

State Vs. Parameswaran Pillai

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Court : Kerala

Decided On : Jun-10-1952

Reported in : 1953CriLJ1

Judge : Koshi, C.J.,; Govinda Pillai and; Vithayathil, JJ.

Appellant : State

Respondent : Parameswaran Pillai

Judgement :

Koshi, C.J.

1. This revision petition is directed against an order of the Division First Class Magistrate of Padmanabhapuram refusing to compel an accused person to write out in Court two documents which are alleged to be in his handwriting. The prosecution is for cheating and forgery for the purpose of cheating. The State, representing the prosecution, made an application to the Court that the accused should be made to write four copies of each of the two documents forming the subject of the forgery charge against him. The provision of law relied upon in that behalf was Section 73 of the Evidence Act. The accused who was given notice of the application filed a written objection to the effect that he cannot be compelled to write out the documents and that the court should turn down the request of the prosecution. The Court rejected the application' accepting the defence contention that an accused person cannot be compelled to write out in Court copies of

documents alleged to have been forged by him. Hence this revision petition by the State.

2. The lower Court places reliance for its decision upon *Bazari Hajam v. Emperor* 1 Pat 242 and *Gunamudayam Pakkianathan v. Sirkar* A.I.R. 1950 Trav-C 5.

3. After the revision was duly admitted when it came up before a learned Single Judge (Kunhi Raman C.J.) the learned Counsel for the accused counter-petitioner raised an argument that the expression 'any person present in Court' occurring in paragraph 2 of Section 73, Evidence Act, will not include an accused person. It was pointed out that the decisions on the point were not all uniform. The learned Chief Justice took the view that the Question was of sufficient importance for reference to a Full Bench and consequently ordered.

I, therefore, direct that the question as to whether an accused person will come under the category of 'any person present in Court' within the meaning of the second paragraph of Section 73 of the Indian Evidence Act in the circumstances of this case be referred for the opinion of a Full Bench of this Court.

4. Section 73 of the Evidence Act is in these terms:

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 written or seal admitted or proved to the satisfaction of the Court to have been written or made by the 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.

Paragraph 2 is couched in very wide terms. The words 'any person' are wide enough to cover an accused person. It is a well-established rule of construction of statutes that where the language is plain and unambiguous, there is no room for

construction, and the court is not justified in departing from the plain language of the statute in search of an intention which the words themselves do not suggest. Giving the words 'any person present in court' occurring in paragraph 2 the meaning which those plain words require, it is clear that no category of person present in court is sought to be excluded from the scope of the provision enacted in paragraph 2 or paragraph 3. If the Legislature intended to exclude accused persons from the category of persons contemplated by the provision there is no reason why it should not have said so.

That indeed is the view a Full Bench of the Rangoon High Court took in *Emperor v. Nga Tun Hlaing* 1 Rang. 759. Young, Offg. C.J. observed that paragraph 2 makes no exception in favour of accused persons. Words to the same effect are seen also in the judgments of the other two learned Judges. This decision was followed by a learned Single Judge of the Bombay High Court in *Emperor v. Ramrao Mangesh* 56 Bom. 304. Wadia J. who decided that case repeated the observation in the Rangoon case that if it was the Intention of the Legislature to exempt an accused person from the operation of Section 73, there was nothing to prevent it from saying so and said he agreed with the judgment.

Doubt was however expressed by Lort-Williams J. in *Kishori Kishore v. Emperor* 39 Cal. W.N. 986 as to whether the expression 'any person' in paragraph 2 includes an accused person. It was really unnecessary in that case to decide the point and the learned Judge's doubt was based on a decision of Rankin J. in *Azimuddy v. Emperor* 54 Cal. 237 about the meaning of the same expression, 'any person' occurring in Section 162 of the Criminal Procedure Code. Jack J. who sat with Lort-Williams J. to decide the above Calcutta case however stated that had it been necessary to decide the question in that case he would have held that Section 73 does include an accused, person. The learned Judges also referred to the Rangoon case and the Bombay case referred to above.

