

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-10769-2017 (O&M)

Date of decision : 1.6.2018

Parveen Gaur Dwivedi

... Petitioner

VERSUS

State of Haryana and others

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. J.S.Bedi, Sr. Advocate, with
Mr. S.S.Brar, Advocate,
for the petitioner.

Mr. Raj Kumar Makkad, DAG, Haryana.

Mr. A.S.Talwar, Advocate,
for respondent No.2.

Mr. G.S.Bal, Sr. Advocate with
Mr. K.K.Kahlon, Advocate and Mr. A.D.S.Bal, Advocate,
for respondents No.3 and 4.

RAJ SHEKHAR ATTRI, J.(Oral)

This is a petition under Section 482 Code of Criminal Procedure for quashing order dated 18.10.2016 (Annexure P-7) passed by learned Special Railway Magistrate (SRM), Ambala for lodging a complaint against the petitioner as well as order dated 21.2.2017 (Annexure P-9) passed by learned Additional Sessions Judge, Ambala dismissing the appeal preferred by the petitioner; and also seeking quashment of subsequent proceedings arising from Annexures P-7 and P-9.

Special Railway Magistrates have been provided by Central Government with concurrence of the State Government for the purpose of conducting checks which are known as 'Magisterial Checks' or 'SRM-Check' to check and punish passengers without ticket and also to punish persons guilty of other offences as provided under the Railways Act, 1989

(Act 24 of 1989), the Railway Property (Unlawful Possession) Act, 1966 as

well as in earlier statute i.e. Indian Railways Act, 1890.

A Railway Magistrate is appointed for dual purposes: firstly, to punish the wrong doers under the Act or other by-laws, notifications as section 181 of the Act specifically provides that all the offences under the Act shall be triable by a Metropolitan Magistrate or Judicial Magistrate of first class; and secondly, to exercise judicial scrutiny and supervision over the administrative actions of the various wings of the department with regard to recovery of fare, excess charges etc.

Government of India, Ministry of Railways (Railway Board) vide letter No.2002/TG/V/03/02 dated 17.2.2017 (Annexure R-3/7) has extended the Magisterial Scheme to check and prevent ticketless travel up to 31.12.2018. This scheme has been in vogue for many years and has been extended from time to time. Thus, under this Scheme and on the demand of railways, Special Railway Magistrate is deployed at Ambala Cantt.. Under the said scheme, Shri Nitin Raj has been appointed as a Special Railway Magistrate, Ambala Cantt. under the administrative notification issued by this court, which reads as under : -

“NOTIFICATION

No. 34 Gaz.II/XXI.C.22. Dated : Chandigarh, the 2.5.16

In exercise of the powers conferred by Section 11 of the Code of Criminal Procedure, 1973, Hon'ble the Acting Chief Justice and Judges have been pleased to appoint Sh. Nitin Raj, a member of the H.C.S. (Judicial Branch) as Judicial Magistrate First Class for the trial of cases involving the commission of offences punishable under the Indian Railways Act, 1890 and under the Railway Property (Unlawful Possession) Act, 1966,

for Ambala District and further to appoint him as Judicial Magistrate First Class for all other Districts in the State of Haryana for the trial of cases involving the commission of offences punishable under the Indian Railways Act, 1890 with effect from the date he assumes the charge of his office.

BY ORDER OF HON'BLE THE ACTING CHIEF
JUSTICE AND JUDGES

REGISTRAR GENERAL

No.11766 Gaz.II/XXI.C.22 Dated, Chandigarh, the 2.5.16

In exercise of the powers conferred by Section 260 of the Code of Criminal Procedure, 1973, Hon'ble the Acting Chief Justice and Judges have been pleased to empower Sh. Nitin Raj, Judicial Magistrate First Class, Ambala, to try in a summary way all or any of the offences specified in Section 260(1) of the said Code, when committed within the limits of any district in the State of Haryana, with effect from the date he assumes the charge of his office.

BY ORDER OF HON'BLE THE ACTING CHIEF JUSTICE
AND JUDGES

REGISTRAR GENERAL”

In pursuance thereof, he joined his duties and started functioning in the capacity of a Special Railway Magistrate. His work was to hold summary trials and to award punishments to the persons committing offences under the Act. As per provisions contained in Ticket Checking

train) and security personnels. The Guards of trains attached with him were known as “Special Railway Magistrate Squad” and he was authorised to check and penalise persons travelling without tickets and committing other offences under the Act. A list of persons who were attached with SRM squad has also been attached with showing 12 persons in DCM squad 10 in SRM quota, 10 persons in DCM/FRT squad and 10 persons in DCM/Chg squad. As per practice, he has been sending his Tour Programme to the railway authorities through District & Sessions Judge for the purpose of checking and holding summary trials at the spot.

