

Special Judicial Magistrates.

11. (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 Sanhita on a Judicial Magistrate of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local 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.

COMMENTS

COMPARATIVE STUDY OF PROVISIONS OF BNSS, 2023 & Cr.PC.

11.1 Corresponding provision

- ◆ Section 11 of the BNSS corresponds to section 13 of the Cr.PC.

SECTION ANALYSIS

11.2 Special Judicial Magistrates

- ◆ Section 11 relates to appointment of Special Judicial Magistrates by the High Court.

11.2-1 *Appointment of Special Judicial Magistrates by the High Court*

- ◆ Section 11 provides that the High Court may, if requested by the Central or State Government, 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 BNSS on a Judicial Magistrate of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area.
- ◆ Such Magistrates shall be called Special Judicial Magistrates.

11.2-2 *Appointment shall be for a term not exceeding 1 year at a time*

- ◆ Special Judicial Magistrates shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

11.2-3 *Appointee to possess qualification or experience in relation to legal affairs as the High Court may, by rules, specify*

- ◆ 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.

Local Jurisdiction of Judicial Magistrates.

12. (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 9 or under section 11 may exercise all

or any of the powers with which they may respectively be invested under this Sanhita:

Provided that the Court of 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 9 or section 11 extends to an area beyond the district in which he ordinarily holds Court, any reference in this Sanhita to the Court of Session or Chief Judicial 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 or Chief Judicial Magistrate, as the case may be, exercising jurisdiction in relation to the said district.

COMMENTS

COMPARATIVE STUDY OF PROVISIONS OF BNSS, 2023 & Cr.PC.

12.1 Corresponding provision

- ◆ Section 12 of the BNSS corresponds to section 14 of the Cr.PC.

SECTION ANALYSIS

12.2 Local Jurisdiction of Judicial Magistrates

- ◆ Section 12 relates to Local jurisdiction of Judicial Magistrates.

12.3 Power of Chief Judicial Magistrates to define the local limits of the areas within which the Magistrates shall exercise all or any of their powers

- ◆ 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 may exercise all or any of their powers under BNSS.

12.4 Place where sitting of Court of Special Judicial Magistrates to be held

- ◆ The Court of Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.

12.5 Jurisdiction and powers of Special Judicial Magistrates to extend throughout the district

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

12.6 Where the local jurisdiction of a Magistrate appointed under section 9 or section 11 extends to an area beyond the district in which he ordinarily holds Court,

- ◆ Where the local jurisdiction of a Magistrate appointed under section 9 or section 11 extends to are beyond district in which he ordinarily holds court, any reference in BNSS to the Court of Session or Chief Judicial 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 or Chief Judicial Magistrate, as the case may be, exercising jurisdiction in relation to the said district.

Subordination of Judicial Magistrates.

13. (1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

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

COMMENTS

COMPARATIVE STUDY OF PROVISIONS OF BNSS, 2023 & Cr.PC.

13.1 Corresponding provision

- ◆ Section 13 of the BNSS corresponds to section 15 of the Cr.PC.

SECTION ANALYSIS

13.2 Subordination of Judicial Magistrates

- ◆ Section 13 relates to Subordination of Judicial Magistrates.

13.3 Chief Judicial Magistrate subordinate to Sessions Judge

- ◆ Section 13 provides that Chief Judicial Magistrate shall be subordinate to the Sessions Judge.

13.4 Every other Judicial Magistrate subordinate to Chief Judicial Magistrate

- ◆ Every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

13.5 Power of Chief Judicial Magistrate to make rules or give special orders as to distribution of business among the Judicial Magistrates subordinate to him

- ◆ The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with BNSS, as to the distribution of business among the Judicial Magistrates subordinate to him.

Executive Magistrates.

14. (1) In every district, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have such of the powers

of a District Magistrate under this Sanhita or under any other law for the time being in force as may be directed by the State Government.

(3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Sanhita on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.

(5) The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.

(6) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police all or any of the powers of an Executive Magistrate.

COMMENTS

COMPARATIVE STUDY OF PROVISIONS OF BNSS, 2023 & Cr.PC.

14.1 Corresponding provision

- ◆ Section 14 of the BNSS corresponds to section 20 of the Cr.PC.

SECTION ANALYSIS

14.2 Executive Magistrates

- ◆ Section 14 relates to Executive Magistrates.

14.3 Appointment of Executive Magistrates (EMs) for every district by State Government

- ◆ In every district, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates (EMs).

14.4 One of the EMs shall be appointed as the District Magistrate (DM)

- ◆ The State Government shall appoint one of them (EMs) to be the District Magistrate (DM). [Sub-section (1) of section 14].