5. Here it is useful to notice that the decision in *Azimuddy v. Emperor* 54 Cal. 237 has since been overruled by a Board of the Judicial Committee of which Sir George Rankin was himself a member. See *Narayana Swami v. Emperor* AIR 1939 P.C. 47. The question there was whether the words 'any person' in Section

162 of the Criminal Procedure Code would include a person eventually accused, but who at the time of making statement was not even suspected. The point arose whether his statement had to be excluded from evidence under the provision enacted by the section. Commenting on the conflict of decisions bearing upon the point Lord Atkin who pronounced the judgment in the case said thus at pp. 50 and 51:

This section which in its amended form was substituted for the original Section by Section 34, Criminal P.C. Amendment Act, 1923, has been the subject of repeated decisions in the High Courts of India and has given rise to a distinct cleavage of opinion. The majority of the High Courts have held that it has no application to a statement made by a person who at the time it is tendered in evidence is an accused person; the minority have held that there is no such limitation. Their Lordships have been referred to at least twelve reported cases, all of which with others they have considered.

The representative opinions on either side may be taken to be 54 Cal. 237 in a judgment of the then Rankin J. admitting such a statement against the accused and *Syamo Maha Patro v. Emperor* 55 Mad. 903 in a judgment of Reilly J. sitting in a Full Bench of the High Court of Madras rejecting the statement. The present Board have had the advantage of the presence of Sir George Rankin in giving a full consideration to all the reported decisions; and they have come to the conclusion that the words of the Section lead to the conclusion that the statement is not admissible even when made by the person 'ultimately accused'.

Other passages from the judgment of Lord Atkin, useful to the present occasion, are seen quoted by Harries C.J. in a recent Full Bench decision of the Calcutta High Court reported as *Satya Kinkar v. Nikhil Chandra* : AIR1951 Cal101 . In that case the controversy was whether the provisions in Sections 94 and 98 of the Criminal Procedure Code relating respectively to 'summons to produce document or other thing' and 'when search warrant may be issued' would bring within their scope accused persons. Clause 1 of Section 94 states 'inter alia' that the Court may issue a summons to the person in whose possession or power the relevant document or thing is believed to be, requiring him to attend and produce it, and

Clause 2 states that any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition, if he causes such document or thing to be produced instead of attending personally to produce the same.

Among other things Section 96 prescribes the procedure the Court is empowered to adopt when the Court is satisfied that a summons under Section 94 will not be complied with etc., and in that section also occur the words 'any person'. Before the Full Bench it was contended that these sections would not apply to accused persons. Harries O.J. who pronounced the judgment of the Pull Bench exhaustively reviewed the case law bearing on the question and referring to Section 94 said:

The section is framed wide enough to cover the right to serve a summons on a person accused in a case to produce a document, and there is nothing in the section to suggest that it would not cover an accused person. Sub-section (2) of Section 94 provides that any person who is required to produce may do so in a certain manner. Again the words 'any peron' are wide enough to cover a person accused.

Section 96 is then quoted and it is observed:

Again this section is absolutely general in terms and would apply to any person to whom a summons or order under Section 94 has been addressed. Of course if no summons under Section 94 could be addressed to an accused person then Section 94 would not apply to an accused person. But as I have already said Section 94 is framed in the widest possible terms, and that being so it appears to me that a search warrant under Section 96, Cr.P.C. could be issued to search the premises of an accused person who was known to be in possession of a document and who had refused to produce it after a summons for production has been served upon him.

In the course of the judgment the learned Chief Justice quotes from the judgment of Lord Atkin In *Narayana Swami v. Emperor*. The relevant passages occur at pp. 104 and 105 and they read as follows:

The importance of giving all words in a section their full and grammatical meaning was stressed by their Lordships of the P.C. in the case of *Narayana Swami v. Emperor* AIR 1939 P.C. 47. In that case, their Lordships had to consider whether the phrase 'any person' in Section 162, Cr.P.C. covered an accused person. This Court had held in the case of *Azimuddy v. Emperor* 54 Cal. 237 that the phrase 'any person' could not cover an accused person because if such a meaning was given to it then Section 162, Cr.P.C., would be in conflict with Section 27, Evidence Act.