However, on 18.9.2016, the Clerk of the Court Shri Raman Kumar informed the SRM to the effect that the railway authorities refused to provide the requisite staff for the purpose of checking and penalising the offenders. The railway authorities were well aware of the fact that his appointment was solely for the purpose of holding summary trials of the cases involving offence under the Railways Act, 1890, under Act of 1989 and Railway Property (Unlawful Possession) Act, 1966. The learned Magistrate treated it as an obstruction in performing judicial functioning, therefore, he issued show cause notice to Smt. Parveen Gaur Dwivedi, Senior Divisional Commercial Manager, Northern Railways, Ambala Cantt.(petitioner herein) and the same is reproduced as under : -

“To

Smt. Parveen Gaur Dwivedi,
Senior Divisional Commercial Manager,
Northern Railways, Ambala Cantt.

Show Cause Notice

Being Senior Divisional Commercial Manager, Northern

Railways (herein after referred as Sr. D.C.M.) you are well aware of the fact that a squad of ten Travelling Ticket Examiners (herein after referred as TTEs) is attached with Special Railway Magistrate (herein after referred as SRM) Haryana consequent upon the mandate of the Hon'ble High Court of Punjab & Haryana that SRM Haryana is to hold Camp Court throughout Haryana at different Railway Stations. Accordingly until now SRMs had been holding Camp Courts through out the State of Haryana and were prosecuting the offenders qua Railways. SRM Haryana not only earned huge revenue for the railways, by levying fine on the ticketless travellers as well as on vendors and other violators, but also create (sic) deterrent effect on the prospective violators.

It has been communicated in writing to the Court by Court Clerk Shri Arun that on 28/09/16, on the instructions of the Court, following the precedent, he through his mobile number 97296-39753 at around 14:03 hrs informed the concerned clerk of Commercial Department Northern Railways Sh. Simran on his mobile number 97295-39972 regarding SRM check for 29/9/16 and 30/9/16 at Railway Station Ambala Cantt. and Railway Station Ambala City respectively so as to apprise the same to you being Sr. D.C.M. And to send the SRM squad at the aforesaid venue. However the concerned clerk instead told the Court Clerk that he has received instructions from you that Commercial Department would be unable to spare any TTE of SRM squad for the aforesaid checking,

without assigning any reason. Further no official communication as been received till date from you regarding the same. As a result ticketless passengers could not be checked on 29/09/16 at Railway Station Ambala Cantt where as no Camp Court could be held at Railway Station Ambala City primarily due to non availability of TTEs. Though on 29/09/16 RPF at Ambala Cantt. Station conducted joint checking of illegal vendors with my team comprising of GRP and RPF personnel after realising that the Commercial Department Ambala is not at all interested in checking ticketless passengers. It is trite to state the ___ attitude on your part has led to obstruction in holding of Camp Courts by me at Railway Stations across the state on the dates mentioned above as well as for future dates.

The Commercial Department, Northern Railways has lost sight of the fact that the office of SRM as well as all the Departments of Railways, including yours, are created just to work in the best interest of the Railways with endowing special duty on my shoulder to not to let off any offender inflicting undue loss or damage to the railway property or Railway passengers.

It is pertinent to mention that such an action on your part prima facie tantamount to interference in my judicial functioning apart from causing revenue loss to the Railways. Moreover it does not go down well with the office ethics that Court be informed by some clerical staff of your department

regarding above stated decision, that too telephonically.

Therefore, show cause notice is hereby issued to you that why proceedings under section 186, 187, 217 Indian penal Code 1860 be not initiated against you as well contempt proceedings be recommended against you to the Hon'ble High Court of Punjab & Haryana. You are directed to appear in person and file reply in the form of affidavit on 12/10/16.

sd/-
Nitin Raj
Special Railway Magistrate, Haryana-
cum-Additional Civil Judge (Senior
Division) Ambala”

While replying to the show cause notice, the petitioner has admitted in her affidavit that she has received oral communications from the clerk of the court of Special Railway Magistrate regarding 'SRM-Check' for 29.9.2016 and 30.9.2016 at railway stations at Ambala Cantt. and Ambala city. She also admitted that checking staff was not provided for SRM checks for those days i.e. 29 and 30th September, 2016 but she made an effort to explain all this by giving reasons in para 3 (a to e) and para 4 of her affidavit. It is apposite to reproduce the same hereunder : -

