
of Articles 301 and 304 (a) of the Constitution of India. The said notification is, therefore, quashed. No order as to costs.

S.C.K.

Before V.S. Aggarwal, J.

MUKHTIAR SINGH @ MUKHA,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

Crl. M.No. 13620/M of 96

28th January, 1997

Code of Criminal Procedure, 1973-S.482—Identification of Prisoners Act, 1920—Ss. 4&5—Finger impressions—Whether during investigation the Judicial Magistrate can direct a person to give his thumb-impression or not.

Held, that the Identification of Prisoners Act, 1920 had been enacted to authorise measurements and photographs of convicts and others. Section 2(a) defines measurements:

“2(a) ‘measurements’ include finger impressions and foot print impressions.”

(Para 6)

Further held, that reading of the provisions of the Identification of Prisoners Act, 1920 clearly show that in the impression “measurements” giving of the finger impressions and foot prints is included. The legislature specifically excluded the taking of the specimen handwritings. This contrast can easily be noticed that while during investigation the Court cannot direct giving of the specimen handwriting but under the Identification of Prisoners Act, direction can certainly be given for giving of the finger prints and foot prints.

(Para 7)

Further held, that the law specifically permits taking of the measurements during investigation as per order of the Court. During investigation a direction cannot be given for taking of the specimen

writing. The learned Additional Sessions Judge, therefore, rightly allowed the revision petition. There is no ground, thus, to interfere.

(Para 7)

Mr. S.C. Chhabra, Advocate *for the Petitioner*.

Mr. Vikas Cuccria, AAG, Punjab *for the Respondent*.

JUDGMENT

V.S. Aggarwal, J.

(1) The sole question that arises for consideration is as to whether during investigation the Judicial Magistrate can direct a person to give his thumb-impression or not ?

(2) To appreciate the said controversy, it will be appropriate to mention some of the relevant facts. A case is being investigated against Mukhtiar Singh petitioner with respect to the Offences punishable under sections 419/420/467/468 and 471 IPC. The prosecution/State had moved an application with the learned Judicial Magistrate for directing the petitioner to give his thumb impressions for comparing the same which are required in investigation of the case. The learned Judicial Magistrate, Zira relying upon the decision of this Court in the case of *Dharamvir Singh v. State* (1), rejected the request of the prosecution State. The State preferred a criminal revision petition in the court of Sessions at Ferozepur. The learned Additional Sessions Judge, Ferozepur,—*vide* order dated 27th May, 1996 allowed the revision petition. It was held that such an order could be passed during investigation directing an accused-person to give his thumb-impressions. Hence, the present revision petition.

(3) Learned counsel for the petitioner during the course of arguments, highlighted the fact that during investigation such an order could not be passed. Firstly it will be compelling the petitioner to be a witness against himself and secondly he urged that under section 73 of the Indian Evidence Act, such a direction could not be given during the course of investigation. It could only be done during the trial or an enquiry before the Court. Needless to say that the learned counsel appearing for the State urged otherwise and his submissions were confined to the fact that the petitioner was not being compelled to be a witness against himself. During investigation

such a direction indeed could be given.

(4) So far as the first submission of the learned counsel for the petitioner is concerned, it is unnecessary to discuss the same because the same is concluded by the celebrated decision of the Supreme Court in the case of *State of Bombay v. Kathi Kalu Oghad*, (2). The sole question before the Bench of the Supreme Court was as to whether when a person is compelled to give handwriting or signaures, whether under Article 20(3), he is being compelled to be a witness against himself. The answer given was in the negative and while drawing the conclusions the Court held:—

- “(1) An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.
- (2) The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not ‘compulsion’.
- (3) ‘To be a witness’ is not equivalent to ‘furnishing evidence’ in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.
- (4) Giving thumb-impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression ‘to be a witness’.”

Being so there is no merit in the said submission of the learned counsel.

