

The Policeman & The Magistrate

-Dr. M. N. Buch

On 2nd March 2011 the DIG of Gwalior, during a routine round of the city, found a car sporting no number plate but flashing an amber rooftop beacon. The time was a little after 10 pm at night. The DIG intercepted the car and directed his escort officer to check the validity of registration, etc, of the car. There were two occupants of the car, including a person who introduced himself to the escort officer as a Railway Magistrate and threatened dire consequences to the Police officer who dared to check him. Thereupon the DIG ordered that the matter should be entered in the general dairy (*roznamcha*) of the Padav Police Station. The vehicle driver was asked to have a proper number plate for the car and he was allowed to leave.

Under the Motor Vehicles Act every vehicle is required to be registered with the competent authority, the Regional Transport Officer. In Madhya Pradesh all vehicles registered in the state have to bear the letter MP, followed by a two digit number indicating the registration authority. For example, all vehicles registered in Bhopal have the number MP-04. Thereafter there can be upto two letters of the alphabets indicating the registration series and this is followed by a four-digit number specific to the vehicle. There can be no exception to this. Similarly, under a notification issued by the Transport Department on 8/2/2011 published in the Madhya Pradesh Gazette on 18/2/2011 rules are prescribed about rooftop lights and the entitlements in this behalf. In the judiciary the Chief Justice and all Judges of the High Court are allowed a red light on their car and every District and Sessions Judge and CJM is allowed an amber light. Other than this judicial magistrates are not entitled to sport any rooftop light. In other words, the Railway Magistrate in question at Gwalior, Shri J. S. Kushwaha, was not entitled to the use of any rooftop beacon and by sporting it he was violating statutory rules. This made him liable for prosecution under the Motor Vehicles Act.

Section 23 of the Police Act lays down the duties of police officers. Amongst the duties are prevention of the commission of offences and public nuisances and detection of offences, apprehension of and bringing to justice offenders of law. As per the facts available and subject to any subsequent findings the DIG as a police officer was duty bound to apprehend a person who was violating the provisions of the Motor Vehicle Act. Because the person concerned is himself a judicial magistrate it was his duty not to commit any offence. If he had done so unwittingly he should have willingly accepted his error and ensured that the matter ended there. Instead, it is said that he threatened the police staff and has now converted the matter as a clash between police and judiciary. Because the judge is the complainant the DIG has been transferred without his version being heard. Obviously this means that the police is precluded from any action involving violation of law by judicial officers and these officers are now to be treated as being above the law. In a democratic country where there is the rule of law how can such a situation be accepted?

Obviously, at least some railway magistrates are a breed apart. In 1965 I was DM of Ujjain. At about one o'clock in the morning a group of agitated railway men came to my house. It seems that the Railway Magistrate posted at Ratlam, who had jurisdiction over Ujjain, arrived at the station at about 11 o'clock at night and ordered the railway staff to open the railway guesthouse for him. The Assistant Station Master explained that the rest house was closed for massive structural repairs of the roof, and, therefore he accommodated the magistrate in the retiring room of the station. The magistrate was not mollified and ordered the Station Master to be produced before him as soon as he returned after an official trip to Indore. A little after midnight the stationmaster called on the magistrate who was lounging around in his underwear.

The magistrate was not prepared to listen to excuses about the non availability of the rest house and when the station master tried to explain things he treated this as a contempt committed in

his presence in hearing of the court under section 345 of Cr.PC and sentenced the station master to one month's imprisonment. He then ordered the Station Officer, GRP to take the station master into custody. The order was ridiculous, without jurisdiction and I treated this as a *coram non judice*. I ordered the Station Officer to immediately send the station master home because the magistrate could only give imprisonment if a fine is not paid and in this case no fine was imposed.

The next morning I spoke to the District and Sessions Judge and he was very cold to the idea of intervention. I requested that he should take up the matter under appeal under 351 Cr.PC, but he seemed reluctant to do so. Fortunately Justice P. V. Dixit, then Chief Justice of Madhya Pradesh, was camping at Indore and he very kindly agreed to receive me. He was totally horrified at what I told him, summoned the case file suo moto and passed severe strictures on the D and SJ and the Railway Magistrate, Mr. Dubey (I forget his initials). He also ordered that the magistrate was never to be promoted nor assigned magisterial work during the rest of his service. I quote this case because, based on precedent I am confident that the Madhya Pradesh High Court will not allow any injustice to be done in the Gwalior case.

This brings me to the real crux of this article. All civil servants, including police officers, are required to be polite and correct in their attitude and to treat every citizen with respect. If Pankaj Shrivastava, the DIG has been remiss on this account he can always be corrected provided the facts prove this. Certainly if the railway magistrate has a complaint it must be inquired into. However, a police officer doing his duty must not be transferred from his place of duty without a proper inquiry which proves that he has done something wrong. If a police officer is transferred for doing his duty the message to the entire Force is that there are categories and classes of citizens who are beyond the law. My submission is that it is proper for the High Court to order an enquiry into the incident. It was improper for the High Court to insist on the DIG's transfer and it was an act of cowardice on the part of government to succumb to this demand. Government has caused immense damage to the morale of civil servants by its hasty decision. I am absolutely delighted that the IAS Association has made common cause with its IPS colleagues in this case.