

ANDHRA PRADESH HIGH COURT

B. Rami Reddy

Vs.

State of A.P

Criminal Revision Case No. 788 of 1970 and Criminal Revision Petition No. 702 of 1970
(Madhava Reddy, J.)

03.12.1970. 12.04.1971

JUDGMENT

Madhava Reddy, J.

1. This is a petition by the accused to revise the order made by the Judicial First Class Magistrate, Gooty, in Cri. M. P. No. 751/70 directing the accused to give specimen handwriting to the Investigating Officer in Crime No. 167/70 of the Gooty Police Station.

2. Mr. Sadasiva Reddy, learned counsel for the petitioner contended that directing the accused to give his specimen signatures for the purpose of investigating an offence alleged to have committed, amounts to testimonial compulsion offending Article 20(3) of the Constitution of India. The Supreme Court in *M.P. Sharma v. Satish Chandra (Jagannadhadas J^l.)*, observed that : "Article 20(3) embodies the principles or protection against compulsion of self-incrimination which is one of the fundamental canons of the British system of criminal jurisprudence and which has been adopted by the American system and incorporated as an article of its Constitution. It has also, to a substantial extent, been recognized in the Anglo-Indian administration of criminal justice in this country by incorporation into various statutory provisions.

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So far as the Indian law is concerned, it may be taken that the protection against self-incrimination continues more or less as in the English common law, so far as the accused and production of documents are concerned, but that it has been modified as regards oral testimony of witnesses, by introducing compulsion and providing immunity from prosecution on the basis of such compelled evidence.

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Analysing the terms in which this fundamental right has been declared in our Constitution, it may be said to consist of the following components :

(1) It is a right, pertaining to a person "accused of an offence," (2) It is a protection against "compulsion to be a witness," and (3) It is a protection against such compulsion resulting in his giving evidence "Against himself."

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Broadly stated the guarantee in Article 20(3) is against "testimonial compulsion". But there is no reason to confine it to the oral evidence of a person standing his

¹ AIR 1954 SC 300

trial for an offence when called to the witness-stand. The protection afforded to an accused in so far as it is related to the phrase "to be a 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 is available, therefore, to a person against whom a formal accusation relating to the commission of an offence has been leveled which in the normal course may result in prosecution.

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Considered in this light, the guarantee under Article 20(3) would be available to persons against whom a First Information Report has been recorded as accused therein. It would extend to any compulsory process for production of evidentiary documents which are reasonably likely to support a prosecution against them."

Dealing with the specific question, where thumb impressions or impressions of foot or palm, fingers or specimen writings of the accused are taken, are not included in the expression "to be a witness," their Lordships of the Supreme Court in a Majority Judgement in *State of Bombay v. Kathi Kalu (Sinha C.J.)* held -

" '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. The observation of the Supreme Court in AIR 1954 Supreme Court 300 that Section 139 of the Evidence Act has no bearing on the connotation of the word 'witness' is not entirely well founded in law."

It was further held :

"An accused person furnishes evidence when he is giving specimen handwriting, or impressions of his fingers or palm or foot but he does not furnish evidence against himself in so doing within the meaning of Article 20(3).

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"To be a witness" means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise."

Their Lordships, however, observed that :

" 'To be a witness' in its ordinary grammatical sense means giving oral testimony in Court. Case law has gone beyond this strict literal interpretation, of the expression which may now bear a wider meaning namely bearing testimony in Court or out of Court by a person accused of an offence, orally or in writing."

Finally their Lordships held -

"To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement

has been made."

Having regard to the above, it must be held that asking the accused to give thumb impression does not amount to testimonial compulsion which is violative of Article 20(3) of the Constitution of India.

3. Mr. Sadasiva Reddy, however, contended that Section 73 of the Indian Evidence Act gave power to the Court to 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; and that section

²1961-2 Cri LJ 856 : (AIR 1961 SC 1808)

also applied with necessary modification to finger impressions. According to the learned counsel, that section did not empower the Court to direct a person present in Court to give finger impressions for the purpose of enabling the police investigating the offence to gather evidence against the accused. Section 73 of the Indian Evidence Act reads as follows :

"In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose."