Nevertheless their Lordships of the P.C. held that the term 'any person' in Section 162, Cr.P.C. had to be given its ordinary and grammatical meaning and as the phrase was wide enough to cover a person accused in the case the section applied to him as well as to others. In the judgment of the Board which was delivered by Lord Atkin stress is laid on the importance of a grammatical construction and two well-known observations of very distinguished English Judges were referred to. In *Grey v. Pearson* (1857) 6 HLC 61 at p. 106 Lord Wensleydale observed:

I have been long and deeply impressed with the wisdom of the rule, now I believe universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency but no further.

In *Commrs. For Special Purposes of Income-Tax v. Pemsel* (1891) 15 AC 531, Lord Halsbury L.C. observed at p. 542: 'My lords, to quote from the language of Tindal C.J. when delivering the opinion of the Judges in the *Sussex Peerage Case* (1844) 11 Cl & P 85 at p. 143 the only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such

case best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble which according to Dyer C.J. *Stowel v. Lord Zouch* (1797) 1 Plowden 353 at p. 369 is a key to open the minds of the makers of the Act and the mischiefs which they are intended to redress.'

As I have said earlier, giving Section 94 ordinary grammatical construction it must be held that it applies to accused persons as well to others....

6. In *Golam v. The King* : AIR1950 Cal66 the Calcutta High Court had to consider the question of the applicability of Section 73, Evidence Act, to accused persons and the view held was that the section did apply to such persons. The case related to the legality of taking specimen thumb impressions in Court and that case will be referred to in greater detail later on in this order.

7. The foregoing discussion and the authorities cited will clearly show that there is no substance in the contention that Section 73 of the Evidence Act has no application to accused persons. We accordingly repel it.

8. The question then is whether the learned Magistrate went wrong in holding that he had no power to compel the accused to write out from (in?) court the alleged forged documents. The relevant words used in paragraph 2 of Sections 73 are that the Court "may direct" any person present in Court' (the italics (here in are ours). It is plain that the word 'direct' connotes an idea different from what the word 'compel' signifies. The word compel occurs in several sections of the Evidence Act. See for instance Sections 125, 129, 130, 131 and 132. The idea of using or not using, as the case may be, of force appears on the face of these sections. There is hence no warrant for the contention raised on behalf of the State that the Court can compel an accused person to write down something to its dictation when all that Section 73 states is that the Court may 'direct' any person present in Court etc. When this aspect was discussed at the bar the learned Public Prosecutor was constrained to concede that the Court had no power to compel an accused to write out the contents of a document alleged to have been forged by him.

9. In this context reference may usefully be made to the decision in *Sirkar v. Itticheria* (1935) Trav LT 524 where this identical question came up for decision. At that time there was no Evidence Act in Travancore, but the learned Judges, Nokes and Sivasankara Pillai JJ. held that in conducting trials the provisions of Section 73 could be invoked by courts in that Jurisdiction. Their view was that while criminal courts had power to require an accused person present in Court to write 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 him, such courts had no power to use any compulsion in that behalf. The conclusion we have come to here is the same. Indeed the decisions are for the most part really all one way.

10. The learned Public Prosecutor however complained that the lower Court did not even exercise the power vested in it under Section 73 to 'direct' the accused to write out the contents of the 2 documents forming the subject of the charge against him. The complaint is legitimate but we blame the parties more for the result. The matter was agitated in the court below only as to the question of compulsion and as it happened in the case last referred to the Magistrate never considered the question whether he had, to use the language employed by Notes J., the lesser jurisdiction merely to require the accused to write. It is clear that the Magistrate did not attempt to exercise that lesser jurisdiction and we therefore set aside the order and direct the Magistrate to rehear the petition and to exercise the discretion vested in him by law in the light of the observations herein contained.

11. Whether any adverse inference could be drawn by the accused's refusal to comply with any direction the Court will hereafter give is a matter about which we do not now feel obliged to pronounce upon.

12. In allowing the revision and directing the lower court to rehear the matter we have not omitted to notice that the reference order has only asked for the opinion of the Full Bench. At the hearing both sides invited us to finally dispose of the petition ourselves and acceding to that we have decided the revision petition itself.

