

(1995) 09 MP CK 0052

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2522 of 1984

Hanumantsing Kubersing

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Bonded Labour System Abolition Act, 1976 — Section 21
Constitution of India, 1950 — Article 14, 21, 50

Citation : (1995) ILR (MP) 526 : (1996) JLJ 305 : (1996) 41 MPLJ 389 : (1996) MPLJ 389

Hon'ble Judges : U.L. Bhat, C.J.; V.K. Agarwal, J.; S.K. Dubey, J

Bench : Full Bench

Advocate : P. Shastri, Vivek Rusia, for the Appellant; R.S. Jha, Government Advocate, for the Respondent

Judgement

S.K. Dubey, J.

This order shall govern the disposal of Misc. Petition No. 2516 of 1984, Krishnapal Singh v. State of M. P. and Anr.; Misc. Petition No. 2517 of 1984, Pannalal v. State of M. P. and Anr.; Misc. Petition No. 2518 of 1984, Yashwant Singh v. State of M. P. and Anr.; Misc. Petition No. 2519 of 1984, Ramchandra Singh v. State of M. P. and Anr.; Misc. Petition No. 2520 of 1984, Mandatar Singh v. State of M. P. and Anr. and Misc. Petition No. 2521 of 1984, Surendra Singh v. State of M. P. and Anr..

The petitioners in all the petitions are agriculturists, who for their agricultural operations hired labour, Bhils of Tahsil Petalwad, district Jhabua. On some complaints, after investigation concerning Police filed charge sheets under Sections 16, 17 and 18 of the Bonded Labour System (Abolition) Act, 1976 (for short "the Act") against the petitioners, in the Court of Sub-Divisional Magistrate, Petalwad (for short "the S.D.M.") in Criminal Case Numbers as mentioned below :

S.No. Writ Petition No. Criminal Case No. (1) W.P. No. 2522/84 Criminal Cases Nos. 186/83, 187/83, 188/83, 189/83, 197/83, 203/83, 204/83 and 232/83. (2) W.P. No. 2516/84 Criminal Cases Nos. 196/83, 231/83 (3) W.P. No. 2517/84 Criminal Cases Nos. 199/83, 200/83, 201/83, 202/83. (4) W.P. No. 2518/84 Criminal Cases Nos. 193/83, 194/83, 198/83. (5) W.P. No. 2519/84 Criminal Cases Nos. 180/83, 181/83, 182/83, 183/83, 184/83, 185/83, 230/83. (6) W.P. No. 2520/84 Criminal Cases Nos. 190/83, 191/83, 192/83, 195/83. (7) W.P. No. 2521/84 Criminal Cases Nos. 205/83, 206/83, 207/83, 208/83.

During trial, the petitioners apprehended that they will not get fair and just trial, hence they applied u/s 407 of the Code of Criminal Procedure, 1973 (for short "the Code") before the Sessions Judge, for transfer of the cases to the Court of Judicial Magistrate First Class of the competent jurisdiction; that prayer was rejected. Hence the petitioners have filed the aforesaid petitions challenging the constitutional validity of Section 21 of the Act.

All the aforesaid petitions were heard by a Division Bench of this Court. The Division Bench after having anxiously considered the question raised in the petitions was of the opinion that the matter deserves to be considered by a larger Bench; hence referred the matter accordingly vide order dated 11th August, 1995.

The petitioners contended that Article 50 of the Constitution lays down that the State shall take steps to separate the Judiciary from the Executive in the public services of the State. Directive principles of the State policy are conscience of the Constitution and embodies the philosophy of the Constitution and its basic underpinning and values. The anxiety of the Constitution makers was to keep the Judiciary far away from any form of executive control or interference. After the enforcement of the Code, the trial of any offence by an Executive Magistrate is excluded." Section 4 of the Code deals with trial of offences under the Indian Penal Code and other laws. Section 5 contains saving provisions. The effect of conjoint reading of Section 4(2) and section of the Code is that an offence has to be investigated, inquired into, tried or otherwise dealt with in accordance with the provisions of the Code unless there be an enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. There is no such provisions in the Act regulating the manner or place of investigating or inquiring into the offences under the Act. Section 21 of the Act enables the State Government to confer powers on an Executive Magistrate for the trial of the offences under the Act and if such power is conferred, such Executive Magistrate is deemed for the purposes of the Code to be a Judicial Magistrate of the First Class or Second Class as the case may be. If no such power is conferred by the State Government on an Executive Magistrate, all offences under the Act are to be tried by Judicial Magistrate. Thus, after the conferment of power on an Executive Magistrate by the State Government u/s 21 of the Act, the jurisdiction of an Executive Magistrate and of Judicial Magistrate remains concurrent. The trial by an Executive Magistrate of the offences is