“3. That deponent further submits that the oral communication received from the clerk of this Hon'ble Court regarding SRM Check for 29.09.2016 and 30.09.2016 at Railway Stations at Ambala Cantt and City was duly considered keeping in view the following facts : -

a. That in Ambala Division, no sanctioned post of ticket checking staff for SRM squad. At present, against the actual requirement of 1209 tickets checking staff, the

division is having 685 ticket checking staff against the sanctioned strength of 789. Approx. 70 pairs of mail/express Shatabdi trains are being manned by Divisional Ticket Checking Staff and remaining staff are being utilised at stations for station duty and for open ticket checking. The SRM Checks are carried out from amongst the ticket checking staff put in open ticket checking. It is further submitted that Ambala Division is spread over 5 states including the State of Haryana having 24 stations.

b. The division also offers and co-ordinates with other SRMs e.g. SRM Jalandhar, SRM Bikaner and SRM Gaziabad for stations in their respective states for holding similar SRM Checks but no such requisitions are being received from any of these other Special Railway Magistrates.

c. Notwithstanding the above, the deponent further submits that the oral requisitions for 29.09.2016 and 30.09.2016 at Ambala Cantt and Ambala City railway stations was duly considered. However, the same was not feasible due to the ensuring annual inspection of General Northern Railway on 03.10.2016 for Kalka-Chandigarh-Ambala-Yamunanagar-Saharanpur section.

d. That the deponent further submits that all out efforts are being made to ensure effective ticket checking over the Division in order to avoid the entry of un-

authorised persons in the station premises and to plug the loop-holes in the revenue collection.

e. That from the foregoing, it may be seen that the deponent has not wilfully or deliberately disobeyed any directions of this Hon'ble Court or has intervened with the judicial functioning of this Hon'ble Court.

4. That the deponent further submits that the oral requisition for SRM Check in future may be reviewed in the light of Section 181 (Magistrate having jurisdiction under the Act) and 182 (Place of Trial) of the Railway Act, 1989 read with para 915 (Concentrated spot check) and para 922 (Beggar and hawker nuisance) of Indian Railway Code for Traffic (Commercial) Department.”

Thereafter, the learned Railway Magistrate (respondent No.2 herein) conducted the inquiry under the provisions of Section 340 Code of Criminal Procedure (in short the Code). He recorded the statements of Shri O.P.Dingra, Chief Ticket Inspector, Ambala, Suresh Chand, Deputy Chief Ticket Inspector, Ambala, Mohinder Pal, Chief Ticket Inspector, Rajesh Kumar, Chief Ticket Inspector, Kuldeep Judgment Writer in the Court of Shri Nitin Raj, Special Railway Magistrate, Ambala Cantt, Sh. Shamsher Singh, Additional/Assistant Ahlmad, Special Railway Magistrate, Ambala Cantt., Shri Arun Kumar, Summary Clerk, Special Railway Magistrate, Ambala Cantt., Shri Kapil, Additional Ahlmad in the Court of Shri Nitin Raj, Special Railway Magistrate, Ambala Cantt. and Shri Gurdev Ram, Ahlmad in the Court of Shri Nitin Raj, Special Railway Magistrate, Ambala

Cantt..

Ultimately, he observed that obstruction has been caused by the petitioner in performing his judicial functions and thus, vide impugned order, he formed an opinion that a complaint be transmitted to the learned Chief Judicial Magistrate, Ambala under the provisions of Section 195 (1)(a)(i) of Code. This Court would like to reproduce para 13 of his order here under : -

“13. This Court has already made an inquiry as enshrined under the provisions of Section 340 of the Code of Criminal Procedure, 1973. Therefore, this Court orders the sending of the complaint to the Court of learned Chief Judicial Magistrate, Ambala, for trial of the deponent hereinafter referred to as accused for the commission of the above stated offences. The order would be treated as a complaint and I would not be required to depose before the learned Court for the purpose of evidence or otherwise in view of immunity conferred upon me under Sections 80 and 121 of the Indian Evidence Act, 1872. Therefore, this order, previous orders passed by this Court, show cause notice and reply to the show cause notice as well as statements including documents attached with the order are per se admissible in evidence. Accused through her learned counsel is hereby directed to appear before the Court of learned Chief Judicial Magistrate, Ambala on 28.10.2016 sharp at 09:30 a.m. Ahlmad is directed to send the file immediately, complete in all respect, to the Court of learned Chief Judicial Magistrate, Ambala.”