(5) However, reliance strongly was being placed by the learned counsel for the petitioner on the decision of this Court in the case of *Dharamvir Singh v. State* (supra). Before the petitioner can take advantage of the said decision, it becomes necessary to mention that a particular decision of the Court would be a precedent if it is identical on facts or law is generally laid so as to be a precedent. If the facts are different, indeed in that event the binding nature of the said decision loses its thrust and significance *qua* the subsequent case. In the case of *Dharamvir Singh* (supra) an application had been moved before the Judicial Magistrate, Jagadhari for directing him to give specimen handwriting. The learned Single Judge of this Court, keeping in view the provisions of Section 73 of the Indian Evidence Act held that during investigation such a direction could not be given. It is obvious that therein the scope was confined to the fact that the concerned person was being directed to give his specimen handwriting. A clear distinction as would be noticed hereinafter is made when a person is directed to give specimen handwriting or thumb-impressions. In the latter case such a direction can be given.

(6) The Identification of Prisoners Act, 1920 had been enacted to authorise measurements and photographs of convicts and others. Section 2(a) defines measurements:—

“2(a). “measurements” include finger impressions and foot-print impressions;”

Under Section 3 of the said Act a person who has been convicted of an offence punishable with rigorous imprisonment for a term of one year or upwards or has been ordered to give security for his good behaviour under section 118 of the Code of Criminal Procedure, if so required, will allow his measurements to be taken. Measurements can be taken of non-convicted persons under section 4 of the said Act. Section 5 of the Act reads:—

“5. Power of Magistrate to order a person to be measured or photographed.—If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and

place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class;

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.”

Under Section 6 of the said Act if any person is required to allow his measurements to be taken resists or refuses to allow the same which is lawful to secure the taking thereof. Refusal is also an offence under Section 186 of the Indian Penal Code.

(7) Reading of the provisions of the Identification of Prisoners Act, 1920 clearly show that in the impression “measurements” giving of the finger impressions and foot prints is included. The legislature specifically excluded the taking of the specimen handwritings. This contrast can easily be noticed that while during investigation the Court cannot direct giving of the specimen handwriting but under the Identification of Prisoners Act, direction can certainly be given for giving of the finger prints and foot prints. It had been considered in the case of *T. Subbiah v. S.K.D. Ramaswamy Nadar* (3). The said Court held:—

“By this contrast between these two provisions, though under different statues, it appears to my mind that the Court under section 73 of the Evidence Act does not have even power to issue summons to the person to be present in Court unless he is already present in Court as a party concerned in the proceeding before it. The Magistrate can direct a person to give his finger prints in the course of investigation by the police by virtue of section 5 of the Identification of Prisoners Act but not under section 73 of the Evidence Act though the finger prints are included therein for the purpose of comparison.”

This decision was approved by the Supreme Court in the case of *State of Uttar Pradesh v. Ram Babu Misra*, (4). Learned counsel

3. AIR 1970 Madras 85

4. AIR 1980 SC 791

for the petitioner relied upon the decision *State of Uttar Pradesh v. Ram Babu Misra* (supra) so as to urge that such a direction cannot be given but perusal of the same reveals that the Supreme Court was concerned with the question of giving of the specimen handwriting. The scope of Section 73 of the Evidence Act was under consideration. Therefore, the ratio of the decision cannot be taken and stretched that taking of finger prints and foot prints is excluded. In fact the Supreme Court had also drawn the said distinction noticed above in paragraph 6 of the judgment and observed:—

“There are two things to be noticed here. First, signature and writing are excluded from the range of S.5 of the Identification of Prisoners Act and, second, ‘finger impressions’ are included in both section 73 of the Evidence Act and section 5 of the Identification of Prisoners Act. A possible view is that it was thought that section 73 of the Evidence Act would not take in the stage of investigation and so section 5 of the Identification of Prisoners Act made special provision for that stage and even while making such provision, signature and writings were deliberately excluded. As we said, this is a possible view but not one on which we desire to rest our conclusion. Our conclusion rests on the language of section 73 of the Evidence Act.”

It is true that final conclusions had not been given but the Supreme Court certainly did not disapprove that under the Identification of Prisoners Act, during investigation a direction can be given for finger prints and foot prints to be taken of the accused. As noticed above already, the law specifically permits taking of the measurements during investigation as per order of the Court. During investigation a direction cannot be given for taking of the specimen writing. The learned Additional Sessions Judge, therefore, rightly allowed the revision petition. There is no ground, thus, to interfere.

8. For these reasons, the present petition being without merit fails and is dismissed. It will be for the learned Judicial Magistrate at Zira to consider as to whether such a direction has to be issued or not.

J.S.T.