neither fair nor reasonable and is biased as the S.D.M. remains the member of the Vigilance Committee constituted u/s 13 of the Act and acts as a Chairman of the Committee, or he nominates another person as Chairman of the Committee. The Vigilance Committee discharges its function as enumerated in Section 13 of the Act. A look at the provisions of Sections 13 and 14 of the Act will show that Vigilance Committee is acting as a complainant or a party. Therefore, the bias during the trial by S.D.M. is apparent. Such trial violates Article 21 of the Constitution, which prevents encroachment upon personal liberty by Executive save in accordance with law. Even if there is not bias, such a trial does not inspire confidence in the accused. Therefore, Section 21 of the Act violates Articles 14 and 21 of the Constitution. In support of the contentions, Shri Purushottam Shastri, learned counsel for the petitioner placed reliance on - Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, ; Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, ; Neeraja Chaudhary Vs. State of M.P., and Full Bench decision of Punjab and Haryana High Court in Sukhdev Singh Dhindsa and Another Vs. The State of Punjab and Another, .

Shri R. S. Jha, learned Govt. Advocate contended that Parliament enacted the Act to abolish bondage system in different parts of the country under which the debtor or his descendants or dependants have to work for the creditor without reasonable wages or with no wages in order to extinguish the debt. At times several generations work under bondage for repayment of paltry sum which had been taken by some remote ancestor. The interest rates are exorbitant, such bondage could not be interpreted to be result of any legitimate contract or agreement. The system implies infringement of the basic human rights and destruction of the dignity of human labour. Article 23(1) of the Constitution prohibits "Begar" and other similar forms of forced labour and further provides that any contravention of the said prohibition shall be an offence punishable in accordance with law. The Act being a welfare legislation for the upliftment of the downtrodden, it has provided various measures for implementing in the proper spirit for achieving the noble object. If any person is found contravening the provisions of the Act which have been made offences punishable under the Act, to grant relief to the bonded labour in speedy manner the Central Government in the Act made an enabling provision u/s 21 of the Act whereby the State Government can confer on the Executive Magistrate power for conduct of the judicial inquiry and trial who thereupon is deemed to be Judicial Magistrate for the purposes of the Code. Even on conferment of the power, the jurisdiction of the Judicial Magistrate and the Executive Magistrate on whom the powers to conduct the trial has been conferred, remains concurrent. The trial is to be conducted in accordance with the procedure prescribed under the code. A party accused of such an offence at the trial can avail the remedy of appeal or revision as the case may be and hence it cannot be contended that the trial by an Executive Magistrate who is for all purposes is a Judicial Magistrate is not just and fair and violates Article 21 of the Constitution; to support the contention reliance is placed on the decision of the Supreme Court in the case of Kartar

Singh v. State of Punjab : (1994) 3 SCC 569, a case under the Terrorist and Disruptive Activities (Prevention) Act, 1987. However, he fairly cited another decision of the Supreme Court in the case of In Re: The Special Courts Bill, 1978, and referred to paragraphs 94 and 95 of the judgment, which supports the contention of the petitioners.

Smt. Indira Nair, learned counsel for Union of India submitted that Section 21 of the Act is only an enabling provision and if the power is conferred by the State Government on Executive Magistrate, the jurisdiction of the Executive Magistrate and the Judicial Magistrate remains concurrent. Therefore, Section 21 of the Act does not offend Article 50 of the Constitution in any manner. The trial by the Executive Magistrate of offences under the Act also does not violate Article 21 of the Constitution. A decision of the Karnataka High Court in case of State of Karnataka v. Gangiah 1979 Cr. L.J. 732 was cited. In any case if this Court is of the view that there will be no fair trial, the notification empowering the Executive Magistrate or the S.D.M. may be quashed as was done by the Bombay High Court in case of Govind Shanwar Chatal v. Dattatraya Waman Bhanushali 1992(2) Cr. L.J. 1228.