13. The revision petition has challenged the correctness of the decision in *Gunamudayan Pakkianathan v. Sirkar* AIR 1950 Trav C 5. Though the counter-

petitioner would seem to have relied upon it before the learned Single Judge no reference was made to that case before us by his learned Counsel. For the State it was strenuously argued that in enunciating the rule of the decision that the practice of taking the thumb impression of the accused and using it against him is inconsistent with the principle of a fair trial, the learned Judges had overlooked the provisions of Section 73, Evidence Act, and Section 5 of the Travancore Identification of Prisoners Act, XI(11) of 1112. The Travancore Evidence Act was enacted in 1117 and Section 73 thereof is in the same terms as Section 73 of the Indian Evidence Act. Section 73 of the Indian Evidence Act has already been quoted in this order. Section 5 of the Travancore Identification of Prisoners Act reads thus:

If a Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to Whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken as the case may be by a police officer;

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the First Class;

Provided, further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

Section 6 provides as follows:

(1) If any person who under this Act is required to allow his measurements or photograph to be taken resists or refuses to allow the taking of the same, it shall be lawful to use all means necessary to secure the taking thereof.

(2) Resistance to or refusal to allow the taking of measurements or photographs under this Act shall be deemed to be an offence under Section 179 of the Travancore Penal Code.' By the definition the said Act gives to 'measurement', it

includes finger impressions and foot-print impressions, (Vide Section 2a). Presumably the difficulty which the Courts felt in *Sirkar v. Itticheria* (1935) Trav LT 524 paved the way for the enactment of the Travancore Identification of Prisoners Act and that Act is practically a verbatim reproduction of the Identification of Prisoners Act, XXXIII(33) of 1920 passed by the Indian Legislature. Cochin also adopted that law by enacting the Identification of Prisoners Act, XV(15) of 1112. As in Travancore it followed the same lines as Act XXXIII (33) of 1920. In the statement of Objects and Reasons attached to the Bill which eventually became the Identification of Prisoners Act, XXXIII (33) of 1920 the necessity for the law relating to the identification of prisoners has been explained as follows:

The object of the Bill is to provide legal authority for the taking of measurements, finger impressions, foot-prints and photographs of persons convicted of or arrested in connection with certain offences. The value of the scientific use of finger impressions and photographs as agents in the detection of crime and the identification of criminals is well known, & modern developments in England and other European countries render it unnecessary to enlarge upon the need for the proposed legislation.

The existing system by which the Police in India take finger impressions, photographs etc., of criminals and suspected criminals is void of legal sanction, except as regards registered members of criminal tribes, in whose case provision exists for the taking of finger impressions in Section 9 of Criminal Tribes Act, 1911 (111(3) of 1911). The need for legalising the practice has long been recognised, but it was not thought expedient to take the matter up so long as no practical difficulties arose. Instances have recently been reported to the Government of India where prisoners have refused to allow their finger prints or photographs to be taken. With a view to prevent such refusals in future it is considered necessary without further delay to place the taking of measurements etc., which is a normal incident of police work in India as elsewhere, on a regular footing.

14. We consider it unfortunate that the attention of the learned judges in *Gunnamudayam Pakkianathan v. Sirkar* AIR 1950 Trav-C 5 was not invited to either of the statutory provisions referred to above or to the case in *Sirkar v.*

Ittycheria 1935 Trav LT 524. The learned Sessions Judge who tried the case (Sessions case No. 14 of 1123 of the Nagercoil Sessions Court) which gave rise to Gunnamudayan Pakkianathan v. Sirkar, was bound by the decision in Sirkar v. Ittycheria. The Evidence Act and the Identification of Prisoners Act had long been passed into law when the trial in the later case took place. It is remarkable that the Public Prosecutor or the defence counsel did not bring to the notice of the Judges of this Court the relevant statutes or the decision. The case in '9 Trav. LT 69' (short notes) referred to by the learned Judges did not rebate to a case of an accused person being made to write or to give his thumb impressions. In a prosecution for counterfeiting the Committing Magistrate got the accused to demonstrate the process of counterfeiting and naturally the High Court condemned that method in severe terms. There is no law warranting such a procedure, but that case was no guide to decide Gunnamudayam Pakkianathan v. Sirkar.