In pursuance thereof, the cognizance was taken by the learned

Chief Judicial Magistrate, Ambala on the basis of said complaint. However, the petitioner has challenged the show cause notice and the said order by filing a revision petition. The said revision was dismissed by learned Additional Sessions Judge vide order dated 21.2.2017.

I have heard the learned counsel for the parties and gone through the record.

Learned counsel for the petitioner has vehemently contended that the learned Magistrate had no power to initiate such an inquiry; that the alleged inquiry amounted to a full-fledged trial and it seems that the learned Magistrate has himself taken cognizance of the complaint in which he was the complainant and he was not required to do so; that the complaint and the impugned order failed to establish if there was any *mens rea* on the part of the petitioner, as such, offences under Sections 186 and 187 of Indian Penal Code are not made out; that under the Act, a Magistrate has to come into operation only when ticketless passengers are produced before him; that no sanction has been accorded under the provisions of Section 197 of the Code, therefore, the proceedings before learned Chief Judicial Magistrate are mere abuse of the process of Court. In support of his contentions, reliance has been placed on **Sunil v. State of Maharashtra and others**, 2006 (3) ALL MR (Cri) 3085, **Om Prakash Puri v. State of Rajasthan**; 1991 (3) Crimes 68, **Devi Dan v. State of Rajasthan**; 2014 (30) RCR (Criminal) 846 and **G.B.Reddy and others v. State of Rajasthan and another**; 2008 (3) Cri. CC 332.

On behalf of respondents No.3 and 4, i.e., General Manager, Northern Railways and Railway Board respectively, it has been vehemently argued that the Railway Magistrate has no independent power to check the

wrong doers committing offences under the Act, rather, role of the Special Railway Magistrate comes into play only when ticketless travellers refused to pay the fare and fine, then they are arrested and are to be produced before him within 24 hours of their arrest; that the demand of Special Railway Magistrate, Ambala in asking the petitioner to provide him ticket checking staff for apprehending ticketless travellers is patently illegal, arbitrary and without jurisdiction; that in fact he has no such power prescribed under any of the provisions of law to hold such checks himself to apprehend the ticketless travellers. He also endorsed the arguments of learned counsel for the petitioner.

On behalf of respondent No.2, i.e., Special Railway Magistrate, Ambala, it has been strenuously contended that-under the Act, Ticket Checking Manual, Northern Railway (in short the Manual), Indian Railway Code for Traffic (Commercial) Department, Indian Railway Commercial Manual and also under various letters, notifications-the magisterial checks have been provided at different railway stations, running trains and trains are hauled at a particular railway station for this purpose; that in order to efficient checking of the ticketless travellers, surprise and massive checks have been arranged, which require the checking staff, including Guards of trains/ticket collectors and security personnel; that these magisterial checks have been in practice since coming into force Indian Railways Act, 1890; under new Act of 1989 as well as under various schemes of Government of India (Railway Department).

It has been further argued that the petitioner has abruptly withdrawn the facility of checking staff i.e. Guards of train and without their help, magisterial checks cannot be held and a magistrate is not obliged

to himself check the ticketless travellers, therefore, withdrawal of the checking staff in itself amounts to an obstruction in the functioning and in performing the judicial obligations by the Railway Magistrate; that even after issuing show cause notice, no checking staff was provided irrespective of the fact that in the adjoining railway divisions, the checking staff is provided for the purpose of magisterial checks; that respondent No.2 (SRM) has himself conducted an inquiry as to whether the obstruction was intentional and when he was satisfied that it was intentional, only then he submitted a complaint under the provisions of 195(1)(a)(i) of the Code to learned Chief Judicial Magistrate; that the action of the petitioner is neither in good faith nor it falls within the ambit of the provisions of Section 197 of the Code because it is not the duty of the petitioner to withdraw the checking staff in order to nullify the very purpose of the appointment of the Special Railway Magistrate. According to him, this petition is a abuse of the process of law and should be dismissed as such.

This Court has given its thoughtful consideration to the rival contentions.

First of all, this court will like to discuss about appointment of a Special Railway Magistrate. Section 181 of the Act provides that all the offences under this Act shall be tried by Metropolitan Magistrate or Judicial Magistrate 1st Class. Chapter XV of the Act deals with the 'Penalties & Offences' under the Act. Sections 137 to 178 of the Act defines various offences and only a Magistrate is competent to try the same. Section 180 of the Act authorise various railway servants to apprehend and arrest a person and to produce him before the Court of the Magistrate within 24 hours.