The Act was enacted by the Parliament to assist abolition of bonded labour system as in various parts of the country, particularly remote areas, a system of usury, under which the debtor or his descendants or dependants have to work for the creditor without reasonable wages or with no wages in order to extinguish the debt, exists. At times several generations work under bondage for repayment of a paltry sum which had been taken by some remote ancestor. The interest rates are exorbitant and such bondage cannot be interpreted to be the result of any legitimate contract or agreement. The system implies infringement of the basic human rights and destruction of the dignity of human labour. Article 23(1) of the Constitution prohibits "Begar" and other similar forms of forced labour and further provides that any contravention of the said prohibition shall be an offence punishable in accordance with law. Article 35(a)(ii) of the Constitution confers the power on Parliament only to make laws for punishment for those acts which are declared to be offences under Part III of the Constitution. The bonded labour system offends Article 23(1) of the Constitution. Accordingly the Bonded Labour System (Abolition) Ordinance, 1975 was promulgated by the President. By the said Ordinance the Bonded Labour System was abolished and the Bonded Labourers were freed and discharged from any obligation to render any bonded labour and their bonded debts were also extinguished. The Ordinance further afforded protection to the freed bonded labourers from eviction from their homestead. Contravention of the provisions of the Ordinance were made offences punishable in accordance with law. This Ordinance was replaced by the Act which came into force with retrospective effect from October 25, 1975.

A cursory look at the provisions of the Act shows that Section 2 deals with definitions wherein Section 2(e) defines "bonded labour", Section 2(f) defines "bonded labourer". Section 2(g) defines "bonded labour system", as the system

of forced or partly forced labour under which a debtor enters, or has, or is presumed to have entered into an agreement with the creditor to the effect that -

(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or

(ii) in pursuance of any customary or social obligation, or

(iii) in pursuance of an obligation devolving on him by succession, or

(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

(v) by reason of his birth in any particular caste or community;

he would render by himself or through any member of his family, or any person dependant on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages. Section 3 gives overriding effect to the provisions of the Act inconsistent with the provisions of any enactment or instrument agreement. Section 4 deals with the abolition of bonded labour system on commencement of the Act. Section 5 of the Act lays down that on the commencement of the Act, any custom or tradition or any contract, agreement or other instrument (whether entered into or executed before or after the commencement of this Act) by virtue of which any person, is required to do any work or render any service as a bonded labourer, shall be void and inoperative. Sections 6 to 9 in Chapter III deal with extinguishment of liability to repay the debt. Sections 10 to 12 of Chapter IV deal with Implementing Authorities. Sections 13 to 15 of Chapter V deal with Vigilance Committees. Section 13 of the Act provides that every State Government shall constitute such number of Vigilance Committees in each district and each Sub-Division as it may think fit. Sub-section (2) of Section 13 deals with constitution of Vigilance Committee in a district. Sub-section (3) of Section 13 deals with the constitution of Vigilance Committees in a Sub-Division of which the persons enumerated in clauses (a) to (f) shall be members and S.D.M. or a person nominated by him shall be the Chairman. Sub-section (4) provides that each Vigilance Committee shall regulate its own procedure and have secretarial assistance, as may be necessary provided by the District Magistrate in relation to Vigilance Committee in district and in the Sub-Division by the Sub-Divisional Magistrate.