14.5 Appointment of Additional District Magistrate (ADM)

- ◆ The State Government may appoint any Executive Magistrate to be an Additional District Magistrate (ADM).

14.6 ADM to have powers of DM

- ◆ Such ADM shall have such of the powers of a District Magistrate (DM) under BNSS or under any other law for the time being in force as may be directed by the State Government. [Sub-section (2) of section 14]

14.7 When office of DM becomes vacant

- ◆ Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district,
- ◆ Such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by BNSS on the District Magistrate. [Sub-section (3) of section 14]

14.8 Sub-divisional Magistrate (SDM)

- ◆ The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires;
- ◆ And the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate. [Sub-section (4) of section 14]

14.9 Delegation of powers by State Government to the District Magistrate

- ◆ The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate. [Sub-section (5) of section 14]

14.10 State Government may confer powers of an EM on a Commissioner of Police

- ◆ Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police all or any of the powers of an Executive Magistrate. [Sub-section (6) of section 14]

Special Executive Magistrates.

15. The State Government may appoint, for such term as it may think fit, Executive Magistrates or any police officer not below the rank of Superintendent of Police or equivalent, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Sanhita on Executive Magistrates, as it may deem fit.

COMMENTS**COMPARATIVE STUDY OF PROVISIONS OF BNSS, 2023 & Cr.PC.****15.1 Corresponding provision**

- ◆ Section 15 of the BNSS corresponds to section 21 of the Cr.PC.

15.1-1 Police Officer

- ◆ Besides Executive Magistrate, State Government can also appoint any police officer not below the rank of Superintendent of Police or equivalent to be known as Special Executive Magistrate.

SECTION ANALYSIS**15.2 Special Executive Magistrates**

- ◆ Section 15 relates to Special Executive Magistrates (SEM).

15.3 Executive Magistrate or Superintendent of Police may be appointed as Special Executive Magistrate

- ◆ The State Government may appoint, for such term as it may think fit, Executive Magistrates or any police officer not below the rank of Superintendent of Police or equivalent, to be known as Special Executive Magistrates (SEM), for particular areas or for the performance of particular functions and

15.4 Powers conferrable on EMs may be conferred on SEMs

- ◆ The State Government may confer on such Special Executive Magistrates such of the powers as are conferrable under BNSS on Executive Magistrates, as it may deem fit.

Local Jurisdiction of Executive Magistrates.

16. (1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Sanhita.

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

COMMENTS

COMPARATIVE STUDY OF PROVISIONS OF BNSS, 2023 & Cr.PC.

16.1 Corresponding provision

- ◆ Section 16 of the BNSS corresponds to section 22 of the Cr.PC.

SECTION ANALYSIS

16.2 Local Jurisdiction of Executive Magistrates

- ◆ Section 16 relates to Local Jurisdiction of Executive Magistrates.

16.3 Powers of District Magistrate to define local limits of areas of Executive Magistrates

- ◆ Section 16 provides that the District Magistrate (DM) may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under BNSS. [Section 16(1)]
- ◆ The DM shall exercise the above powers subject to the control of State Government.

16.4 Jurisdiction and powers of EMs shall extend throughout the district

- ◆ Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district. [Section 16(2)]

Subordination of Executive Magistrates.

17. (1) All Executive Magistrates shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate)

exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, to the general control of the District Magistrate.

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

COMMENTS

COMPARATIVE STUDY OF PROVISIONS OF BNSS, 2023 & Cr.PC.

17.1 Corresponding provision

- ◆ Section 17 of the BNSS corresponds to section 23 of the Cr.PC.

SECTION ANALYSIS

17.2 Subordination of Executive Magistrates

- ◆ Section 17 relates to Subordination of Executive Magistrates.

17.3 All EMs subordinate to the DM

- ◆ All Executive Magistrates shall be subordinate to the District Magistrate [Section 17(1)].

17.4 Every EM other than SDM is subordinate to SDM

- ◆ Every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate. [Section 17(1)]

17.5 Power of DM to make rules or give special orders as to the distribution or allocation of business among the EMs subordinate to him

- ◆ The District Magistrate may, from time to time, make rules or give special orders, consistent with BNSS, as to the distribution or allocation of business among the Executive Magistrates subordinate to him [Section 17(2)]

Public Prosecutors.

