

Sub-inspector of Police Vs. Devarajan

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Court : Kerala

Decided On : Jul-19-1999

Reported in : 1999CriLJ4264

Judge : M.R. Hariharan Nair, J.

Acts : [Evidence Act, 1872](#) - Sections 73 and 114; Indian Penal Code (IPC) - Sections 420, 504, 506 and 507; Code of Criminal Procedure (CrPC) - Sections 73, 125 and 202; [Constitution of India](#) - Article 20(3)

Appeal No. : Crl. M.C. No. 3543 of 1999-C

Appellant : Sub-inspector of Police

Respondent : Devarajan

Advocate for Def. : S. Ramachandran and; M.H.J. David, Advs.

Advocate for Pet/Ap. : S.U. Nazar, Public Prosecutor

Disposition : Petition dismissed

Judgement :

ORDER

M.R. Hariharan Nair, J.

1. The petition is filed by the State. In connection with Crime No. 14/98 of the Kovalam Police Station involving offence under Section 504, 506 and 507 of the Indian Penal Code, the Investigating Officer wanted to record the specimen handwriting of the accused in the case. His request in that regard made to the employer of the accused and subsequent notice to the accused who was on bail to appear before the Investigating Officer did not yield any result and, therefore, he moved the Magistrate before whom the FIR was pending through M.P. 3173/98 to issue directions to the accused to appear before the Court and give the specimen handwriting. Section 73 of the Indian Evidence Act was invoked. The learned Magistrate, however, refused the request relying on the decision in State of U.P. v. Ram Babu Misra AIR 1980 SC 791. The present petition has been filed aggrieved by the said order of the learned Magistrate with a request to quash the same.

2. I have heard both sides. In view of the submission by the learned Public Prosecutor that this is perhaps the first time that the question comes up before this Court and that the decision in this case may have serious impact on the freedom and efficiency of investigating officers, I proceed to consider the question in extenso and to consider all the decisions cited by the learned Public Prosecutor.

3. The second limb of Section 73 of the Evidence Act, the scope of which is to be interpreted herein, reads as follows :

73. xxx xxx xxx xxx

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.

4. There is merit in the submission of the learned public prosecutor that compelling a person to give his specimen writing will not amount to testimonial compulsion for purposes of Article 20(3) of the Constitution see State of Bombay v. Kathi Kalu Oghad AIR 1961 SC 1808; but that does not mean that the Court should enter the realm of investigation and force the accused to give specimen writing. As far as the Court is concerned, the power can be exercised only within the four corners of Section 73, Cr. P.C. It is to be noted that it was with reference to the decision in

State of Bombay v. Kathi Kalu Oghad (supra) that the Supreme Court laid down in State of U. P. v. Ram Babu Misra AIR 1980 SC 791 that Section 73 does not enable the Magistrate to give a direction to the accused to give specimen writing either during investigation or for anticipated necessity in the prospective proceeding that would reach the Court once investigation is completed.

5. In Lilly v. Vijayalaxmi 1985 Ker LT 696 the question that arose was whether in a private complaint involving offence under Section 420 of the IPC, the specimen writing of the respondent against Whom the offence was alleged could be directed to be given. The learned single Judge who decided the question summed up the position as follows :

11. What emerged from the above discussion is this. A direction to give the specimen handwriting or signature will not amount to testimonial compulsion as envisaged by Article 20(3) of the Constitution. The Court is entitled to give direction to the accused to give his specimen handwriting or signature for the purposes enumerated in Section 73 of the Evidence Act. In that respect also, there can only be a direction within the limits allowed by law and there cannot be a compulsion. If that direction, which is within the law, is disobeyed, a presumption under Section 114 of the Evidence Act will be the legitimate consequence. 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. In such a case, it is likely to incriminate him as held in State of Bombay v. Kathi Kalu AIR 1961 SC 1808:1961 (2) Cri LJ 856. The question whether a Magistrate is competent to direct an accused to give his specimen handwriting or signature to the police during investigation does not arise in the case and hence such a question is not decided. In this case the direction sought for was definitely for the purpose of using the specimen handwriting and signature as evidence against the first respondent by getting the opinion of the expert by comparison with the writings and signature contained in the receipt produced before Court. Such a direction is not permitted by the provisions of law and, therefore the learned Magistrate was correct when he dismissed the petition filed by the petitioner for that purpose.

6. The question involved in the present case, viz. whether a Magistrate is competent to direct an accused to give his specimen writing or signature to the police during investigation was thus left open in the said case and even as regards the private complaint, the decision was in favour of the alleged offender.

7. In *Kumaran Nair v. Bhargavi* (1987) 2 Ker LT 644 : (1988 Cri LJ 1000) the question that arose was whether in a proceeding under Section 125 of Cr. P.C, the husband-counter petitioner can be compelled to give his specimen writing under Section 73 of Cr. P.C. The Court found that it was permissible, but that was a case where the proceeding was pending before the Magistrate at the time when the motion was made.

8. The question that arose in *Gopalakrishnan Nayanar v. K. V. Sasidharan Nambiar* (1996) 1 Ker LT 83: (1996 Cri LJ 1302) was only whether a person against whom offences are alleged in a complaint and being enquired into under Section 202, Cr. P.C. by the same Court can be taken as an accused person for the purpose of Article 20(3) of the Constitution. The Court answered the question in the affirmative. The distinctions in the instant cases therefrom are (1) that this is not a private complaint under investigation under Section 202, Cr. P.C. and (2) no enquiry under Section 202 was pending before the learned Magistrate in the instant case when the motion under Section 73 of the Evidence Act was made.

9. I now proceed to consider the question' involved in the present case. Section 73 already quoted in paragraph 3 above empowers the Court to direct any person present in Court to give his specimen handwriting to enable the Court to compare the handwriting. But the said power can be exercised only in connection with an ongoing trial and appears to have no application when the case is at the stage of investigation. A reading of Section 73 as a whole (that is, including the first limb), makes it clear that it is to enable the Court to make the comparison to form its own opinion by comparing disputed and admitted writings that the power is given to record the specimen handwriting. Once such specimen is recorded, it may also be used for getting an expert opinion based on comparison with the disputed handwriting. Nevertheless, the purpose is only to form the, Court's own opinion with regard to the handwriting in question.

10. To enable exercise of the power, it is essential that there should be some proceeding pending before the Court. The direction can be given to enable the Court to compare and not for the purpose of enabling an Investigating officer or Prosecuting Agency to obtain and produce as evidence in the case, the specimen handwriting for ultimate comparison with the disputed writing. Where the case is still under investigation and no proceedings are pending before Court in which it might be necessary to compare the two hand-writings, a person present in Court albeit the accused, cannot be compelled to give his specimen handwriting. The possibility of the proceeding ultimately reaching the Court may not be sufficient. Recourse to the section can be had only when an enquiry or trial is pending before the Court and the Court requires the specimen writing to enable it to compare it with the disputed writing. In other words, the Court which can issue a direction under Section 73 is only the Court holding an enquiry under Cr. P.C. or the Court trying an accused. It follows that the Court which is not either concerned with an enquiry under the Cr. P.C. or trial and had only received a copy of the FIR, cannot issue a direction of the nature contained in Section 73. The position is also covered by the decision in Sukhvinder Singh v. State of Punjab (1994) 5 SCC 152.

For all these reasons, I find the order of the Magistrate to be correct. The Cri. M.C. is found to be devoid of merit and it is accordingly dismissed.