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There is a good deal to be said on both sides but after considering the matter carefully, I am not prepared to dissent from the conclusion reached by the Single Judge. I would accordingly affirm his judgment and dismiss the appeal with costs.

BROADWAY J.—I concur. BROADWAY J.

A. N. C.

Appeal dismissed.

MISCELLANEOUS CRIMINAL.

Before Shadi Lal C. J. and Broadway J.

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Jan. 31.

THE CROWN, Petitioner

versus

SUKH DEV AND OTHERS (ACCUSED) Respondents.

Criminal Miscellaneous No. 290 of 1929.

Criminal Procedure Code, Act V of 1898 (as amended by Act XVIII of 1923), sections 208 (3), 561-A—Rules and Orders of the High Court (Lahore), Volume II, Chapter IX, page 74, para. 16—Inherent powers in criminal cases—extent and exercise of—whether High Court can be called upon to make pronouncements for guidance of lower Courts.

In the course of the preliminary inquiry into a number of serious charges made against seventeen persons, after the depositions of about 145 witnesses for the prosecution had been recorded by the Magistrate, the Public Prosecutor considered that sufficient *primâ facie* proof had been given against all the accused and in order to prevent delay he did not wish to produce before the Magistrate the remaining witnesses (some 400) who were expected to give corroborative or formal evidence, but desired that (1) the Magistrate should, if at any time he considered that a *primâ facie* case had been established by the evidence led, exercise the discretion given by section 208 (3) of the Criminal Procedure Code and refuse to issue process for the examination of further witnesses during the inquiry if he deemed it unnecessary to do so; and (2) if the Magistrate considered it proper to do so, he should pass an order under section 512 of the Code dispensing with the re-examination of the witnesses whose evidence had

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been recorded before the appearance of the three absconding accused in Court. Apprehending, however, that the instructions contained in Chapter IX, paragraph 16 of Volume II, of the Rules and Orders of the High Court, which require a Committing Magistrate to make his record complete, might prevent the Magistrate in the present case from complying with this request, the Public Prosecutor applied to the High Court to give directions to the Magistrate to adopt the courses above mentioned and relied on section 561-A of the Code.

Held, that it is an established principle that Courts must possess inherent powers, apart from the express provisions of the law, which are necessary to their existence and the proper discharge of the duties imposed upon them by law.

Courts and their Jurisdiction by J. D. Works, section 27, page 170, referred to.

And, that this doctrine finds expression in section 561-A (added to the Criminal Procedure Code by Act XVIII of 1923), which does not confer any new powers on the High Court, but merely recognises and preserves the inherent powers previously possessed by it.

Further, that the section embraces three classes of orders which may be necessary, *viz.* (*i*) to give effect to any order passed under the Code; (*ii*) to prevent abuse of the process of any Court; and (*iii*) to secure the ends of justice; but that the High Court does not possess an unrestricted and undefined power to make any order which it might please to consider was in the interests of justice. The special jurisdiction recognised by section 561-A can be invoked only in exceptional cases for which no express provision has been made by the Code, and to redress only such grievance as calls for an immediate relief.

Raju v. *Crown* (1), followed.

Held also, that while section 151 of the Civil Procedure Code recognises the existence in civil cases of inherent jurisdiction in *all* the Civil Courts, superior as well as inferior; section 561-A of the Criminal Procedure Code expressly confines its operation to the High Court—the jurisdiction of which to act *ex debito justitiæ* should be sparingly and

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cautiously exercised and only in those cases in which no other remedy is available.

Hukam Chand Boid v. *Kamalanand Singh* (1), followed.

Held further, that it was never contemplated by the Legislature that the High Court should exercise its inherent power for making pronouncements upon questions of law in order to guide a Magistrate in conducting a preliminary enquiry and before the Magistrate has himself determined those questions.

Application under section 561-A, Criminal Procedure Code.

CARDEN-NOAD, for Petitioner.

AMAR DAS, SANT SINGH and MALIK MOHAMMAD AMIN, for some of the Respondents.

