

Badri Lal Vs. State

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Court : Rajasthan

Decided On : Dec-05-1957

Reported in : AIR1960Raj184; 1960CriLJ1000

Judge : K.L. Bapna and; D.M. Bhandari, JJ.

Acts : [Constitution of India](#) - Article 20(3)

Appeal No. : Criminal Ref. No. 26 of 1957

Appellant : Badri Lal

Respondent : State

Advocate for Def. : G.A. Gupta, Adv.

Advocate for Pet/Ap. : J.K. Mathur, Adv.

Judgement :

K.L. Bapna, J.

1. This case has been referred to the Division Bench by a learned Single Judge of this Court.

2. One Badrilal is being prosecuted for offences under Sections 409 and 420 I. P. C. in the Court of the Sub Divisional Magistrate, Bundi. On 27th December, 1956 the Public Prosecutor requested for directing the accused to give his specimen

handwriting. An objection was raised on behalf of the accused. The learned Magistrate after referring to the Supreme Court decision in *M. P. Sharma v. Satish Chandra*, AIR 1954 SC 300 relied on the case of *Sailendra Nath Sinha v. the State*, AIR 1955 Cal 247, that the obtaining of a specimen handwriting under Section 73 of the Evidence Act did not amount to violation of Article 20(3) of the Constitution.

The accused filed a revision, and the learned Additional Sessions Judge, Bundi has recommended that the order of the Magistrate be set aside as it amounted to violation of Article 20(3) of the Constitution. The case came for hearing before the learned Single Judge of this Court who has referred this case to the Division Bench in view of the importance of the question involved in this case.

3. It is settled by the decision in *M. P. Sharma's case*, AIR 1954 SC 300 that the guarantee in Article 20(3) of the Constitution is against testimonial compulsion and the protection afforded to an accused in so far as it is related to the phrase 'to be witness', is not merely in respect of testimonial compulsion in the Court-room but may well extend to compelled testimony previously obtained from him. It was observed in paragraph 10 that 'to be a witness is nothing more than to furnish evidence and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes.' In the case of AIR 1955 Cal 247, AIR 1954 SC 300 was referred to but it was held that that decision was not authority for the proposition that the direction to take specimen writings of a person who is accused of an offence amounts to a direction compelling him to give evidence against him.

It was observed that a mere direction to, a person accused of an offence, to give his specimen writing did not amount to compelling him to give evidence against himself. In the case of *Brij Bhushan Raghunandan Prasad v. the State*, (S) AIR-1957 Madh Pra 106, the effect of *M. P. Sharma's case*, AIR 1954 SC 300 has been taken to be that the giving of the thumb impression, specimen writing and signature are the positive acts of the accused and when he is directed to give his thumb impression, specimen writing and signature he is being compelled to do something which is likely to be used as evidence to support the prosecution case

against him, and that such a direction is repugnant to Article 20(3) of the Constitution. In our opinion different considerations arise in respect of obtaining a thumb impression and in respect of obtaining specimen handwriting or signature.

4. In obtaining specimen hand-writing or signature, the co-operation of the accused is necessary. But it is not always for the purpose of finding evidence against the accused that such specimen writing and signature may be used. One can well conceive of cases where such specimen hand-writing or signature may support the innocence of the accused. A mere direction to the accused to give specimen handwriting or signature, does not by itself contravene the provisions of Article 20(3) of the Constitution. It may well be that the accused agrees to give such specimen handwriting and signature. What Article 20(3) of the Constitution prohibits is the use of compulsion in order to obtain evidence against the accused by the act of the accused himself. In the present case the accused has objected and, therefore, while the direction to the accused to give specimen handwriting and signature, does not contravene the provisions of Article 20(3) of the Constitution, no action will be taken to compel him to furnish such specimen hand-writing or signature.

5. It is conceivable that in a certain case the police may obtain such specimen hand-writing or signature after compelling the accused to do so. It is open to an accused person in such cases to plead that the provisions of Article 20(3) of the Constitution had been violated at the time evidence is led by the prosecution to prove that certain writings and signatures are identical with the specimen writing and signatures obtained by the prosecution.

6. In respect of thumb impressions different considerations arise. They can be so obtained without the co-operation of the accused and the case in respect thereof stands on the same footing as the recovery of a document or article from the possession of the accused under a search warrant. What Article 20 Sub-clause (3) provides is that compulsion shall not be used against the accused to be a witness against himself. It does not prohibit the securing of evidence by agencies other than the accused himself and by methods in which the co-operation of the accused is not necessary.

7. In the present case while the direction of the Court to the accused to give his specimen hand-writing and signature is not by itself open to objection, no compulsion can be used for obtaining such specimen writing or signature.

8. The reference by the learned Additional Sessions Judge, Bundi is answered as aforesaid.

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