Section 182 of the Act provides that any person committing an offence

under this Act or any rule made thereunder shall be triable for such offence in any place in which he may be or which the State Government may notify in this behalf, as well as in any other place in which he is liable to be tried under any law for the time being in force. Thus, the Act itself provides the appointment of a Railway Magistrate. Annexure R-3/8 which is a letter of Government of India, Ministry of Home Affairs dated 14.7.1982, it has been provided that apportionment of the cost of the Railway Magistrates, their court staff and police force attached to them and crediting of judicial fine shall be the duty of the State Government. In Annexure R-3/9 which is dated 16.8.1982, it has been specifically provided as under : -

“The Ministry of Home Affairs considered the matter in detail in consultation with the Ministry of Law and have suggested to the State Governments that the entire cost of Railway Magistrates, their court staff and the police force should be borne by the State Governments and the fines also should be credited to them.....”

Para 539 of Indian Railway Commercial Manual specifically provides for the appointment of Special Railway Magistrate for the purpose of speedy prosecution of passengers who have committed the offences under the Railways Act. It is also provided therein that such a Magistrate shall hold Court at stations which are notified by each railway and where Railway Courts are not situated, the Station Masters should arrange for the prosecution of ticket less travellers, beggars, hawkers etc. in the nearest Railway Magistrate's court or the local court if there is one.

Rule 1209 of the Ticket Checking Manual also provides the

appointment of Railway Magistrates and Rule 1404 specify the Railway Magistrates and Magisterial checks. Both these rules are reproduced hereunder : -

Rule 1209 : Railway Magistrates

- (a) The Magistrates have mostly been provided with Court Rooms situated either in the station buildings or in the neighbourhood.
- (b) These Magistrates will also dispose of cases pertaining to “Other non-cognizable” offences, referred to in this chapter.
- (c) At stations where no Railway Magistrates are posted, Railway cases under paragraphs 1203 and 1206 above will be dealt with either by the Magistrate specially deputed for the purpose by State Government or at the local Civil Court.

1404 : Railway Magistrates and Magisterial Checks

- (a) In order to deal with ticketless travellers who refuse to pay Railway dues on demand, and other offenders, the attendance of magistrates is arranged during some of the stationery and mobile checks. Such checks are called magisterial checks.
- (b) At some stations where are number of cases to be dealt with justifies it, the civil authorities nominate honorary Magistrate or a regular Magistrate to hold court at Railway station on specified dates and dispose of the cases.

Under Ticket Checking Manual, para 1402, 1403, 1405, 1406, 1407, different kinds of the checking of the ticket less travellers and other offenders is provided, which reads as under:-

“1402 Stationary checks : Those comprise of

(i) The checks on incoming and outgoing passengers exercised by ticket collector who man the various accesses to platforms.

(ii) The checks at ticket-vise (checking stations, by ticket collectors posted to check tickets or through passengers in trains.

(iii) **Replacement checks :** To ascertain the efficacy of checks exercised by ticket collector they are replaced by TTEs drawn from sectional/divisional/headquarters squads. These squads function round the clock for 24 hrs. or more, then their performance e.g. the number of ticketless passengers apprehended, the amount realised, the percentage of missing tickets etc. is compared with that of the ticket checking staff posted at station. Suitable steps are taken by divisional authorities to improve the performance of the ticket checking staff at station, if it is found to be unsatisfactory as a result of these replacement checks.

1403 Mobile checks

(a) On divisions where cent percent checking is in force, one or more TTEs are booked by every train daily to exercise checks on particular section. As one or two TTEs can not check a train completely and thoroughly checks are also exercised by squads of TTEs Hd. Quartered at convenient stations on divisions. In addition, squads consisting of selected staff, having good performance function under the direct order of

senior divisional commercial Manager, these squads carry out routine and surprise checks so as to exercise a super check on the work of the regular squads to enable the senior divisional commercial manager to take suitable action against these TTEs, who are not giving a good account of themselves. Such checks also highlight the bad sections where there is heavy incidence of ticketless travelling. Special intensive checks then be initiated to tackle the problem.

(b) With a view to exercise a super check on the working of the divisional squads certain number of squads work under the direct control of the hd. quarters office and carry out similar checks.”

1405 Cross Country Checks

To ensure the element of surprise, squads are sometimes taken by buses to check trains at way-side stations. Some trains are stopped out of course either at a station or in midsection. Generally a Railway magistrate and adequate number of GRP and RPF staff accompany the ticket checking parties. The entire train is cordoned off and passengers detected travelling without ticket etc. who fail to pay the railway dues are tried by the magistrates on the spot.

