

CALCUTTA HIGH COURT

Priti Ranjan Ghosh

Vs

State

(Mitra, J.)

27.09.1972

JUDGMENT

Mitra, J.

- (1.) CRIMINAL Revision Case Nos. 859 of 1971 and 7 of 1972 were taken up for hearing together as the questions of law which arise in both the cases are the same.

(2.) IN Criminal Revision No. 859 of 1971 the petitioners are Priti Ranjan ghose and his two brothers. On the basis of a written complaint made by the Superintendent, Post Offices, presidency Division, addressed to the Superintendent of Police, C. B. I. , S. P. W. Division, Calcutta, a case under section 120b/420, 420/471 of the Indian Penal code was started against them. On the 19th of July, 1971, on the prayer of the inspector, C. B. I. , S. P. W. , Calcutta, the learned Sub-divisional Magistrate, alipore, directed the petitioners to appear before the investigating Officer on 21. 7. 71 and 22. 7. 71 for taking of their specimen handwritings before the learned Magistrate. On repeated prayers of the petitioners the order requiring the taking of specimen handwritings was kept in abeyance and ultimately on 21. 10. 71, the learned Sub-divisional Magistrate directed the petitioners to appear before Sri s. K. Roychowdhury Magistrate, 1st class for giving their specimen hand writings on 21. 11. 71. Against this order the petitioners moved the Sessions Judge, alipore, under Section 435/438 Cr. P. C. The learned Sessions Judge by his order dated 1. 12. 71 rejected the prayer and upheld the order of the learned Magistrate. Against the order of the learned sessions Judge the petitioners have come up before this Court in revision. In Criminal Revision No. 7 of 1972, the petitioner is Gokul Chandra sarma, who along with another person was arrested by the Enforcement Branch of the Calcutta Police on 23. 6. 69, and a case under section 120b/417/467/71 i. P. C. was started against them. Specimen handwritings and signatures of the accused petitioner was taken by the Investigating Officer for the purpose of examination by the Handwriting Expert and on 1. 9. 71 the Investigating Officer submitted a report before the learned chief Presidency Magistrate to the effect that the Expert could not submit a complete report and asked for further writings of the petitioner and the other accused person. The learned Chief presidency Magistrate by his order dated 14. 12. 71 directed the petitioner to give his specimen writings in presence of sri G. P. Roy, Presidency Magistrate. This order of the learned Chief Presidency Magistrate has been

challenged in this revisional application. The common question of law which arises in both the Rules is whether a Magistrate can direct an accused person to give his specimen writings to the police in course of investigation.

(3.) MR. Ajit Kumar Dutta appearing on behalf of the petitioners in Criminal revision No. 859 of 1971 has submitted that neither the Criminal Procedure code nor the Indian Evidence Act has anywhere empowered a Magistrate to direct an unwilling accused to give his specimen writings to the Police in course of investigation. According to Mr. Dutta chapter XIV of the Criminal Procedure code deals, inter alia, with the power of the police to investigate and Chapter xiv nowhere empowers the police to forcibly take specimen writings of an accused, and no provision in the Criminal Procedure Code authorises the police to come before a Magistrate and ask for necessary orders to take such specimens. In this context. Mr. Dutta has referred to the Identification of prisoners Act which authorises the taking of measurements and photographs of convicts and others. Mr. Dutta referred to section 4 of the said Act which requires a person arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards to allow his finger and foot-print impressions to be taken in the prescribed manner, if so required by a police officer. Mr. Dutta argued that if it was the intention of the legislature to empower the police to take specimen handwritings of the accused, "specimen handwritings" would have been included in the definition of "measurements" in section 2 (a) of the said Act. Mr. Dutta has also referred to section 73 of the indian Evidence Act and submitted that under the said section a Magistrate can direct an accused person in a case pending before him to give his specimen handwritings for the purpose of the court's own comparison and a Magistrate can give such direction after he has taken cognizance, and section 73 does not give any such power to a Magistrate when a case is in the stage of investigation. In support of his argument Mr. Dutta has relied on the case of (1) *T. Subbiah v. S. K. D. Ramaswamy Nadar reported in*¹, Mr. Dutta also referred to a decision of this court, (2) (*Hiralal Agarwala v. The state*) reported in A. I. R. 1958 Calcutta 123 in support of his argument as regards the scope and object of Section 73 of the evidence Act and the powers of the court under the said section. Reference was also made by Mr. Dutta to the case of (3) *Farid Ahammad v. The State re ported in*² and to the appeal by the State to the Supreme court against the decision in this case reported in A. I. R. 1961 S. C. 1808. With reference to this decision Mr. Dutt argued that the Supreme Court overruled the view of this Court only on the point whether the taking of specimen handwritings was included within the expression "to be a witness" but the Supreme Court did not express any opinion on the other point decided by this Court in Farid ahammad's case, viz. , that a Magistrate is not empowered to direct an accused person to give his specimen writings to the police in course of investigation. ;

Cases Referred.

1A. I. R. 1970 Mad 85

2 A. I. R. 1960 Cal 32