15. In Gunnamudayam Pakkianathan v. Sirkar AIR 1950 Trav-C 5 the learned Judges fell into the error of following Bazari Hajam v. Emperor 1 Pat 242 which in its turn had omitted to notice Section 73 of the Evidence Act and Section 5 of the Identification of Prisoners Act. The Patna High Court itself has dissented from that decision in subsequent cases and so too other High Courts. A very instructive summary of the subsequent case law on the point is to be found in the judgment of the Calcutta High Court in Golam Rahman v. The King AIR 1950 Cal 66 already referred to. Lahiri J. who gave the decision of the Division Bench states as follows in paragraph 18 of his judgment: 'The fourth point of law raised in the appeal relates to the legality of taking specimen thumb impressions in Court. Mr. Taluqdar has argued that this procedure is wholly unwarranted and relied upon Bazari v. Emperor 1 Pat 242 : AIR 1922 Pat 73, where it was observed that there is no law which authorises a Court to ask the accused to do something which may have a tendency to incriminate them. It is remarkable that in this case the attention of the Court was not invited to Section 73, Evidence Act. This decision was dissented from by the same High Court in the cases of Basgit Singh v. Emperor 6 Pat 305 : AIR 1928 Pat 129 : 28 Cr.L.J. 850 and Zahuru Sahu v. Emperor 6 Pat 623 : AIR 1928 Pat 103 : 28 Cr.L.J. 1028 in which reliance was placed upon Section 5 of the Act XXXIII (33) of 1920 (Identification of Prisoners Act) which authorises a

Magistrate for the purpose of any investigation under the Criminal Procedure Code to direct finger impression to be taken.

In the case of Public Prosecutor v. Kanda sami 50 Mad 462 : AIR 1927 Mad 696: 27 Cr. LJ 1251 the Madras High Court has dissented from the view taken by the Patna High Court in Bazari's Case 1 Pat 242 : AIR 1922 Pat. 73 and held that it is not illegal or improper for a Magistrate to direct the finger print of the accused to be taken in the course of a criminal trial where lie is charged with the offence of forgery of a finger print. The Bombay High Court has taken the same view as the Madras High Court in the case of Emperor v. Ram Rao 56 Bom 304 : AIR 1932 Bom 406: 33 Cr LJ 666.

In the case of Superintendent and Remembrancer of Legal Affaria, Bengal v. Kiran Bala Dasi reported in 30 Cal. W.N. 373 : AIR 1926 Cal 531 : 27 Cr LJ 409, (C.C. Ghosh and Duval JJ.) it was held that the procedure of directing the specimen of the thumb impression of the accused to be taken was permissible under Section 5 of Act XXXIII (33) of 1920 as also under illustration (c) of Section 45, Evidence Act, but no reference was made to the provisions of Section 73, Evidence Act. In Kishori v. Emperor 39 CWN 986 : AIR 1935 Cal 308 : 36 Cri LJ 921, there was a difference of opinion between Lort-Williams and Jack JJ. on the question whether Section 73, Evidence Act, applied to such a case although it was not necessary for the learned Judges to decide the point.

The obiter dictum of Lort-Williams J. was to the effect that it was doubtful whether the word 'person' in Section 73 applies to an accused person whereas the obiter dictum of Jack J. was to the effect that Section 73 does apply to the accused in a criminal trial. The question of the applicability of Section 73 to the accused in a criminal trial was decided in the affirmative by a Pull Bench of the Rangoon High Court in King Emperor v. Naga Tun Alaing 1 Rang 759 : AIR 1924 Rang. 115: 26 Cri LJ 108 FB where it was pointed out that Section 342, Criminal P.C. does not prevent the application of Section 73, Evidence Act to a criminal trial. Young C.J. observed as follows:

Section 342, Criminal P.C. relates only to oral questioning of the accused and does not prohibit a direction to make a thumb impression any more than it

prohibits a direction to him to face a witness in order that he may be identified.

