

Pali Ram Vs. State

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Court : Delhi

Decided On : Feb-18-1975

Reported in : 1975CriLJ1756; ILR1975Delhi352

Judge : Jagjit Singh and; Vyas Dev Misra, JJ.

Acts : [Evidence Act, 1872](#) - Sections 73

Appeal No. : Criminal Revision Appeal No. 46 of 1973

Appellant : Pali Ram

Respondent : State

Advocate for Pet/Ap. : C.L. Behl and; K.L. Arora, Advs

Judgement :

Jagjit Singh, J.

(1) This revision petition was referred to a larger Bench by a learned Single Judge of this Court. That is how it came to be heard by us.

(2) The facts giving rise to the revision are not disputed. Har Narain and nine o

(3) The challan case being exclusively triable by the Court of Sessions inquiry proceedings were started by the Additional Chief Judicial Magistrate, under chapter xviii, section 207A, of the Code of Criminal Procedure, 1898. The trial of

the complaint was also commenced before the same Magistrate.

(4) After most of the prosecution evidence had already been recorded in connection with the inquiry proceedings an application, dated December 11, 1970, was submitted on behalf of the prosecution. It was stated in the application that one of the documents tendered in evidence against the accused was Exhibit Public Witness . 21/F and that according to the prosecution it was in the handwriting of Pali Ram, but it could not be sent earlier to the Government Examiner of Questioned Documents along with other documents 'because the specimen writings of Pali Ram could not be taken due to his avoiding the same'. It was further stated in the application that the said document was a very vital link for establishing the case against the accused persons and it was, therefore, necessary in the interest of justice 'to obtain the specimen writings of Pali Ram accused in Court and have the same forwarded to the G.E.Q.D. Simla along with the original document marked Public Witness . 21/F to obtain the opinion of the handwriting expert'. It was, therefore, requested that action be taken under section 73 of the Evidence Act by calling Pali Ram to the Court for giving specimen writings so that these may be forwarded along with the original document to the Government Expert of Questioned Documents 'with a view to have the necessary comparison'.

(5) By his order dated May 20, 1972 Shri S. C. Chaturvedi, then Additional Chief Judicial Magistrate, made an order, the relevant portion of which pertaining to the above mentioned application was as follows:-

'This document is undoubtedly a vital link. It has an important bearing on the case as Pali Ram himself happens to be an accused. In this peculiar situation it becomes necessary to take recourse to the court's power u/s 73 in the interests of justice and to ask Pali Ram to give specimen handwriting, have it examined by handwriting expert and then to decide about it. Under these circumstances, I think it fit to allow the request of the prosecution in this regard.'

By the same order the learned Additional Chief Judicial Magistrate also called upon the prosecution to produce in the complaint case all the evidence which was required for purposes of framing charges so that if a prima fade case is made out

both in the challan and the complaint cases and charges are framed against the accused then both the cases may simultaneously be committed to the Court of Session.

(6) Feeling aggrieved by the order in so far as it directed Pali Ram to give specimen handwriting, the said accused preferred a revision to the Court of Session. The revision was dismissed on December 7, 1972 by Shri R. K. Sinha, Additional Sessions Judge. Thereafter the present revision was filed by Pali Ram in this Court.

(7) The revision filed in this Court came up for hearing before R. N. Aggarwal, J. The learned Judge, however, referred the case to a larger Bench as in his opinion it involved a point which was not free from difficulty. Though the point was not formulated but from the referring order it appears that the matter requiring consideration is whether 'the second paragraph of section 73 of the Indian Evidence Act empowers a Court to direct an accused to write any words or figures by way of specimen writing for enabling the prosecution to send the specimen writing to a handwriting expert for purposes of comparison with the writing of a disputed document alleged to be in the handwriting of that accused person.

(8) Section 73 of the Indian Evidence Act reads as under :- '73. 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.'

(9) It was not disputed before us that the expression 'any person', as appearing in the second paragraph of section 73 of the Evidence Act is wide enough to include an accused person. That indeed was the view of a Full Bench of the Rangoon

High Court in Emperor v. Nqa Tun Haiqiq I.L.R. Ran 759.

(10) In terms the second paragraph of section 73 of the Evidence Act only allows a court to 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'.

(11) Thus 'the Court is competent under law, by virtue of the provisions of the second paragraph of section 73 of the Evidence Act to direct an accused person present in Court to write any words or figures and then to itself compare the words or figures so written with any words or figures -alleged to have been written by that person.'

(12) The matter is not rest Integra. In Hiralal Agarwalla v. The State : AIR1958 Cal123 Debabrata Mookerjee, J. made the following observations:-

'S. 73 does not in my view entitle the Court to assist a party to the proceedings. It entitles the court to assist itself to a proper conclusion in the interests of justice. In so far therefore as the learned Magistrate wanted to be satisfied as to the genuineness or otherwise of certain writings it was open to him to ask the petitioner to write out certain words and figures in order that a comparison might be made between them and the disputed writing, but it was certainly not open to the learned Magistrate to hand the document over to the prosecution in order that they might make use of it as a piece of their own evidence. I do not see the propriety of allowing the Bench Clerk to step into the witness box with a document in hand swearing to the fact that the writing was done by the accused and thereafter treating that document as a prosecution exhibit in the case. Far less do I appreciate the Magistrate's proposed procedure of sending it to an Expert who is a prosecution witness. Not only that, it seems that the learned Magistrate was inclined to send the writing taken in court to a photographer of the Income-tax Department at whose instance the petitioner is being prosecuted. If the learned Magistrate wanted further assistance in the shape of enlargement of the writing, it was perfectly open to the court to call in its own photographer take the enlargements under its own supervision, study them, and if necessary, call its own Expert as a court witness in order that it might be assisted to a proper conclusion.'