In that Section, the power given to the Court is with respect to "any person" which also includes a person accused of an offence or a person who is in exercise of a lawful authority arrested and brought before the Court for any purpose whatsoever. In *Narayana Swami v. Emperor (Lord Atkin)*³. considering if the expression 'any person' in Section 162, Criminal Procedure Code includes "an accused person", their Lordships held that it did. In *Sailendra Nath v. State, (Guha Ray J⁴.)*, it was held :

"The words 'any person' include a person accused of an offence. There are no words limiting the section to persons other than a person accused of an offence and in the absence of any such limiting words it is not open to the court to read them into the section."

In directing the person who has been arrested and produced in the Court for taking his finger impressions, the Court cannot be said to be exercising a jurisdiction in contravention of Section 73 of the Indian Evidence Act. What is, however, contended is while the Court may have jurisdiction to direct even an accused person to give finger impressions when he was present in the Court, that can be done only for the purpose of enabling the court to compare the disputed finger impression with the finger impression taken in the Court and not for the purpose of enabling the Police to make an investigation. While this argument is attractive, to my mind, is devoid of force. Section 73, no doubt, lays down, that it is for the purpose of enabling the Court to compare the two finger impressions, the disputed and the admitted, but in directing the accused brought before it to give the finger impressions even at the stage of investigation, it is only for the purpose of ultimately enabling the Court before which the accused may be brought, put for trial to compare the thumb impressions with the admitted thumb impressions and thus do

justice. If, after taking finger impressions even during the investigation, the Police Officers are satisfied that the disputed impressions and the admitted impressions do not tally and do not implicate the accused, the accused suffers no prejudice. But, if ultimately, these two impressions are brought before the Court, any opinion expressed by the investigating authorities is not conclusive. It is for the Court to decide whether the two impressions are of one and the same person. The impressions of the accused which were ordered to be taken by the Court earlier would enable it to compare the same with the impressions alleged to be that of the accused. A Full Bench of the Patna High Court in *Gulzar Khan v. State*, (*Misra J.*⁵), held :

³ AIR 1939 PC 47

⁵ AIR 1962 Pat 255 (FB)

⁴ AIR 1955 Cal 247

"A direction by a Magistrate to accused persons to give signatures specimen writings, thumb impressions, finger prints or foot prints to be used for comparison with some other signatures, hand-writings, thumb impressions, finger prints or foot prints, which the police may require in the course of investigation will not amount to compelling the accused persons to be witnesses against themselves and is not hit by Article 20(3) of the Constitution."

Their Lordships further held that :

"Such a direction can be given by the Magistrate under Section 73 of the Evidence Act even before he has taken cognisance of the offence. So far as giving of thumb-impression, finger print or palm print is concerned, it is covered clearly by the terms of Section 5 of the Identification of Prisoners Act (Act XXXIII of 1920) which refer to a Magistrate and not to Court. But in regard to Section 73 of the Evidence Act, the word 'Court' therein must be equated with the Court of the Magistrate in a case triable by him or before it is committed to Sessions in a case triable by the Court of Sessions. As a matter of fact, in every case where the accused is arrested and he is required to give his specimen hand-writing or signature, or thumb impression etc., he is arrested under a warrant which must be issued by a Magistrate or when the police arrest without a warrant in a cognizable offence under Section 60 of the Code of Criminal Procedure, he must be produced before a Magistrate without unreasonable delay and the procedure under Sections 60 to 63 of the Code as also under Article 22 of the Constitution of India has to be followed and that attracts the provisions of Section 73 of the Evidence Act."

I find myself in respectful agreement with the reasoning of their Lordships of the Patna High Court in the above Full Bench case.

4. For the aforesaid reasons, I hold that the Order of the Magistrate directing the accused to give his impressions is perfectly legal and justified and does not call for any interference. This Criminal Revision Petition, therefore, fails and is accordingly dismissed.

Revision dismissed.