

**Bhaskaran Vs. Sankaran**

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**Court :** Kerala

**Decided On :** Dec-17-2002

**Reported in :** 2003(1)KLT381

**Judge :** G. Sasidharan, J.

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

**Appeal No. :** Crl. R.P. No. 643 of 2002

**Appellant :** Bhaskaran

**Respondent :** Sankaran

**Advocate for Def. :** Dinesh Mathew Murikan, Adv. and; Sujith Mathew Jose,  
Public Prosecutor

**Advocate for Pet/Ap. :** Dilip J. Akkara, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**G. Sasidharan, J.**

1. This revision is filed by the de facto complainant in C.C. 73/1999 on the file of the Judicial Magistrate of the First Class-I, Thrissur. Petitioner filed petition, M.P.

4288/2001 in the above case praying that direction may be given to the first respondent, who is the accused in the case, to give his thumb impression for comparison by expert. That petition was dismissed by the learned Magistrate and the order by which the application was dismissed is under challenge.

2. The allegation against respondents 1 and 2 is that they committed the offences under Sections 471, 474 and 465 read with Section 34 of the Indian Penal Code, It is stated that in 1953 and 1956 two documents were executed by the first respondent in favour of the father and mother of the petitioner transferring 41 1/2 cents of property and subsequently in 1996 the first respondent executed sale deed in respect of the very same property in favour of the second respondent. The application filed by the petitioner was dismissed by the learned Magistrate in finding that direction under Section 73 of the Evidence Act cannot be given for the purpose of enabling the opposite party to use the same as evidence against the person who has given the specimen handwriting or signature. After observing that giving direction to give specimen signature or thumb impression may not violate Article 20(3) of the Constitution, the learned Magistrate found that the case was one in which after completing investigation charge was laid in Court and after framing charge on commencing the trial the petitioner had already been examined as PW1. The application for obtaining the specimen thumb impression of the first respondent was filed when the case stood posted for examination of C.W.I and C.W. 3. In the order under challenge the learned Magistrate mentions about the decision of this Court in *Lilly v. Vijayalaxmi* (1985 KLT 696) in support of the observation that direction under Section 73 of the Evidence Act cannot be given for the purpose of enabling the opposite party to use the specimen handwriting or signature as evidence against the person who has given it.

3. In *Kwnaran Nair v. Bhargavi* (1987 (2) KLT 644) this Court held that the comparison mentioned in the first para of Section 73 could be as provided in Ss. 45 and 47 and that the Court does not exceed its powers under Section 73, if in the interest of justice, it directs any person present in Court to give his sample writing enabling the same to be compared by an expert, because even in adopting such a course, the ultimate purpose is to enable the Court to compare a disputed writing with the admitted writing. There is nothing in Section 73 which ousts the

jurisdiction of the Court in getting the opinion of an expert by comparison of disputed and admitted writings in order to enable the Court to compare the specimen writing with the disputed one to reach its own conclusion. In the above decision it was also held that by giving specimen handwriting or impression he is not giving evidence against himself and it becomes evidence against him only when after due comparison with it and formation of opinion it is ultimately found that the disputed writing or impression is that of himself. Section 73 of the Evidence Act does not violate Article 20(3) of the Constitution because by giving a direction under the section to give specimen handwriting or signature the Court does not compel him to be a witness against himself.

4. In *Lilly v. Vijayalaxmi* (1985 KLT 696) a learned Judge of this Court held that a direction to give specimen handwriting and signature by the Court will not amount to testimonial compulsion under Article 20(3) of the Constitution. What the Constitution prohibits is only compelling an accused person to be a witness against himself and not to be a witness. It was held by this Court that a direction under Section 73 of the Evidence Act cannot be given for the purpose of enabling the opposite party to use the same as evidence against the person who has given the specimen handwriting or signature.

5. Under Section 73 of the Evidence Act the Court can form opinion regarding the handwriting or thumb impression seen in a document by comparing the same with admitted or specimen writing or thumb impression. The thumb impression taken under the direction of the Court is in substance a specimen thumb impression obtained for comparison of the same with the disputed thumb impression. What is stated in Section 73 is that the comparison has to be made by the Court and it may form the opinion by itself comparing the disputed thumb impression or handwriting with the admitted thumb impression or handwriting and seek the assistance of an expert who can place before Court materials which may help the Court to make the comparison and to come to a conclusion. Even when the assistance of an expert is obtained it is for the Court to make its own opinion by its own assessment of the report of the expert based on the data furnished by the expert. The second limb of Section 73 gives power to direct any person present before it to give his specimen writing for the purpose of enabling the Court to

compare such writing with any writing alleged to have been written by such person. In *Sukhvinder Singh and Ors. v. State of Punjab* ((1994) 5 SCC 152) it was held that the direction that can be given under Section 73 is for the purpose of 'enabling the Court to compare' and not for the purpose of enabling an investigating or a prosecuting agency to obtain and produce as evidence in the case the specimen writings for their ultimate comparison with the disputed writings.

6. It is submitted by the learned counsel that a private complaint was filed by the petitioner in the Court of the Magistrate and that was forwarded to the police for registering crime and for conducting investigation. After investigation, final report was filed in Court and cognizance of the offence had been taken. After the commencement of the trial the de facto complainant filed the application which was dismissed by the trial court. In the light of the observations made by this Court and the Supreme Court in the decisions referred to above, it is seen that there is no illegality or irregularity in the order passed by the learned Magistrate. This revision is hence dismissed.

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