Section 14 deals with functions of the Vigilance Committee as enumerated in clauses (a) to (f) of sub-section (1), Clause (d) of sub-section (1) of Section 14 casts a duty on Vigilance Committee to keep an eye on the number of offences of which cognizance has been taken under this Act, clause (e) speaks of making a survey as to whether there is any offence of which cognizance ought to be taken under this Act and clause (f) requires Vigilance Committee to defend any suit instituted against a freed bonded labourer or a member of his family of any other

person dependent on him for the recovery of the whole or part of any bonded debt or any other debt which is claimed by such person to be bonded debt. Section 15 deals with burden of proof, which provides that whenever any debt is claimed by a bonded labourer, or a Vigilance Committee to be a bonded debt the burden of proof that such debt is not a bonded debt shall lie on the creditor. Chapter VI deals with offences and procedure for trial. Section 16 provides that whoever, after the commencement of the Act compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees. Section 17 deals with the punishment for advancement of bonded debt; sentence provided for such an act is the same as is provided u/s 16 of the Act. Section 18 deals with the punishment for extracting bonded labour under the bonded labour system, punishable with imprisonment which may extend to 3 years and also a fine which may extend to Rs. 2,000/- and out of the fine, if recovered the payment shall be made to the bonded labourer at the rate of rupees five for each day for which the bonded labour was extracted from him. Section 20 deals with the abetment of an offence, which shall be punishable with the same punishment as is provided for the offence which has been abetted. Section 21 speaks of offences to be tried by Executive Magistrate which reads thus -

"21. Offences to be tried by Executive Magistrate. - (1) The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the First Class or of the Second class for the trial of the offences under this Act, and on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973, to be a Judicial Magistrate of the first class or of second class, as the case may be.

(2) An offence under this Act may be tried summarily by a Magistrate."

Section 22 of the Act provides that every offence under the Act shall be cognizable and bailable. Section 23 of the Act deals with the offences by companies. Section 24 to Section 27 of Chapter VII deals with miscellaneous provisions.

Part IV of the Constitution deals with the Directive Principles of State Policy. Article 50 of Part IV of the Constitution provides that the State shall take steps to separate the Judiciary from the Executive in public services of the State. True the Directive Principles of the State Policy cannot as such be enforced by Courts. But while considering the question of enforcement of fundamental rights of a citizen, it is open to the Courts to be guided by the Directive Principles to ensure that in doing justice the principles contained therein are maintained. Fundamental rights and the Directive Principles constitute "Conscience of the Constitution". The Constitution aims at bringing about a synthesis between "Fundamental Rights" and "Directive Principles" of the State Policy by giving to the former a place of pride and to the latter a place of permanence; together they form core of the

Constitution. They constitute its true conscience and without faithfully implementing the Directive Principles it is not possible to achieve the Welfare State contemplated by the Constitution - See - His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, ; V. Markendeya and Others Vs. State of Andhra Pradesh and Others, .

In Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, , P.N. Bhagwati, J. (as he then was) has observed in paragraph 52 that Article 50 is the "Conscience of the Constitution" and embodies the social philosophy of the Constitution and its basic under pinnings and values, plainly revealing without any scope for doubt or debate, the intent of the Constitution-makers, to immunise the Judiciary from any form of executive control or interference. The independence of the Judiciary is a fighting faith of our Constitution. Fearless justice is the cardinal creed of our founding document.

It was in that light that when the Code of 1973 was enacted, complete separation of Judiciary with Executive was made. Chapter II of the Code deals with the constitution of Criminal Courts and the Offices. Section 6 deals with Classes of Criminal Courts. It says that besides the High Courts and the Courts constituted under any law, other than the Code, there shall be, in every State, the following classes of Criminal Courts,- namely,

- (i) Courts of Session;
- (ii) Judicial Magistrates of the first class and in metropolitan areas, Metropolitan Magistrates;
- (iii) Judicial Magistrates of the second class; and
- (iv) Executive Magistrates.

From the set up of the classes of Criminal Courts, it is apparent that the scheme of separation of the Judiciary from the Executive has been implemented. All Judicial Magistrates are under the control of the Sessions Judge and the Executive Magistrates who are very few in number, under the control of the District Magistrate, which would be evident from Section 15 of the Code. On enforcement of the Code, there has been complete separation of Judiciary from the Executive in whole of the country. This has been done to implement the mandate under Article 50 of the Constitution which requires that State shall take steps to separate the Judiciary from Executive. By merging the judicial function in the executive, the basic structure of the Constitution is affected; justice and fair trial cannot be ensured by the Executive Magistrates in as much as they are not required to be legally qualified and trained persons and in actual practice are required to perform various other functions. Their powers under the Code are limited for the purposes of maintenance of law and order or dealing with the cases of the nature as provided in Chapter VIII to Chapter X of the Code; while the Judicial Magistrate, who remains under the exclusive control of the Court of Session and the High Court has to conduct judicial inquiry and trial of cases of