18. (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or the State Government, as the case may be:

Provided that for National Capital Territory of Delhi, the Central Government shall, after consultation with the High Court of Delhi, appoint the Public Prosecutor or Additional Public Prosecutors for the purposes of this sub-section.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment, that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

Explanation.—For the purposes of this sub-section,—

(a) “regular Cadre of Prosecuting Officers” means a Cadre of Prosecuting Officers which includes therein the post of Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) “Prosecuting Officer” means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, Special Public Prosecutor, Additional Public Prosecutor or Assistant Public Prosecutor under this Sanhita.

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as an advocate, or has rendered (whether before or after the commencement of this Sanhita) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

COMMENTS

COMPARATIVE STUDY OF PROVISIONS OF BNSS, 2023 & Cr.PC.

18.1 Corresponding provision

- ◆ Section 18 of the BNSS corresponds to section 24 of the Cr.PC.

18.1-1 *Public prosecutors for National Territory of Delhi Region*

- ◆ New proviso to section 18(1) of BNSS provides that the Central Government shall appoint the Public Prosecutor or Additional Public Prosecutors for the National Capital Territory of Delhi after consultation with the High Court of Delhi.

18.1-2 *Special Public Prosecutor*

- ◆ Under BNSS, the definition of “Prosecuting Officer” includes a Special Public Prosecutor also.

SECTION ANALYSIS

18.2 Public Prosecutors

- ◆ Section 18 relates to Public Prosecutors (PP).

18.3 Appointment of PP/ Assistant Public Prosecutor (APP) for every High Court

- ◆ For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors (APP), for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or the State Government, as the case may be. [Section 18(1)]

18.3-1 *For NCT, appointment of PPs/APPs shall be by Central Government after consulting High Court of Delhi*

- ◆ For the National Capital Territory of Delhi, the Central Government shall, after consultation with the High Court of Delhi, appoint the Public Prosecutor or Additional Public Prosecutors. [Proviso to section 18(1)]

18.4 Central Govt. may appoint one or more PPs for conduct case in any district/local area

- ◆ The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case in any district or local area. [Section 18(2)]

18.5 Appointment of PPs and APPs for every district

- ◆ For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district. [Section 18(3)]

18.5-1 *PP/APP of one district may be appointed to be also PP/APP of another district*

- ◆ The Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district. [Proviso to section 18(3)]

18.6 Panel of names of persons fit to be appointed PPs/APPs

- ◆ The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district. [Section 18(4)]

18.7 No person who is not on Panel to be appointed as PP/APP for the district

- ◆ No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4). [Section 18(5)]
- ◆ See also para 18.8

18.8 Where in a State there exists a regular Cadre of Prosecuting Officers

- ◆ Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre.
- ◆ Where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment, that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4). [Section 18(6)]

18.8-1 “Regular Cadre of Prosecuting Officers”

- ◆ “Regular Cadre of Prosecuting Officers” means a Cadre of Prosecuting Officers which includes therein the post of Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post.

18.8-2 “Prosecuting Officer”

- ◆ “Prosecuting Officer” means a person, by whatever name called, appointed to perform the functions of Public Prosecutor, Special Public Prosecutor, Additional Public Prosecutor or Assistant Public Prosecutor under BNSS.

18.9 Person eligible to be appointed as PP/APP only if he has been in practice as an advocate for not less than seven years

- ◆ A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years. [Section 18(7)]

18.10 Appointment of Special Public Prosecutor (SPP)

- ◆ The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.
- ◆ The Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section. [Section 18(8)]

18.11 Reckoning number of years of practice of an advocate for appointment as PP/APP/SPP

- ◆ For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this BNSS) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate. [Section 18(9)]

LANDMARK RULINGS

18.12 Duties of public prosecutor are wide and varied - A Public Prosecutor has wider set of duties than to merely ensure that accused is punished, duties of ensuring fair play in proceedings, all relevant facts are brought before court in order for determination of truth and justice for all parties including victims. It must be noted that these duties do not allow Prosecutor to be lax in any of his duties as against accused. Public prosecutor is under a duty of disclosure under Cr.PC., Bar Council Rules and relevant principles of common law. Nevertheless, a violation of this duty does not necessarily vitiate entire trial. A trial would only be vitiated if non-disclosure amounts to a material irregularity and causes irreversible prejudice to accused. [Paras 76 and 153] - *Sidhartha Vashisht @ Manu Sharma v. State (N.C.T. of Delhi)* AIR 2010 SC 2352.

18.12-1 Power of judicial review in appointment of members of legal profession as District Government Counsel - Code vests power in District Magistrate to consider suitability of person concerned, for appointment, according to his opinion, there is not much scope of judicial review by Courts, unless a clear case of malice on part of District Magistrate is made out. While exercising power of judicial review even in respect of appointment of members of legal profession as District Government Counsel, Court can examine whether there was any infirmity in “decision making process”. Of course, while doing so, Court cannot substitute its own judgment over final decision taken in respect of selection of persons for those posts. [Paras 12 and 17] - *Harpal Singh Chauhan v. State of U P* AIR 1993 SC 2436.