1406 Inter Divisional Checks

As the efficiency of checks decreases if same squads operate over the same sections for a long time, it is desirable periodically to arrange checks by utilising squads from one division on the adjoining division by comparing results of these

checks with those obtained during routine checks exercised by the squads normally functioning on these sections, it is possible to assess the efficiency of regular checks.

1407 Statistical Checks

(a) **Concentrated spot checks :** There are stationary checks during which all trains passing through the stations where the checks are arranged are thoroughly combined. These checks last for a day or part of day for 8 hours or even shorter periods so as to cover specific groups of trains. Cent per cent checking of trains done during these checks and the percentage of total of passengers detected travelling irregularly to the total number of travelling with proper ticket is worked out. Excess fare tickets issued for extension of journeys, change in to higher class, and baggers turned out or prosecuted are not taken in to account in the figure of total number of passengers travelling irregularly.

(b) Concentrated section checks

(i) These checks cover all trains over a particular section which should preferably extend from one ticket checking station to the next. For proper appreciation of ticketless travel on the section it will be necessary to hold the check for a complete number of days once or more.

(ii) The total number of trains checks are multiplied by the length of section checks to arrive at the total number of train kilometer checked. The total earning of a check is then divided by the total number of checks to work out the earning per train,

kilometer. By comparing this figure with the figure of earning per train kilometer checked during day to day checks an assessment can be made of the adequacy or otherwise of existing ticket checking arrangements on the section.

In all the checks, a Railway Magistrate must be provided with the team of guards/TTEs and all the persons guilty of the offences under the Railways Act are liable to be produced before him and he will hold a summary trial at a particular place or specially constituted court.

The Railway Magistrate cannot himself check the offenders. Under the Act, Rules and Manuals, it has been specifically provided that he be provided with the team of guards/TTEs and such a team kept reserved for this purpose.

It has been specifically provided in para 1405 (supra) as under :

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“.....Generally a Railway magistrate and adequate number of GRP and RPF staff accompany the ticket checking parties. The entire train is cordoned off and passengers detected travelling without ticket etc. who fail to pay the railway dues are tried by the magistrates on the spot.”

Thus, it is specifically provided under the Railway Laws/Regulations/Manuals that adequate number of ticket checking parties along with security personnels be provided to the Railway Magistrate. Apart from it, while conducting an inquiry, learned Special Railway Magistrate has also recorded statements of Shri O.P.Dhingra, Chief Ticket Inspector

(Annexure R-2/1), Shri Suresh Chand, Divisional Commercial Manager

(Annexure R-2/1), Shri Mohinder Pal, Chief Ticket Inspector (Annexure R-2/1), Shri Rajesh Kumar (Annexure R-2/1) and all of them have categorically stated that TTE squad consisting of 10 personnel has been provided since the beginning of SRM checking. Similar is the statements of the other witnesses recorded by learned Magistrate while holding the inquiry. Thus, it is very much apparent that Special Railway Magistrate has been appointed at Ambala Cantt. and checking staff/party consisting of ten members (TTE/guards) was provided for 'SRM squad' for the purpose of checking and holding summary trials.

The evidence available on the record establishes this fact that the petitioner has unnecessarily, without any cogent reason has withdrawn the staff. This court has also carefully gone through the contents of the affidavit of the petitioner. She made an attempt to furnish explanation with regard to withdrawal of the checking staff by giving reasons in sub paras (a) to (e) of para 3. She has admitted that a demand was verbally raised, as per the practice prevalent, for providing checking party with regard to SRM checks for 29/30.9.2016. She has explained that this request of Special Railway Magistrate was duly considered but declined keeping in view the reasons mentioned sub-para a to e (ibid).

In sub-para (a) of para 3, she explained that there is shortage of staff but it is not understandable why the shortage was considered only on 29/30.9.2016. A special checking team was specifically provided as shown in list Annexure B for the purpose of SRM-Squad. Besides this, different teams have kept reserved for DCM squad, DCM/Frt Squad, DCM/Chg Squad and ACM/OBS Squad. Besides this, special staff has been deputed in DCM Squad from SRE Hq. These teams have been reserved for the

checking squads including that of SRM-Squad. Therefore, the explanation/reason given in para 3(a) of her affidavit is not acceptable.

In sub para (b) of para 3 thereof, she explained that Special Railway Magistrates posted at Jalandhar, Bikaner, Ghaziabad are holding similar SRM-Checks but no such requisition have been received from them. No material is placed on the record if any of Railway Magistrates of above stations have not raised any demand. However, Annexure R-3/12 is the Tour Programme of Special Railway Magistrate, Jalandhar and copy thereof has been sent to the all the Senior Officers of Railway Department including CIT Line Jalandhar which means the checking staff has been provided by the CIT Line, Jalandhar. To the mind of this Court, this version contained in this para is irrelevant and is also a matter of evidence.

