

**Ram Dev Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Apr-07-2005

**Reported in :** RLW2005(2)Raj1402; 2005WLC(Raj)UC684

**Judge :** K.C. Sharma, J.

**Acts :** [Evidence Act, 1872](#) - Sections 73; Indian Penal Code (IPC) - Sections 376 and 511

**Appeal No. :** S.B. Criminal Miscellaneous Petition No. 269 of 2005

**Appellant :** Ram Dev

**Respondent :** State of Rajasthan

**Advocate for Def. :** Ashvin Sharma, Public Prosecutor

**Advocate for Pet/Ap. :** Anoop Dhand and; A.S. Shekhawat, Advs.

**Disposition :** Petition allowed

**Judgement :**

**K.C. Sharma, J.**

1. Heard learned Counsel for the parties.

2. Through this petition, the petitioner has prayed for quashing the order dated 01.03.2005 passed by the Additional Sessions Judge (Fast Track), Sikar dismissing the application of the petitioner filed under Section 73 of the Evidence Act for getting compared the hand-writing of the prosecutrix on the letters Exh. D-2 to D-5 and/or to seek opinion of the hand-writing expert.

3. The petitioner is facing trial for offence under Section 376/511 IPC. On 17.02.2005, in the course of cross-examination of the prosecutrix, some of the letters referred to above were exhibited to show that prosecutrix, fell in love with the petitioner. However, the prosecutrix denied to have written any such letters. Accordingly, the accused petitioner, on the same day i.e., on 17.02.2005 moved an application under Section 73 of the Evidence Act with the prayer to get compared the hand-writing of the prosecutrix with the aforesaid letters written by her and/or in the alternative, to get the opinion of hand-writing expert. The learned Trial Court vide its order under challenge dismissed the said application of the petitioner on the ground that there is no provision in law to take specimen signature of a witness and then to send the same to hand writing expert for the purposes of getting compared the hand-writing of a witness, in the course of trial. According to the Trial Court, only a judicial Magistrate is competent to make an inquiry and he alone can get the report of hand writing expert so as to compare the hand writing of a witness.

4. A perusal of Section 73 of the Evidence Act makes it clear that 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. Section 73 further enables the Court to direct any person present in Court to give specimen writing for the purpose of enabling the Court to compare such writings with the writing alleged to have been written by such person. The direction is to be given for the purpose of 'enabling the Court to compare' and not for the purpose of enabling the investigating or other agency 'to compare' and not for the purpose of enabling the investigating or other agency 'to compare.' Evidently thus, the Court has ample power under Section 73 of the Evidence Act to compare the disputed signature/writing with the admitted signature/writing. I am fortified in my view by a

decision of the Apex Court in State of Haryana v. Jagir Singh (2004 Cr LR SC 17), wherein their Lordships of the Apex Court, after considering the provisions of Section 73 of the Evidence Act, observed as under:

'The second paragraph of Section 73 enables the Court to direct any person present in the Court to give specimen writing 'for the purpose of enabling the Court to compare' such writing with writings alleged to have been written, by such person. The clear implication of the words 'for the purpose of enabling the Court to compare' is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of enabling the Court to compare and not for the purposes of enabling the investigating or other agency 'to compare.' If the case is still under investigation there is no present proceedings before the Court in which or as a consequence of which it might be necessary to compare the writings. The language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in proceedings which may later be instituted in the Court.'

5. Thus, in view of the provisions of Section 73 of the Evidence Act and in the light of the observations of the Apex court quoted above, it must be concluded that the Trial Court has committed grave error in declining the request of the petitioner. The observations made by the by the Trial Court in the impugned order are contrary to the provisions of law. Present one is a sessions triable case and the learned Magistrate has nothing to do with the proceedings. It is not understandable as to how and under what provisions of law the Trial Court has concluded that jurisdiction of the Court is confined only to the extent of conducting trial and has no power to make an inquiry and that it is the judicial Magistrate only who can make an inquiry and can get the opinion of hand-writing expert, during inquiry. The 'Court' as perfection 3 of the Indian Evidence Act includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.

6. Section 73 categorically makes a provision that the Court where some proceedings are pending can direct any person present in the Court to give

specimen writing 'for the purpose of enabling the Court to compare' such writings with writings alleged to have been written by such person. The clear implication of the words 'for the purpose of enabling the Court to compare' is that there is some proceeding before the Court to compare such writings.

7. For the reasons aforesaid, the impugned order being contrary to the provisions of law cannot be sustained and is liable to be quashed.

8. In the result, this petition succeeds and is hereby allowed. The impugned order dated 01.03.2005 is quashed and set aside. The Trial Court is directed to decide the application of the petitioner filed under Section 73 of the Evidence Act, afresh in the light of the law propounded by the Apex Court in State of Haryana v. Jagir Singh (supra).

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