

Dharamvir Singh Vs. State

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Court : Punjab and Haryana

Decided On : Oct-21-1974

Reported in : 1975CriLJ884

Judge : Kulwant Singh Tiwana, J.

Appellant : Dharamvir Singh

Respondent : State

Judgement :

ORDER

Kulwant Singh Tiwana, J.

1. Criminal cases under Sections 406, 420, 467 and 471. Indian Penal Code, are pending against Dharam Vir Singh which are being investigated by Jagadhri Police. The investigating agency was in necessity of the signatures of Dharamvir Singh in order to connect him with those offences. An application in this behalf was made to the Judicial Magistrate First Class, Jagadhri by the Investigating Officer for issuing a direction to Dharamvir Singh accused-petitioner to give specimen writings so that those could be got compared from the hand-writing expert. The learned Judicial Magistrate First Class, Jagadhri, acting under Section 73 Of the Indian Evidence Act, allowed this application. As the order of the learned Magistrate went against the interest of the petitioner he preferred a revision which was heard by Shri P. R, Aggarwal, Additional Sessions Judge, Ambala. The

learned Additional Sessions Judge vide his report, which is before this Court, disagreed with the order of the Judicial Magistrate. First Class. Jagadhri, and has made a reference for quashing those orders. It is in this manner that this revision is before this Court.

2. The only question involved in this revision is whether a Court under Section 73. Indian Evidence Act can direct an accused person to give his signatures at the instance of the investigating agency so that after comparison from an expert these could be used against him as evidence. The learned counsel for the State relied on a Full Bench decision of Patna High Court in *Gulzar Khan v. State* : AIR1962 Pat255 to argue that such a thing was permitted by law. He also tried to derive help from *State of Bombay v. Kathi Kalu Oghad* : 1961 CriLJ856 In *T. Subbiah v. S. K. D. Rama-swamy Nadar* : AIR1970 Mad85 ; *Gulzar Khan's case* (supra) was noticed but it was not followed. Similarly *Kathi Kalu Oghad's case* was referred and was distinguished. In this case, para. 10. *Kathi Kalu Oghad's case* (supra), was reproduced in extenso. in para. 14, which contains the facts of that case. The learned Judge of the Madras High Court observed at P. 89 of AIR : (at p. 258 of Cri. L. J.)-

Nowhere in this passage we find that Section 73 of the Evidence Act authorises the Court to take the finger impression or specimen handwriting of the person present in Court in the course of investigation by the police.

The learned Judge further observed at (P. 90 of AIR : (259 of Cri. L. J.)-

This passage makes it abundantly clear that the Supreme Court was not concerned with any other question in relation to the facts of each of these cases. I am, therefore, of the view that, there is no basis for the contention of the learned counsel that the Supreme Court has at least indirectly approved the point that the Magistrate can take handwriting or signature of the accused in the course of investigation.

Similar view was expressed by a Division Bench of the Kerala High Court in *Alloysious John v. The State of Kerala* (1966) Mad LJ (Cri) 298.

3. In view of the above cited judgments it is clear that Section 73 of the Indian Evidence Act does not contemplate that the accused can be asked, persuaded or coerced¹ to give his handwriting or thumb impressions at the instance of the police so that these may be, at a later stage, used against him. The learned Additional Sessions Judge took pains to make a detailed reference. The learned Magistrate transgressed the provisions of law in directing Dharamvir Singh petitioner to give his signatures at the instance of the police. The order being bad in law amounts to illegality and requires to be Quashed. Accepting the reference of the learned Additional Sessions Judge, Ambala. the order is set aside.

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