In sub para (c) of para 3 thereof, it is stated that the demand/oral requisition for providing checking staff for two days i.e. 29/30.9.2016 for the purpose of SRM-Checks at Ambala Cantt. and Ambala City was not feasible due to the ensuing annual inspection of General Northern Railway on 03.10.2016 for Kalka-Chandigarh-Ambala-Yamunanagar-Saharanpur section. Although the petitioner has taken a paradoxical stand, yet it is not understandable why the checking staff has been withdrawn due to the inspection of General Manager. To the mind of this Court, this reason is also not acceptable, rather, it appears to be a mere excuse.

In sub-para (d) of para 3 of her affidavit, it has been submitted that the officers of the railway department are making all out efforts on their own level to ensure effective ticket checking over the Railway-Division in order to avoid the entry of unauthorised persons in the station premises and

to plug the loop-holes in the revenue collection. In fact, the version given in this sub-para amounts to ouster of the jurisdiction of the Railway Magistrate and the petitioner along with the officers of her department want to get rid of the services of the Railway Magistrate and to indulge in checkings on their own level. If this version is accepted, it will completely thwart the provisions of Sections 137 to 178 of the Act. Even the travelling in a train without ticket is itself an offence and only a railway Magistrate is competent to try the same. Apart from it, if this version is accepted, it will invite dishonest practices.

In para 4 of her affidavit, it is stated that oral requisition for SRM-Check in future may be reviewed in the light of Section 181 and 182 of the Act read with para 915 (Concentrated Spot Check) and para 922 (Beggar and hawker nuisance) of Indian Railway Code for Traffic (Commercial) Department. This plea is also against the provisions of the Act. Even para 915, as reproduced in the affidavit, establishes that- *“the passengers without ticket to be taken into account during the checks are only those paying excess or charged for un-booked luggage and those taken before magistrate from whom fare and excess charges or fine are realised. The excess fare tickets issued for extensions of journey, difference between, lower classed and upper class as also beggars turned out of trains or those taken before magistrates and convicted and sent to prison are not be included”*. To the mind of this Court, the reasons given in the affidavit of the petitioner are hypothetical and unsuccessful endeavour has been made to get rid of the services of the Railway Magistrate, rather to indulge in self checking. This can never be permitted as it violates the provisions of

Sections 137 to 181 of the Act.

A Railway Magistrate cannot perform his judicial duties without the aid of checking staff. The said act of the petitioner goes to render the post of Magistrate as nugatory and he becomes functus officio. Thus, such a withdrawal of the checking staff amounts to an obstruction in performing the duties of a Railway Magistrate.

The legal term 'obstruction' under the provisions of sections 186 and 187 Indian Penal Code does not require use of actual criminal force. It is sufficient if there is a show of force or a threat or any act preventing the execution of any act by a public servant. Such an obstruction may be by the acts, omissions, commissions and conduct of the offender. In the case in hand, such an obstruction is apparent even from bare perusal of the reply to the show cause notice by way of affidavit of the petitioner. To the mind of this Court, the denial to provide checking-staff and withdrawal of the same is itself amounts to an obstruction under the provisions of sections 186 and 187 Indian Penal Code.

However, the facts in case G.B.Reddy and others (supra) are distinguishable.

A bare perusal of the statements recorded by learned Magistrate during the inquiry proceedings make it apparent that the checking staff was specifically provided. In his letter dated 28.9.2016, concerned clerk Arun Kumar has informed Special Railway Magistrate, Ambala Cantt. that the Divisional Commercial Manager, Northern Railways, Ambala Cantt. has issued directions for not sending any train guard or TTE in the special railway magistrate squad. However, along with his said letter, he has sent the list of the train guards (Annexure B) which were specially appointed for this purpose. No reason has been assigned in this letter dated 28.9.2016, on

which ground the Divisional Commercial Manager has arbitrarily withdrawn the checking staff from SRM squad, inspite of the fact that ten train guards have been deployed for this purpose.

It has been argued by the learned counsel for the petitioner that the impugned order (Annexure P-7) is itself a detailed order vide which the learned Magistrate has taken the cognizance. This court has considered this submission, but the same carries no weight. Learned Special Railway Magistrate himself specifically stated that he is sending a complaint for the purpose of taking action against the petitioner. This does not amount to an order taking cognizance by respondent No.2 himself.