Section 73, Evidence Act, is quite general in its terms and applied to all cases and there is no exception in favour of an accused person. If there is nothing in the Criminal Procedure Code which precludes its application to criminal trials we do not see any reason why the plain language of the section should not be given its full effect. The operation of any other Act is, of course, expressly saved by Section 2, Evidence Act. We agree with Young C.J. that Section 342, Cr.P.C. does not make Section 73, Evidence Act, inapplicable to criminal trials. We accordingly, hold that the procedure followed in taking specimen thumb impressions under the direction of the Court is in strict compliance with Section 73 and Section 45, ill(c), Evidence Act, & also Section 5 of Act XXXIII(33) of 1920. The fourth point raised by Mr. Taluqdar is accordingly overruled.

The point referred to in the latter half of the above extract would appear to have troubled the minds of the learned Judges in *Gunnamudayam Pakkianathan v. Sirkar*. It is seen stated in their Judgment that on principle it appeared to them that the accused could not be required to furnish any evidence in support of the case for the prosecution. Mr. K.P. Abraham the learned Counsel who appeared before us for the counter-petitioner, while not referring to *Gunnamudyan Pakkianathan v. Sirkar*, sought to reinforce the idea underlying that decision by contending that to compel a person to write down anything to Court's dictation or to give finger impressions came within the interdict of Article 20(3) of the Constitution of India which provides that no person accused of any offence shall be compelled to be a witness against himself.

16. The point does not strictly arise in this case as we have held that the Court cannot compel an accused person to write down the contents of a document alleged to have been forged by him, or even his name or signature. However as law permits compulsion to be used by a Court to take an accused person's finger-impressions and as we are discussing the correctness of the decision in *Gunnamudayam Pakkianathan v. Sirkar*, it is interesting to notice that the same argument was raised in *Satya Kinkar v. Nikail Chandra* AIR 1951 Cal 101 with reference to Sections 94 and 96 of the Criminal Procedure Code. The argument

was repelled there.

The learned Counsel for the counter-petitioner invited our attention to *Boyd v. United States* (1886) 116 US 616 : 29 Law Edn. 746. A provision similar or identical in terms to Article 20(3) of the Constitution forms part of the Fifth Amendment to the Constitution of the United States of America, but the said case deals not only with the Fifth Amendment but also with the Fourth Amendment. Attempt was made in the Indian Constituent Assembly to introduce a fourth clause to Article 20 on the lines of the Fourth Amendment but it was negatived. Vide Volume VII Constituent Assembly Debates pp. 794 to 797 and 840 to 842. Besides, *Boyd v. United States*, has not been approved in subsequent decisions.

17. It would here be instructive to quote a passage from a judgment of Justice Oliver Wendell Holmes. In *Holt v. United States* (1910) 218 U.S. 245 : 54 Law Edn. 1021 at page 1030 (Lawyer's edition) that very distinguished Judge said:

Another objection is based upon an extravagant extension of the 5th Amendment. A question arose as to whether the blouse belonged to the prisoner. A witness testified that the prisoner put it on and it fitted him. It is objected that he did this under the same duress that made his statements inadmissible, & that it should be excluded for the same reasons. But the prohibition of compelling a man in a criminal Court to be witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material. The objection in principle would forbid a jury to look at a prisoner and compare his features with a photograph in proof. Moreover, we need not consider how far a court would go in compelling a man to exhibit himself. For when he is exhibited whether voluntarily or by order, and even if the order goes too far, the evidence, if material, is competent.

(18) The foregoing discussion would show that the contention raised on behalf of the State that *Gunamudayan Pakkianathan v. Sirkar* AIR 1950 Tray-C 5 does not correctly lay down the law regarding the Court's jurisdiction to compel an accused person present in Court to give his finger impressions or the use which the Court could make of the impressions so taken is plainly right. We accordingly overrule that decision. The Judgment in that case does not even show that the accused

had raised any objection to his finger impressions being taken by the Court.

(19) In the result we allow the revision, direct the lower Court to rehear the petition giving rise to it and dispose of it according to law in the light of this order.

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