SHADI LAL C. J.—This is an application, under section 561-A of the Criminal Procedure Code, made by the Government Advocate on behalf of the Crown in a case which is pending before a Magistrate. The circumstances, under which the application has been made, do not admit of any dispute. Seventeen persons are being prosecuted for several serious crimes, such as murder, dacoity, offences against the State and under the explosive Substances Act, and also for criminal conspiracy. The Magistrate, who is conducting the preliminary enquiry, has already recorded the depositions of about 145 witnesses for the prosecution, and it is proposed to produce before him further evidence in support of the charges brought against the accused. But, as stated in the application, there are many other witnesses "probably about 400 in number, who will be called in the Sessions Court (if the case is committed), whose evidence merely corroborates and supplements the evidence of the approvers and other principal witnesses," or is of a formal character. SHADI LAL C.J.

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It appears that two of the prisoners were arrested after the commencement of the enquiry, one of whom appeared before the Magistrate after 29 witnesses, and the other after 84 witnesses, had been examined. The learned Government Advocate also states that another accused was arrested only a few days ago, after this application had been presented to the High Court.

To prevent delay at the preliminary stage of the case the prosecution do not desire to re-examine the witnesses whose evidence had been recorded before the appearance of the three absconding accused in Court. Nor do they wish to produce the witnesses, about 400 in number, who are expected to give corroborative or formal evidence. They, however, apprehend that the instructions contained in Chapter IX, paragraph 16 of Volume II of the Rules and Orders of the High Court, which require a Committing Magistrate to make his record complete, might prevent the Magistrate in the present case from complying with their request. They accordingly ask this Court to grant the following two prayers :—

" (1) That directions may be given to the Magistrate that the above-mentioned instructions contained in paragraph 16 at page 74 of the High Court Rules and Orders, Volume II, should be relaxed so as to enable the Magistrate, if at any time he considers that a *primâ facie* case has been established by the evidence led, to exercise the discretion given by section 208 (3), Criminal Procedure Code, and to refuse to issue process for the examination of further witnesses during the enquiry if he deems it unnecessary to do so.

" (2) That directions may also be issued to the Magistrate that in spite of the said instructions above

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referred to, he is at liberty, if he considers it proper so to do, to pass an order under section 512, Criminal Procedure Code, dispensing with the attendance of the witnesses called prior to the appearance of any individual accused in his Court. The Magistrate may be further directed, if this Hon'ble Court deems fit, that these two accused be supplied with copies of the evidence of all witnesses recorded prior to their production in Court."

Mr. Amar Das, who appears for five prisoners, raises a preliminary objection that the law governing both the matters mentioned in the application is laid down in explicit terms in the Code of Criminal Procedure, and that the inherent jurisdiction of the High Court cannot be invoked for the purpose of guiding the Magistrate on points of law for which provision has been made by the Legislature. Mr. Carden-Noad, however, retorts that, though the Code states the law on the subject, the instructions referred to above fetter the discretion of the Magistrate and that he would probably follow them, unless the High Court gives directions to the effect that he is not bound to record all the evidence, and that after he has taken all such evidence as may be produced in support of the prosecution or on behalf of the accused or as may be called for by himself he may refuse to issue process to compel the attendance of any witness at the instance of the prosecution or the defence, if, for reasons to be recorded by him, he deems it unnecessary to do so.

The determination of the question depends upon the interpretation to be placed upon section 561-A, which is in these terms :—

" Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make

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such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

The reason for enacting this section, which, it is to be observed, was recently added to the Code by the Code of Criminal Procedure (Amendment) Act, XVIII of 1923, does not require any elaborate discussion. No legislative enactment dealing with procedure can provide for all the cases that may possibly arise, and it is an established principle that Courts must possess inherent powers, apart from the express provision of the law, " which are necessary to their existence and the proper discharge of the duties imposed upon them by law " (*vide* " Courts and their jurisdiction " by J. D. Works, section 27, page 170). This doctrine finds expression in section 561-A, which as rightly pointed out by the learned Government Advocate, does not confer any new powers on the High Court, but merely recognises and preserves the inherent powers previously possessed by it.

The section, as its language shows, embraces three classes of orders, namely, orders which may be necessary (*i*) to give effect to any order passed under the Code; (*ii*) to prevent abuse of the process of any Court; and (*iii*) to secure the ends of justice. The first two classes need not detain us long. It is an obvious proposition that when a Court has authority to make an order, it must also have power to carry that order into effect. If an order can lawfully be made, it must be carried out; otherwise it would be useless to make it. The power to enforce obedience to the mandates of the Court necessarily springs from the very existence of the authority to issue the mandates;

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and, if that power is not expressly given by the Statute, it must be deemed to be inherent in the Court.

It is also clear that the authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority, so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely, to promote justice and to prevent injustice.

