

**Ramesh Kumar Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/753975](http://sooperkanoon.com/753975)

**Court :** Rajasthan

**Decided On :** Mar-28-2006

**Reported in :** RLW2006(2)Raj1431; 2006(4)WLC262

**Judge :** R.S. Chauhan, J.

**Acts :** Indian Penal Code (IPC) - Sections 420 and 467; [Evidence Act, 1872](#) - Sections 73; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 405 and 439

**Appeal No. :** S.B. Criminal Revision Petition No. 1272 of 2005

**Appellant :** Ramesh Kumar

**Respondent :** State

**Advocate for Def. :** Arun Sharma, Adv.

**Advocate for Pet/Ap. :** Suresh Sahni, Adv.

**Disposition :** Petition allowed

**Judgement :**

**R.S. Chauhan, J.**

1. The petitioner has challenged the imposition of the condition in the order dated 7.10.2005 whereby he has been directed to give specimen of his signature/handwriting to the Investigating Agency during the course of

investigation.

2. The brief facts of the case are that a case for offences under Sections 420 & 467 IPC was registered against the accused vide FIR No. 209/2005 registered at Police Station Niwai, District Tonk. Subsequently, the petitioner had moved a regular bail application under Section 439 of the Criminal Procedure Code henceforth to be referred to as 'the Code' for short. While granting the benefit of a regular bail to the accused petitioner vide order dated 7.10.2005, the learned Court below was pleased to impose a condition as under:

**\*\*izkFkhZ dks tekur dh lqfo/kk bl 'krZ ds lkFk fn;k tkuk mfpr gS fd ;fn mDr izdj.k esa vuqla/kku vf/kdkjh }kjk ;g vko';d le>k tkos fd izkFkhZ vfHk;qDr ds uewus ds gLrk{kj dh vko';drk fookfnr gLrk{kjksa ls feyku djus gsrq gS] rks izkFkhZ fcuk fdlh vkifRr ds vius uewus ds gLrk{kj vuqla?kkj vf/kdkjh ds funsZ'kkuqlkj nsxkA izkFkhZ }kjk vU; izdkj ls Hkh mDr izdj.k ds vuqla/kku esa iqfyl rFkk vfHk;kstu i{k dks fu;ekuqlkj lg;ksx fd;k tkosxkA\*\***

3. Mr. Suresh Sahni, the learned Counsel for the petitioner, has argued that such a condition cannot be imposed by the learned Court below during the course of investigation. According to him, Section 73 of the Evidence Act provides a power to direct an accused person to submit a specimen of his handwriting/signature, but such a power is limited only to a proceeding pending before the Court and when the accused person is present before the Court. However, such a condition cannot be imposed during the course of investigation.

4. On the other hand, Mr. Arun Sharma, the learned Public Prosecutor for the State, has argued that such a condition can be imposed by the learned Court below.

5. We have heard the learned Counsels for the parties and have perused the impugned order.

6. The legal issue whether an accused person can be directed to give a specimen of his signature/handwriting during the course of investigation or not, was raised in the case of State of U.P. v. Ram Babu : [1980]2SCR1067 . Their Lordships of the

Hon'ble Supreme Court have held 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 interest of the administration of justice, 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'. Since this issue has already been settled by the Hon'ble Supreme Court, the condition could not be imposed by the learned Court below during the pendency of the investigation.

7. In the present case, since a charge-sheet was not Filed by the police when the regular bail application was listed before the Court below, and the investigation was continuing, the learned Court below could not have imposed the above-noted condition. For such a power has not been bestowed upon the Court under Section 73 of the Evidence Act. Section 73 of the Evidence Act comes into play only after the investigation is complete and the proceeding is pending before the Court and the accused person is present before the Court. Such a power cannot be utilized while the investigation is pending. In the light of Ram Babu's case supra, we are inclined to quash and set aside the condition imposed by the learned Court below vide order dated 7.10.2005.

8. In the result, this revision petition is allowed and the condition stated above directing the accused petitioner to give a specimen of his signature/writing to the Investigating Officer is quashed and set aside.

9. The Deputy Registrar Judicial is directed under Section 405 of the Code to send a certified copy of this order to the concerned lower Court. The lower Court is further directed to make such orders as are conformable to the orders passed by this Court within a period of one week after the receipt of a certified copy of this order.