

iqbal Ahmed Vs. Ketki Devi

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Court : Allahabad

Decided On : Jul-31-1975

Reported in : 1976CriLJ244

Judge : H.N. Kapoor, J.

Appellant : iqbal Ahmed

Respondent : Ketki Devi

Judgement :

ORDER

H.N. Kapoor, J.

1. The applicant has filed this petition under Section 482 Cr.P.C. with the prayer that the order of the Sessions Judge dated 16-5-1974 be quashed. The applicant was being tried in Sessions Trial No. 11 of 1970 in a case under Section 465/109 I. P.C. on the basis of a complaint filed by Smt. Ketki Devi. During the pendency of the trial, an application was moved on behalf of the complainant praying that the court in the interest of justice be pleased to take thumb-impressions of the accused Iqbal Ahmad under Section 73, Indian Evidence Act and to send them to the Government Handwriting and Finger Prints Expert for comparison with his thumb-impression affixed in the relevant book of the Registration office. On this application, the learned Sessions Judge passed the impugned order dated 16-5-1974 which is as follows:--

The statement of the accused was taken under S. 342(1) of the Cr.P.C. He is called upon to give his thumb-impression for comparison by expert, but it is explained to him that he is not bound to give his thumb mark as if it goes against him after comparison it may be an evidence against him. He may refuse to give his thumb-mark but in that case a presumption may be drawn against him.

HAMKO SAMAJHNE KA MAUKA DIYA JAWEDASKHAT Iqbal Ahmad in Urdu. The accused wants time to consult his counsel. He will be called upon to give his statement after lunch interval.

Sd. R. B. Srivastava,

16-5-1974

2. The accused Iqbal Ahmed then moved a revision application in this Court which was rejected as it was against an interlocutory order. He also filed a transfer application in this Court which was also rejected. He then filed the present petition under Section 482, Cr.P.C.

3. learned Counsel for the petitioner has challenged the order of the learned Sessions Judge on two grounds:

Firstly, according to him the counsel for the complainant had no locus standi to move any such application as the case was to be conducted by the public prosecutor under Section 493, Cr.P.C. (Old). Secondly, he has argued that the Court should not have passed any order which had the effect of helping the prosecution. According to him, under Section 73, Indian Evidence Act, the Court could have asked the accused to give his thumb-impression only for the purpose of its being compared by the Court itself. He has also argued that there is nothing to show that the Sessions Judge was himself satisfied that such comparison of the thumb-impression was necessary for deciding the case. In support of his contention, he has placed reliance on the following cases:

R. R. Khajotia v. A. S. T. Zaidy, (1973 Cr LJ 1499) (Bom); Hiralal Agarwalla v. The State : AIR1958 Cal123 and State v. Poonamchand Gupta : AIR1958 Bom207 . These are single Judge decisions in which it was held that the Court cannot order

thumb-impressions or signatures to be taken under Section 73, Indian Evidence Act and to hand them over to the prosecution for sending them to Handwriting Expert and thus to enable the prosecution to create evidence against the accused. It has been held by Hon'ble Supreme Court in the case of State of Bombay v. Kathi Kalu, (1961-2 Cr LJ 856) (SC) by a majority judgment that it does not amount to compelling the accused to be a witness against himself within the meaning of Article 20(3) of the Constitution by asking him to give specimen handwritings or impressions of fingers, palm or foot etc. Under Section 73, Indian Evidence Act, the learned Sessions Judge was fully authorised to ask the accused to give his thumb-impression failing which an adverse inference could be drawn against him. Section 73, Indian Evidence Act reads as follows:

In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(This section applies also, with any necessary modifications, to finger-impressions.)

4. Finger prints by implication are to be compared with a disputed finger print with the help of the Expert. I am not prepared to put the limited interpretation on the words 'for the purpose of enabling the Court to compare' that the Court can itself compare the finger impressions and cannot send them to the Handwriting Expert directly and invite the opinion of the Handwriting Expert, No doubt, it would be deemed that the Court has itself considered the Expert's evidence on this point necessary and the Expert may be examined as a Court witness. The request in the application was that the finger impression of the accused may be taken and sent to the Government Handwriting Expert by the Court. They will of course be sent by the Court to the Government Expert under its own seal and will not be

handed over to the prosecution for making such use as the prosecution may consider necessary. It is true that the complainant himself had no locus standi under Section 493, Cr.P.C. (Old), but the counsel for the complainant could move the application under the direction of the public prosecutor and there is nothing to show that the application was moved against the wishes of the public prosecutor. Counsel for the complainant is often allowed by the public prosecutor even to advance arguments. In fact, by the aforesaid application the attention of the Court was drawn to this aspect and it was ultimately for the Court to be satisfied whether it was a fit case in which it would like to take the finger prints of the accused for comparison. The order ultimately passed by the learned Sessions Judge was obviously passed on his own satisfaction. There is, thus, no illegality in the order passed by the learned Sessions Judge. It is a perfectly just order,

5. In the result, the petition is dismissed. The stay orders dated May 28, 1974 and 18-7-1975 are vacated. A copy of this order shall be sent to the Sessions Judge concerned at an early date. The Sessions Judge shall now proceed with the trial without further delay.

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