It is not, however, suggested that the present application has been made in order to enable the Magistrate to enforce any order made by him or to prevent abuse of the process of his court. The object of the prosecution in making the application is to shorten the period of enquiry by dispensing with the production of evidence which may be deemed to be unnecessary at the present stage. It is no doubt open to the prosecution not to produce evidence which they consider unnecessary, but the trial Judge or the High Court may take objection to the legality of the order of commitment based upon an incomplete enquiry. The learned Government Advocate is naturally anxious to avoid such adverse finding, and asks this Court to make a pronouncement that the Code gives the Magistrate a discretion to curtail the proceedings in the manner specified in the application, and that he is not bound to follow the instructions requiring him to make his record complete by examining all the witnesses for the prosecution.

The matter is then narrowed down to the point whether these circumstances warrant the exercise by the High Court of its inherent jurisdiction on the ground that, in order to secure the ends of justice, it

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is necessary to make an order directing the Magistrate to conduct the enquiry in accordance with the suggestion made by the prosecution. Now, the rule is firmly established that the High Court does not possess, nor did it ever possess, an unrestricted and undefined power to make any order which it might please to consider was in the interests of justice [*vide, inter alia, Raju and another* v. *The Crown* (1)]. The inherent power cannot be capriciously or arbitrarily exercised, but, as observed by Woodroffe J. in *Hukam Chand Boid* v. *Kamalanand Singh* (2), the Court in the exercise of its inherent power must be careful to see that its decision is based on sound general principles and is not in conflict with them or the intentions of the Legislature. That the inherent jurisdiction must be exercised with care is further emphasized, so far as criminal cases are concerned, by the fact that, while section 151 of the Civil Procedure Code, which governs the exercise of the inherent power in civil cases, recognises the existence of this jurisdiction in all the Civil Courts, superior as well as inferior, section 561-A of the Criminal Procedure Code expressly confines its operation to the High Court.

The jurisdiction to act *ex debito justitiæ* should be sparingly and cautiously exercised and only in those cases in which no other remedy is available. The application before us proceeds on the ground that the instructions quoted above are at variance with the law enacted by the Legislature; and that, even when a conflict between the two is established, the Magistrate is likely to follow those instructions in preference to the Statute law. To avoid this contingency we are asked to enter into a discussion upon the admissibility or otherwise of the depositions recorded in the absence

(1) (1929) I. L. R. 10 Lah. 1. (2) (1906) I. L. R. 33 Cal. 927.

of the absconding accused, and also to expound the law as to whether a Magistrate should, or should not, take all the available evidence before making an order of commitment. It must be remembered that the Magistrate has not determined these questions, and it is clear that any opinion, which we may express at this initial stage, would be no more than a mere *obiter dictum*. That opinion may be followed by the subordinate Courts, but there can be little doubt that it would not be binding upon another Division Bench of this Court before whom the case may come up on appeal for final decision.

I am not aware of any judgment, and certainly none has been cited before us, in which a High Court has ever exercised its inherent jurisdiction to discuss questions of law which might arise, on the happening of a certain event, in a case pending in a subordinate Court. If we once decide to extend our inherent jurisdiction to a case of this description our decision would certainly be availed of by other persons interested in cases pending in the subordinate Courts; and we would be called upon to adjudicate upon all sorts of hypothetical questions. The High Court would then be required to perform the function of a legal adviser to the litigants and the subordinate magistracy.

I have bestowed my anxious and earnest consideration upon the matter and reached the conclusion that the special jurisdiction recognised by section 561-A can be invoked only in exceptional cases for which no express provision has been made by the Code, and to redress only such grievance as calls for an immediate relief, which can be granted only by the High Court. The inherent jurisdiction should be exercised with due care and caution and must conform to

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sound general principles and precedents. It was never contemplated by the Legislature that the High Court should exercise its inherent power for making pronouncements upon questions of law in order to guide a Magistrate in conducting a preliminary enquiry. I would accordingly dismiss the application.

SHADI LAL C.J.

BROADWAY J. BROADWAY J.—While it is possible that the Rules of this Court might need consideration, I am in complete agreement with my Lord the Chief Justice in the view that any opinion we might express would be a mere *obiter dictum* which would not have any binding force.

Indeed I consider that any such opinion might even be open to misconception by the Subordinate Courts. I therefore concur in dismissing the application and in the reasons for so doing.

N. F. E.

Application dismissed.