission of the Court. Generally speaking, the Code divides crimes into three

A categories namely (i) serious crimes which cannot be compounded and must be tried (ii) crimes which can be compounded but only with the permission of the Court and (iii) crimes which can be compounded by the wrong doer and the victim. Sub-section (1) of Section 320 deals with the last mentioned category i.e. crimes which can be compounded by the concerned parties without the permission of the Court. The table immediately following sub-section (1) enumerates the compoundable offences in Column 1, sets out the section of the Indian Penal Code which makes the act punishable in column 2, while column 3 indicates the person who may compound the same. Sub-section (2) of section 320 enumerates the offences which may be compounded with the permission of the Court before which the prosecution is pending. The table immediately following specifies the nature of the offence, the corresponding provision in the Indian Penal Code and the person who may compound the same. Sub-section (3) of Section 320 also makes the abetment of such offence or the attempt to commit such offence compoundable. In the case of a minor, an idiot, or a lunatic, any person competent to contract on his behalf is held by sub-section (4) to be competent to compound the offence. So also in case the person competent to compound is dead, sub-section (5) permits his legal representative to compound the offence.

We may also refer to Section 206 of the Code which provides a special procedure for petty offences to be tried summarily. It further provides that the Magistrate may issue summons to the accused, requiring him to appear in person or through his lawyer, or if he desires to plead guilty, to transmit by post or messenger, his plea of guilt along with the fine specified in the summons. So also Chapter XXI comprising Section 260 to 265 provides for Summary Trials. We have mentioned these provisions illustratively, merely to point out the category of cases under the Indian Penal Code which could be considered to be disposed of through the instrumentality of the Special Judicial Magistrates/Special Metropolitan Magistrates, the power being conferred on them in a phased manner depending on the experience gained on their working.

In the past, in certain States, large numbers of such petty cases were withdrawn with a view towards reducing the burden on the regular courts. We are of the opinion that unless a machinery is set up to ensure that such cases will not pile up once again after the system is put on an even keel by the withdrawal of such cases, such measure will not serve any purpose but

will, instead, send a wrong signal to the offenders that they can commit such infractions with impunity as nothing will happen to them, and ultimately the cases would be withdrawn. That will bring about more indiscipline in society rather than create a culture of discipline which is so vital for national growth. But, if an adequate machinery of the type envisioned by Sections 13 and 18 of the Code is placed in position to ensure that cases do not pile up in future and then the cases are withdrawn with a view to placing the system on an even keel, it will achieve the desired objective to bring about discipline in society and eradicate crime. That is because the wrong-doer will know that he will be immediately hauled up before a Magistrate and would be punished if found guilty. If the load of such petty crimes is taken out of the regular courts, those courts would have time to deal with more serious crimes rather than have their time consumed by such petty cases. Besides, petty cases would also be disposed of with speed if sufficient number of Second Class Magistrates and Special Judicial/Special Metropolitan Magistrates are appointed. With such a huge pendency, it is difficult to understand the indifference in utilising this machinery envisioned by the Code. The decision to invoke these provisions was taken in 1993 at the Conference of Chief Ministers and Chief Justices which was presided over by the Prime Minister and was attended by the Chief Justice of India and yet there was almost halting progress. Even today the machinery has not been set up in some States, and where it has been set up, it is not in full strength as the status position indicated State-wise earlier would show. We, therefore, give the following directions :

(1) The notices against the States of Nagaland, Mizoram, Jammu and Kashmir and Sikkim and the Union Territories of Daman, Diu and Dadra Nagar Haveli are hereby discharged.

(2) Out of the remaining States, those who have not addressed letters of request to their High Courts for appointment of Special Judicial Magistrates/Special Metropolitan Magistrates, are directed to do so within a month's time so that petty cases may be dealt with by them relieving the regular Judicial Magistrates/Metropolitan Magistrate of such petty cases to enable them to deal with more serious cases.

(3) The High Courts of all such States, on receipt of the letter of request, shall determine the total number of such Special

A Magistrates required to deal with the pendency of petty cases and take immediate steps to appoint them.

(4) In cases where the High Court(s) has already received such a letter and has initiated action to appoint such Special Magistrates, it will, within one month, determine the total number of such
B Special Magistrates needed to dispose of the pendency of petty cases and ensure appointments at an early date, and

(5) The High Courts will also ensure that after the regular Magistrates are relieved of petty cases, they would dispose of a larger number of more serious cases so that the offenders are
C brought to book at an early date and the innocent are not unnecessarily vexed for long spells.

With these directions we terminate both the proceedings. We direct each of the Respondent States covered by direction No. 2 to pay a sum of
D Rs. 10,000 each to the Supreme Court Legal Aid Committee by way of costs. Both the Writ Petitions are disposed of accordingly.

V.M. Petitions disposed of.