The decision in the case of Hiralal Agarwalla (supra) was followed by S. P. Kotval, J. of the Bombay High Court in State v. Poonamchand Gupta and others : AIR1958 Bom207 and while dealing with the second paragraph of section 73 of the Evidence Act it was remarked:-

'NOW,it appears to me that in terms this clause limits the power of the Court to directing a person present in Court to write any words or figures only where the Court itself is of the view that it is necessary for its own purposes to take such writing in order to compare One words or figures so written with any words or figures alleged to have been written by such person. The power does not extent to permitting one or the other party before the Court to ask the Court to take such writing for the purpose of its evidence or its own case. There does not appear to have been any previous decision directly upon the point, but the recent decision of a Single Judge of the Calcutta High Court in Hiralal Agarwalla v. The State, 61 Cal. W.N. 691, supports me in this conclusion.'

(13) The decision in the case of Hiralal Agarwalla (supra) was as well relied upon by Krishnaswamy Reddy, J. of the Madras High Court in T. Subbiah v. S. K. D. Ramaswamy Nadar, : AIR1970 Mad85 in coming to the conclusion that a Magistrate has no power to direct an accused to give his specimen writing or signatures in the course of investigation by the police at their instance.

(14) The learned counsel for the State mainly relied upon certain observations made by S. N. Andley, J. (as his Lordship then was) in Kanwar Lal Gupta v. Amar Nath Chawla 1972 I.A. 95 in Election Petition No. 2 of 1971, decided on January 20, 1972). While referring to the case of Poonamchand Gupta (supra) the learned Single Judge said that it was difficult for him to see what purposes can be purposes of the Court as distinguished and distinct from the purposes of the parties before it; as the sole purpose of the Court is to do justice between the parties and that there are no purposes which can be said to be personal to the Court. Regarding the second paragraph of section 73 of the Indian Evidence Act the learned Judge expressed himself in the following words :-

'....THATthe second part of section 73 empowers the Court to direct 'any person present in Court to give his specimen writing so that the Court may be able to

compare the Specimen writing with the writing which is alleged to be his. The second part of this section primarily deals with a situation where an admitted or proved handwriting may not be in existence and in such a case the hand-writing of a person by whom it purports to have been written has been produced and if it is to be ascertained whether this handwriting is of the person present in Court, the Court may direct such person to give a specimen of his writing for comparison of the two writings. In my view, the words 'enabling the Court' do not restrict the exercise of the power given by the second part of section 73 to cases where such direction is necessary where the Court has to satisfy itself or has its own purposes.'

(15) It will be noticed that in the second paragraph of section 73 of the Evidence Act, with which we are concerned in this case, the expression 'for its own purposes' has not been used. It seems to us that Kotval, J. in the case of Poonamchand Gupta (supra) somewhat loosely used the expression 'for its own purposes' for the words 'for the purpose of enabling the Court'. Probably, therefore, what was intended to be conveyed by the learned Judge was that the power of the Court is to be exercised under the second paragraph of section 73 for the purpose of enabling the Court to compare the words or figures written by a person present in the Court on being so directed with the words or figures alleged to have been written by that person. Thus the view taken was the same as in the case of Hiralal Agarwalla (supra). It also seems to us, and this we say with utmost respect, that the view taken in the case of Kanwar Lal Gupta (supra), that the exercise of power under the second paragraph of section 73 is not restricted to enable the Court to itself compare the handwriting or to 'satisfy itself, is not consistent with the phraseology used in the said paragraph.

(16) In our opinion while interpreting the second paragraph of section 73 of the Evidence Act the words used in the said paragraph of the section should be given their ordinary and plain meanings. There is no ambiguity or confusion in the phraseology used in the second paragraph of the section. therefore the only purpose for which a court may direct any person present in the court (including an accused person) to write words or figures is to enable the court to compare the words or figures so written with any words or figures alleged to have been written

by such person. Where the purpose of directing a person present in court to write any words or figures is not to enable the court to compare the words or figures with any words or figures alleged to have been written by such person but is to enable any of the parties to have the words or figures so written compared from a hand-writing expert of that party, the second paragraph of Section 73 would have no application.'

(17) According to the view which we have taken the order of the learned Additional Chief Judicial Magistrate, dated May 20, 1972 in so far as it related to disposal of the application filed on December 11, 1970 was not legal and was beyond the scope of Section 73 of the Evidence Act. To that extent the said order and the order of the Additional Sessions Judge, dated December 7, 1972, but which the revision was dismissed, are set aside and the revision filed by Pali Ram is accepted.

(18) As the case in which the order under challenge was made is a very old one, efforts should be made to expedite it. We would also like to make it clear that this order of ours will not stand in the way of the court concerned to direct Pali Ram to write any words or figures if the court wants the words or figures to be written for the purposes of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by the said person.

(19) The parties, through their counsel, have been directed to appear in the Court of the Chief Metropolitan Magistrate on March 3, 1975. The Chief Metropolitan Magistrate shall send the case to the court concerned after fixing a date for the appearance of the parties in that court.