various offences by recording judicial decisions. In fact the functions of the Judiciary and Executive are quite different. In other words it is clear that the Executive Magistrate has no role to play in conducting judicial trial and recording judicial decisions. However, in spite of the separation of Judiciary from Executive, Section 21 of the Act enables the State Government to confer judicial power on an Executive Magistrate or the S.D.M. to try offences judicially and to render judicial decisions and by virtue of the conferment of such power on Executive Magistrate, such Executive Magistrate for the purposes of the Code, for the trial of the offences under the Act is deemed to be Judicial Magistrate of first class or second class as the case may be. This is opposed to the policy of separation of Judiciary from the Executive and is against the "conscience of the Constitution" contained in Article 50 of the Constitution.

Besides the fact that some of the Executive Magistrates are not Law Graduates and are not well versed with the practice and procedure and functioning of the judicial system, they are Members/Chairman of Vigilance Committees whose function, inter alia, is to watch the number of offences of which cognizance has been taken and to survey as to whether there is any offence of which cognizance ought to be taken. The trial before such a Magistrate may not always be biased, yet the accused may entertain reasonable apprehension on account of attending circumstances that he will not get a fair trial. The cardinal principle of administering justice is that the justice must not only be done but must be seen to be done; here it would be appropriate to refer to the observations of the Supreme Court in paragraph 94 in case of *In re Special Court Bill, 1978* (supra):

"94. Though this is so, the provisions of the Bill appear to us to be unfair and unjust in three important respects. In the first place, there is no provision in the bill for the transfer of cases from one special Court to another. The manner in which a Judge conducts himself may disclose a bias, in which case the interest of justice would require that the trial of the case ought to be withdrawn from him. There are other cases in which a Judge may not in fact be biased and yet the accused may entertain reasonable apprehension on account of attendant circumstances that he will not get a fair trial. It is of the utmost importance that justice must not only be done but must be seen to be done. To compel an accused to submit to the jurisdiction of a Court which, in fact, is biased or is reasonably apprehended to be biased is a violation of the fundamental principles of natural justice and a denial of fair play. There are yet other cases in which expediency or convenience may require the transfer of a case, even if no bias is involved. The absence of provision for transfer of trials in appropriate cases may undermine the very confidence of the people in the Special Courts as an institution set up for dispensing justice."

The case of *Kartar Singh v. State of Punjab* (supra) deals with provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 and Terrorist Affected Areas (Special Courts) Act, 1984 which were examined by the Supreme Court in the light of the Articles 50, 14 and 21 of the Constitution. In our opinion, the

case is distinguishable as it does not deal with trial of the offences by Executive Magistrate. In that case constitution of a Designated Court was considered to be parallel to Court of Session since Sessions Judge or Additional Sessions Judge are to be appointed as Judges of the Designated Court. The Supreme Court in the said case also held Section 20(3) of the said Act to be valid. The provision deals with the power of Executive Magistrates to record confessions, while holding Section 20(3) as valid, the Supreme Court observed in paragraph 317 thus :

"Though we are holding that this section is constitutionally valid, we, in order to remove the apprehension expressed by the learned counsel that the Executive Magistrates and the Special Executive Magistrates who are under the control of the State may not be having judicial integrity and independence as possessed by the Judicial Magistrate and the recording of confessions and statements by those Executive Magistrates may not be free from any possible oblique motive, are of the opinion that it would be always desirable and appreciable that a confession or statement of a person is recorded by the Judicial Magistrate whenever the Magistrate is available in preference to the Executive Magistrates unless there is compelling and justifiable reason to get the confession or statement, recorded by the Executive or Special Executive Magistrates.

