

Sandeep Kalson Vs. State

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Court : Delhi

Decided On : Nov-19-1993

Reported in : 1993IVAD(Delhi)847; 52(1993)DLT586; 1994(28)DRJ67; 1994RLR95

Judge : S.C. Jain, J.

Acts : [Constitution of India](#) - Article 20(3); [Evidence Act, 1872](#) - Sections 73

Appeal No. : Criminal Revision Appeal No. 31 of 1992

Appellant : Sandeep Kalson

Respondent : State

Advocate for Pet/Ap. : K.L. Sharma and; R.D. Jolly, Advs

Judgement :

S.C. Jain, J.

(1) The main question which requires an answer in this case is whether the prosecution can be granted permission to obtain hair sample of the accused persons for the purpose of comparison during investigation. The Magistrate concerned declined the request of the prosecution by observing that 'in view of the provisions of Section of the Evidence Act, Courts can order the accused persons or any person present in the Court to give his handwriting and fingerprints etc for

the purpose of comparison, but the section envisage only the circumstances when the case has been sent to the court for trial after investigation is complete for enabling the Court to compare the worse of finger prints etc. In the present case the investigation is still pending as such the Court is not empowered to direct the accused persons to give their head hair sample for the purpose of investigation'

(2) In revision before the Additional Sessions Judge the said order of the Magistrate was set aside and the revision petition was allowed permitting the prosecution to take hair samples of the accused persons for the purpose of comparison. The learned Additional Sessions Judge relied upon the decision of the Rajasthan High Court in the case of Mahipal Mahendra and Another vs . State of Rajasthan which lays down that an order requiring the accused to give specimen of hair for the purpose of identification is not vocative of the fundamental right guarantee under Article 20(3) or 21 of the '[Constitution of India](#)'. It was neither found to be self incriminating nor was found to be in any way reducing the enjoyment of life or encroaching upon personal liberty. It was also observed that the provisions of Section 73 of the Indian Evidence Act are not applicable in the present circumstances of the case.

(3) The accused, Sandeep Kalson has challenged the order of the Additional Sessions Judge by filing this revision petition. According to the learned counsel for the petitioner, the learned Additional Sessions Judge has committed a manifest error of jurisdiction in compelling the petitioner to give a sample of hair when the case is not before the Court for trial but is at the investigation stage. According to the learned counsel. Section 73 of the Evidence Act applies only after the investigation is complete and case has been committed for trial. The essence and purpose being to enable the Court to satisfy itself about the identity etc. of the document or individual after the investigation is complete. According to the learned counsel for the petitioner, at the investigation stage there is no procedure prescribed for compelling an accused to part with any part of his body, be it blood or hair. Learned counsel for the petitioner did not press his point that the impugned order is vocative of the fundamental right of the petitioner guaranteed under Article 20(2) and 21 of the [Constitution of India](#), but he pressed the point that Section 73 of the Evidence Act is applicable and it applies only after the investigation is

complete and the case has been committed for trial.

(4) The learned Additional Sessions Judge has dealt with the proposition of law elaborately in her detailed order and it needs no further elaboration. However, for the purpose of elucidating the proposition of law which is involved in this case, it will be relevant to mention that the main question which is involved in this case is the identification of the part of the body of the accused, namely, the hair. Exposing the hair or taking specimen thereof cannot be said to be furnishing evidence. In this case the recovery of some hair from the place of occurrence has prompted the investigation officer to make use of that piece of evidence for the purpose of establishing the identity of the participants in the crime. It is well settled that there is no protection against the exhibition of the body of the accused. Taking of hair sample cannot be equated to taking of thumb impression or finger prints or taking of specimen hand writing.

(5) The Judgment of the Rajasthan High Court reported in 1971 CrL.L.J.1405 has a direct bearing on the controversy in question as it was held therein that the order requiring the accused to give hair sample for the purpose of identification is not violative of his fundamental right guaranteed under Article 20[3] and 21 of the [Constitution of India](#) and it is permissible even at the investigation stage. Even in a decision of the Allahabad High Court reported in 1976 CrL.LJ. 1680, the Hon'ble Judge took the view that the taking of blood from accused for testing the same to see if he could have committed the crime alleged against him would not amount to compelling the accused to be a witness against himself within the meaning of Article 20(3) of the [Constitution of India](#). An accused can be asked to give blood sample even during investigation for this purpose.

(6) The scope of Section 73 of the Evidence Act was considered by the Hon'ble Supreme Court earlier in the case of State [Delhi Administration] vs . Pali Ram : 1979 CriLJ17 and later in the case of State of Uttar Pradesh vs . Ram Babu Mishra : [1980]2SCR1067 . In the earlier decision the Hon'ble Judges of the Supreme Court reversing the decision of the Delhi High Court reported in 1975 CrL.L.J. 1756, observed that a Court holding an inquiry under the Code of Criminal Procedure in respect of an offence triable. by itself or by the Court of Session,

does not exceed its powers under Section 73 if, in the interest of justice, it directs an accused person appearing before it to give his sample writing to enabling the same to be compared by a handwriting expert chosen or approved by the Court, irrespective of whether his name was suggested by the prosecution or the defense, because even in adopting this course, the purpose is to enable the Court before which he is ultimately put up for trial, to compare the disputed writing with his (accused's) admitted writing, and to reach its own conclusion with the assistance of the expert.

(7) However, in the later decision *State of Uttar Pradesh vs. Ram Babu Mishra* [supra] the Hon'ble Judges observed that though a direction by the Magistrate to the accused to give his specimen writing when the case is still under investigation would surely be in the interests of the administration of justice, but the language of Section 73 of the Evidence Act does not enable the Magistrate to give such a direction when the case is still under investigation. The section contemplates pendency of some proceedings before a Court. It does not permit a Court to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further, Section 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court.

(8) A perusal of Section 73 of Indian Evidence Act shows that it is meant only to ascertain whether a signature, writing, finger impression or seal is that of the person by whom it purports, or is alleged to have been written or made. It may be compared by the Court with another signature, writing finger impression or seal which is admitted or proved to have been written or made by that person. This section does not make any distinction between a Civil Court and a Criminal Court. The facts of these cases were different from those of the present case and these decisions are not applicable in the present circumstances of the case.

(9) In this case before me, the question of identification of a part of the body of the accused, namely, their hair is involved. Exposing the hair or taking specimen thereof cannot be said to be furnishing evidence. Section 9 of the Evidence Act provides that facts which establish the identity of any person whose identity is relevant are relevant. It is the duty of the Investigating Officer under the law to

collect all the relevant evidence. Section 4(1) Cr.P.C. defines investigation to include all the proceedings under the Code for the collection of evidence.

(10) I fully, agree with the observations of the learned Judge of the Rajasthan High Court in Mahipal Mahendra and Another vs. State of Rajasthan [supra] that in the absence of any legal provision to the contrary, the Investigating Officer should be allowed to use the reasonable means for obtaining a few specimen of the hair of the accused for the purpose of establishing the identity of those who took part in the crime.

(11) The learned Additional Sessions Judge has correctly held that the provisions of Section 73 of the Evidence Act do not apply in the present circumstances of the case. The Additional Sessions Judge (Miss Rekha Sharma) deserves appreciation for her analytical discussion of the matter in right direction.

(12) I find no illegality or infirmity in the impugned order inviting interference of this Court.

(13) This revision petition is, therefore, dismissed.