

**R.C. Gupta Vs. the State**

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**Court :** Allahabad

**Decided On :** May-21-1957

**Reported in :** AIR1959All219; 1959CriLJ410

**Judge :** V.G. Oak and ;B. Dayal, JJ.

**Acts :** [Constitution of India](#) - Article 20 and 20(3); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 94

**Appeal No. :** Criminal Revn. No. 681 of 1957

**Appellant :** R.C. Gupta

**Respondent :** The State

**Advocate for Def. :** Md. Yaqub Siddiqi, Adv. and ;H.N. Seth, Asst. Govt. Adv.

**Advocate for Pet/Ap. :** N.C. Upadhyaya, Adv.

**Disposition :** Revision allowed

**Judgement :**

**V.G. Oak, J.**

1. The question raised in this criminal revision is whether an order passed by a Court under Section 94 of the Code of Criminal Procedure attracts the prohibition contained in Article 20(3) of the [Constitution of India](#). The question arises under

the following circumstances.

2. Mohan Lal Sharma filed a complaint against Rule C. Gupta under Sections 406, 477, 467 and 201, I.P.C. The case was in the stage of an enquiry under Section 202, Cr. P. C. The complainant applied to the trial Court for an order to the police for recovery of certain documents from the possession of the accused under Section 96, Cr. P. C. Accordingly, the trial Court issued a search warrant under Section 96, Cr. P. C. to the station officer, Kotwali, Agra.

The case was on the file of the Hony. Cantonment Bench Magistrates, Agra, Subsequently, the trial Court issued a summons to the accused calling upon him to appear either himself or produce some of his subordinates and to produce certain documents in the Court. An objection was filed on behalf of the accused.

The main point raised in the objection was that, under Article 20(3) of the Constitution the accused could not be compelled to produce evidence against himself. The objection was overruled. On 19-2-1957 the trial Court passed the following order :

'Arguments heard. The applicant shall produce documents required to be produced.'

3. R. C. Gupta accused filed a revision application against the trial Court's order dated 19-2-1957. That criminal revision was dismissed by the learned Additional District Magistrate of Agra by his order dated 21-5-1957. He held that there was no violation of Article 20(3) of the Constitution. Rule C. Gupta filed the present criminal revision against the Additional District Magistrate's order dated 21-5-1957.

When the criminal revision came up before a learned single Judge of this Court, he thought that the case should be heard by a Bench of two judges, in view of the importance of the question of law involved in the case. That is how this criminal revision has come up before us.

4. Section 94, Cr. P. C. enables a Court to issue a summons to produce a document or any other thing. Section 96 of the Code empowers the Court to issue a search warrant. These are different provisions for production of documents

before the Court. Clause (3) of Article 20 of the Constitution runs thus 'No person accused of any offence shall be compelled to be a witness against himself.' The question to be considered in the present case is whether Article 20(3) of the Constitution is contravened, when a summons to produce a document is issued against a person, who is an accused in a case.

5. A somewhat similar question came up for consideration before their Lordships of the Supreme Court in *M. P. Sharma v. Satish Chandra*, AIR 1954 SC 300. In that case the question considered by the Supreme Court was the validity of a search warrant issued under Section 96, Cr. P. C. Their Lordships however had occasion to discuss orders under Section 94, Cr. P. C, also. In paragraph 10 of the judgment in *M. P. Sharma's* case, AIR 1954 SC 300 their Lordships observed thus :

'Broadly stated the guarantee in Article 20(3) is against 'testimonial compulsion.' It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import..... A person can 'be a witness' not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness or the like. 'To be a witness' is nothing more than 'to furnish evidence', and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes..... It follows that the protection afforded to an accused in so far as it is related to the phrase 'to be a witness' is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained by him.'

Again, their Lordships observed in paragraph 18 thus :

'notice to produce is addressed to the party concerned and his production in compliance therewith constitutes a testimonial act by him within the meaning of Article 20(3) as above explained.'

These observations make it clear that, the expression 'to be a witness' used in Article 20(3) of the Constitution has to be read in a wide sense. That expression

includes furnishing evidence.

6. The learned Assistant Government Advocate relied upon the following sentence appearing in paragraph 17 of that judgment:

'Notwithstanding these assumptions we are unable to read Sections 94 and 96 (1), Criminal P. C. as importing any statutory recognition of a theory that search and seizure of documents is compelled production thereof,'

In that passage their Lordships were merely pointing-out that, search and seizure of documents could not be treated as compelled production.

It is to be remembered that M. P. Sharma's case, AIR 1954 SC 300 was under Section 96, Cr. P. C. In the present case we are concerned with an order issued under Section 94, Cr. P. C. An order under Section 94, Cr. P. C., is directed to a person to produce documents before the Court. Such an order is clearly an order to furnish evidence. Such an order therefore attracts the prohibition contained in Clause (3) of Article 20 of the Constitution.

7. The same view was taken by a Division Bench of this Court in Abdul Salam v. State, Criminal Revn. No. 795 of 1956, decided by the Division Bench on 6-10-1958. Two questions were referred by a learned single Judge. The questions were recast by the Division Bench. Question No. 1 as recast ran as follows :

'If by an order of the Court the accused person produces a document which contains evidence against him, does the production of the document amount to testimonial compulsion within the meaning of Article 20(3) of the Constitution?'

The Division Bench answered this question in the affirmative. We respectfully agree with that view.

8. It follows that in the present case the trial Court was wrong in compelling the accused to produce documents, which were likely to be used as evidence against him. Since the impugned order contravenes Article 20(3) of the Constitution, that order must be set aside.

9. The Criminal Revision is allowed. We set aside the trial Court's order dated 19-2-1957 directing the accused to produce documents before the Court.

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