Section 2(d) of the Code defines the legal term 'complaint', which means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Thus, it is abundantly clear from the bare perusal of Section 2(d) of the Code that a complainant may assert in the complaint that the offender has committed such an offence. It is for the Chief Judicial Magistrate to take cognizance under Section 190 of Indian Penal Code and he has to act independently, irrespective of the observations made in the impugned order or in the complaint sent by Special Railway Magistrate.

So far as protection provided under Section 197 Code of Criminal Procedure is concerned, the same plea may be taken before the Chief Judicial Magistrate who has taken the cognizance. Order (Annexure P-7) of the learned Special Railway Magistrate is only to transmit a complaint to the Chief Judicial Magistrate under the provisions of Section

learned Additional Sessions Judge whereby he upheld order Annexure P-7. At this stage, provisions of Section 197 do not come into play. In case such plea has been raised before Chief Judicial Magistrate, in that eventuality, the Chief Judicial Magistrate has to ascertain as to whether the petitioner was acting or purporting to act in discharge of her official duties.

The facts in Sunil's case (supra) are distinguishable on facts. In fact, in that case, a murder was committed by certain officials of police department but the investigating officer turned it to a mere road accident but later on the investigation conducted by CID (crime) found that in fact it was a murder by beating, therefore, direction was issued to prosecute the investigating officer. Thus, Bombay High Court has observed that the investigating officer was acting while discharge of his duties.

Similarly, facts in Om Prakash Puri's case (supra), Devi Dan's case (supra) are distinguishable.

Respondents No.3 and 4 (General Manager of Northern Railways and Railway Board through its Secretary) have taken a specific plea, while arguing orally and specifically in para 9 of the written submissions, as under : -

“Thus, it is apparent that the demand of Special Railway Magistrate, Ambala in asking the petitioner to provide him ticket checking staff for apprehending ticketless travellers is patently illegal, arbitrary and without jurisdiction and in fact he has no such power prescribed under any of the provisions of law to hold such checks himself to apprehend the ticketless travellers.”

This argument/plea adopted by respondents No.3 and 4 is

without substance and the same is against the provisions of the Act, Manuals and the railway laws/rules/regulations. The purpose of checking ticketless travellers, unauthorised hawkers and to curb commission of other offences as provided in the Act and other railway laws, committed in the trains as well as in the premises of railway stations, is to augment the revenue and to arrest the illegal and dishonest practices. The denial thereof is certainly amounts to encouraging all this. No doubt, various officers of the railway department have been authorised to check and to recover the fare from the wrong doers but there must be a judicial scrutiny and supervision thereon which amounts to judicial review of the actions of the officers of the railway. Besides this, all the cognizable and non-cognizable offences under the Railway laws including the Act, are to be dealt with by the Railway Magistrate and not by any officer of the railway department. Thus, the argument that only the officers of the railway department can check the ticketless travellers and other offenders is in fact a chicanery with the ulterior purpose to debar the judicial scrutiny. If this argument is accepted, then it will openly invite the illegal and dishonest practices in the railway business.

The Secretary of the Railway Board as well as General Manager of Northern Railways made an unsuccessful attempt to conceal the truth from this Court and their conduct, as discussed above, is highly unfair and improper. It amounts to interference in and the ouster of the jurisdiction of Special Railway Magistrate. Apart from it, the act of the petitioner in withdrawing the checking staff is not only unfair, rather, the same is reprimandable. None of the railway authorities has any power to oust the jurisdiction of the Special Railway Magistrate in this regard.

On an independent appraisal of the record, this Court is of the view that both the impugned orders do not suffer from irregularity, illegality and are hereby affirmed.

In this view of the matter, orders passed by learned Special Railway Magistrate dated 18.10.2016 (Annexure P-7) and that of learned Additional Sessions Judge dated 21.2.2017 (Annexure P-9) are held to be fully sustainable being legal and valid. No ground is made out to interfere therein.

Consequently, the present petition stands dismissed. However, a specific direction is given to the railway authorities to restore the facility of checking staff as shown in Annexure B within 30 days from the date of receipt of a certified copy of this order.

Further direction is issued to Secretary, Railway Board, Rail Bhawan, New Delhi, to conduct an inquiry with regard to sudden and arbitrary withdrawal of the checking staff from the SRM squad and to take appropriate action in this regard within a period of six months from the date of receipt of a certified copy of this order and to submit his report to this Court to this effect.

However, nothing expressed above shall affect the merits of the case and learned trial Magistrate is bound to appreciate evidence adduced before him independently.

June 1, 2018
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No