18.12-2 Primacy accorded to Public Prosecutor in conducting trial - The use of the term “assist” in the proviso to section 24(8) is crucial, and implies that the victim’s counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to Cr.PC had used the words “coordinate with the prosecution”. However, a change was later proposed and in the finally adopted version, the words “coordinate with” were substituted by “assist”. This change is reflective of an intention to only assign a supportive role to the victim’s counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under section 301(2). A mandate that allows the victim’s counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from sections 225 and 301(2), permitting such a free hand would go against the scheme envisaged under Cr.PC. [Para 12.1] - *Rekha Murarka v. State of W.B.* AIR 2020 SC 100.

18.12-3 Extent of victim’s counsel right to assist the prosecution clarified - The victim’s counsel to assist the prosecution clarified. The same is not restricted only to assisting Special Public Prosecutors. Rather, assistance given by the victim’s counsel is meant to be given to the prosecution in general, regardless of who exactly is leading it. The law on this point is clarified as under:

- ◆ The role of victim’s counsel cannot extend to making oral arguments and examining witnesses as it is not rooted in the text of Cr.PC. The use of the term “assist” in the proviso to section 24(8) is crucial, and implies that the victim’s counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to Cr.PC had used the words “coordinate with the prosecution”. However, a change was later proposed and in the finally adopted version, the words “coordinate with” were substituted by “assist”. This change is reflective of an intention to only assign a supportive role to the victim’s counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under section 301(2). A mandate that allows the victim’s counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from sections

225 and 301(2), permitting such a free hand would go against the scheme envisaged under Cr.PC.

- ◆ If the victim's counsel insists upon examining any of the left-out witnesses, it is possible that the evidence so brought forth may weaken the prosecution case. If given a free hand, in some instances, the trial may even end up becoming a vindictive battle between the victim's counsel and the accused, which may further impact the safeguards put in place for the accused in criminal trials. These lapses may be aggravated by a lack of advocacy experience on the part of the victim's counsel. In contrast, such dangers would not arise in the case of a Public Prosecutor, who is required to have considerable experience in the practice of law, and act as an independent officer of the court. Thus, it is important to appreciate why the role of a victim's counsel is made subject to the instructions of the Public Prosecutor, who occupies a prime position by virtue of the increased responsibilities shouldered by him with respect to the conduct of a criminal trial.
- ◆ There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over two-three courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victim-centric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the appellant that the introduction of the proviso to section 24(8) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to section 372 Cr.PC is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of Cr.PC should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.
- ◆ In this regard, given that the modalities of each case are different, the extent of assistance and the manner of giving it would depend on the facts and circumstances of each case. Though all possible scenarios that may arise during a criminal prosecution cannot be detailed, a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in section 301(2), the private party's pleader is subject to the directions of the Public Prosecutor. The same principle should apply to the victim's counsel under the proviso to section 24(8), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of Cr.PC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under section 311 Cr.PC or Section 165 of the Evidence Act, 1872. [Paras 12.1-12.5] - *Rekha Murarka v. State of W.B.* AIR 2020 SC 100.

Assistant Public Prosecutors.

19. (1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(2) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

(3) Without prejudice to provisions contained in sub-sections (1) and (2), where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case after giving notice of fourteen days to the State Government:

Provided that no police officer shall be eligible to be appointed as an Assistant Public Prosecutor, if he—

- (a) has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or
- (b) is below the rank of Inspector.

COMMENTS

COMPARATIVE STUDY OF PROVISIONS OF BNSS, 2023 & Cr.PC.

19.1 Corresponding provision

- ◆ Section 19 of the BNSS corresponds to section 25 of the Cr.PC.

19.1-1 Notice to State Government

- ◆ Section 19 of the BNSS stipulates a new requirement that provides that, when no Assistant Public Prosecutor is available, District Magistrate may exercise his power of appointment of any other person as Assistant Public Prosecutor after giving notice of 14 days to the State Government.

SECTION ANALYSIS

19.2 Assistant Public Prosecutors

- ◆ Section 19 relates to Assistant Public Prosecutors.
- ◆ Section 19 provides that the State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.
- ◆ The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

19.3 Powers of DM where no Assistant Public Prosecutor is available for the purposes of any particular case

- ◆ Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case after giving notice of fourteen days to the State Government.