The conferment of the powers u/s 21 of the Act on an Executive Magistrate is for trial of the offences under the Act and not to attend pre-trial steps. There is difference between the inquiry, investigation and trial. The Executive Magistrate on whom the power is conferred can try offences under the Act. They are warrant cases. If a case is instituted otherwise than on a police report, the Court is required to hold an inquiry before framing of the charge. This cannot be done unless the expression "trial" is considered in its widest sense so as to include inquiry at pre-charge stage. Ordinarily trial in a warrant case commences after a charge is drawn up u/s 246 of the Code. Trial is a judicial proceeding before the Court which ends in conviction or acquittal. In warrant cases instituted on a police report proceedings starting with Section 238 including discharge or framing of charges u/s 239 or Section 240 amount to a trial. See - V.C. Shukla Vs. State through C.B.I., . But when a case is instituted on a private complaint the Magistrate conducts inquiry till the framing of the charge and then the inquiry is turned into a trial. As the power is conferred only for trial of the offences under the Act, it is difficult to hold that the Executive Magistrate can exercise powers u/s 167 of the Code regarding a remand etc. or conduct pre-charge inquiry.

Article 21 of the Constitution provides that procedure by law must be fair, just and reasonable and the accused should have satisfaction that he will get a fair and just trial. Therefore, on enforcement of the Code there was separation of Judiciary from the Executive. The fact that an appeal or revision is to be heard by the Court of Session or High Court would not cure the defect, as it is of the greatest importance that trial should inspire confidence and when under the procedure prescribed it cannot inspire confidence, such a procedure should be

held to be invalid, unjust and unfair and also contrary to the provisions of the Code.

As the Sub-Divisional Magistrate or the Executive Magistrate plays an important role under the scheme of the Act and S.D.M. remains the Chairman of the Vigilance Committee, there is a force in the contention that the trial of the offences under the Act will be biased or there will be reasonable apprehension of bias in the trial by an Executive Magistrate which is violative of the principles of natural justice and denial of fair play.

Counsel for the respondents could not point out the benefit which would be derived by vesting judicial powers on the Executive Magistrates by the enabling provision u/s 21 of the Act which is not only against Article 50 of the Constitution but also against the Articles 14 and 21 and also the scheme of the Code. Therefore, we are of the opinion that Section 21 of the Act which enables the State Government to confer on an Executive Magistrate the powers of a Judicial Magistrate of first class or second class for the trial of the offences under the Act, offends Articles 21, 14 and 50 of the Constitution. The Full Bench decision of Punjab and Haryana High Court in the case of Sukhdev Singh v. State of Punjab (supra) supports our view.

It is contended that the jurisdiction is concurrent and, therefore, the cases can be transferred for trial by the Judicial Magistrate as ordered by the Bombay High Court in Govind Shanwar Chatal v. Dattatraya Waman Bhanushali (supra). This, of course, can be done. But that is not the way out, as, in our view, as and when any notification is issued conferring power on an Executive Magistrate for trial of the offences under the Act, the question will have to be dealt with. There should be fair trial and equal protection of law. Therefore, when offences under the Act can be tried effectively and speedily by the Judicial Magistrates, the question of trial by an Executive Magistrate does not arise particularly when it generates an apprehension in the mind of the accused that the trial before such Executive Magistrate will be biased as being the member of the Vigilance Committee.

As a result of the aforesaid discussion, we declare that the enabling provision contained in Section 21 of the Act violates Articles 21, 14 and 50 of the Constitution. Consequently trial against the petitioners for the offences under the Act by the Sub-Divisional Magistrate cannot proceed. All the cases referred to in paragraph 2 above shall stand transferred to the Court of concerned Judicial Magistrate, First Class, records shall be transmitted. As the cases are pending since 1983, the cases shall be disposed of in accordance with law expeditiously within the outer limit of six months. The parties to the cases shall appear before Judicial Magistrate, First Class, Petalwad on 1st November, 1995. If the petitioners fail to appear, their presence shall be secured by process of law.

As we have struck down Section 21 of the Act, the cases pending under the Act before the Executive Magistrates or Sub-Divisional Magistrates shall also stand transferred to concerned Judicial Magistrates and for that Executive Magistrates

or Sub-Divisional Magistrates shall take steps and shall transmit the records to the appropriate Judicial Magistrates.