STATE OF U.P. A

v.

RAM BABU MISRA

February 19, 1980

[R. S. SARKARIA AND O. CHINNAPPA REDDY, JJ.] B

Evidence Act, 1872, Section 73—Scope of—Comparison of signature, writing or seal with others admitted or proved—Competency of the Magistrates to give direction to the accused to give specimen signature when the case is still under investigation.

Dismissing the appeal by special leave, the Court :

C

HELD : Though a direction by the Magistrate to the accused to give his specimen writing when the case is still under investigation would surely be in the interests of the administration of justice, Section 73 of the Evidence Act does not enable the Magistrate to give such a direction when the case is still under investigation. [1068G-H]

The second paragraph of Section 73 enables the Court to direct any person present in Court to give specimen writings "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 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 purpose of enabling the investigating or other agency 'to compare'. If the case is still under investigation there is no present proceeding 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 a proceeding which may later be instituted in the Court. [1069D-F] D E

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(ii) Section 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. It would not be open to a person to seek the assistance of the Civil Court for a direction to some other person to give sample writing under section 73 of the Evidence Act on the plea that it would help him to decide whether to institute a civil suit in which the question would be whether certain alleged writings are those of the other person or not. That being the position, it should not make any difference if the investigating agency seeks the assistance of the court under section 73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings. [1069G-H] G

State (Delhi Admn.) v. *Pali Ram*, [1979] 1 SCR 931 and *State of Bombay* v. *Kathi Kalu Oghad*, AIR 1961 SC 1808; distinguished.

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State of Bombay v. *Kathi Kalu Oghad*, AIR 1961 SC 1808; *T. Subbaiah* v. *S. K. D. Ramaswamy Nadar*, AIR 1970 Mad. 85; *Farid Ahmed* v. *The State*, AIR 1960 Cal. 32; *Priti Ranjan Ghosh and others* v. *The State*, 77 C.W.N.

865; *Dharamvir Singh* v. *State*, 1975 Crl. L.J. 884 (Pb. & Haryana); *Brij Bhushan Raghunandan Pd.* v. *The State*, AIR 1957 M.P. 106; and *Srikant Rout* v. *State of Orissa*, 1972 (2) Cuttack Weekly Reporter 1332; approved.

Gulzar Khan and Ors. v. *State*, AIR 1962 Patna 255 and *B. Rami Reddy and Ors.* v. *State of A.P.*, 1971 Crl. L.J. 1591 (AP); over-ruled.

[The Court suggested that suitable legislation may be made on the analogy of s. 5 of the Identification of Prisoners Act, to provide for the investiture of Magistrates with the power to issue directions to any person, including an accused person, to give specimen signatures and writings.]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 811 of 1979.

Appeal by special leave from the Judgment and Order dated 18-12-1970 of the Allahabad High Court in Crl. Revision No. 170 of 1975.

O. P. Rana and *M. Ramachandran* for the Appellant.

Nemo for the Respondent.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J.—The Officer who was investigating into offences under Section 120-B, 420, 468 and 471 Indian Penal Code alleged against the respondent, Ram Babu Misra, moved the Chief Judicial Magistrate, Lucknow, to direct the accused to give his specimen writing for the purpose of comparison with certain disputed writings. The learned Magistrate held that he had no power to do so when the case was still under investigation. His view has been upheld by the High Court. The State has preferred this appeal by Special Leave of this Court.

Shri O. P. Rana, learned Counsel for the appellant, contended that Section 73 of the Evidence Act conferred ample power on the Magistrate to direct the accused to give his specimen writing even during the course of investigation. He also urged that it would be generally in the interests of the administration of justice for the Magistrate to direct the accused to give his specimen writing when the case was still under investigation, since that would enable the investigating agency not to place the accused before the Magistrate for trial or enquiry, if the disputed writing, as a result of comparison with the specimen writing, was found not to have been made by the accused. While we agree with Mr. Rana that a direction by the Magistrate to the accused to give his specimen writing when the case is still under investigation would surely be in the interests of the administration of justice, we find ourselves unable to agree with his submission that s. 73 of the Evidence Act enables the Magistrate to give such a direction even when the case is still under investigation.

Section 73 of the Evidence Act is as follows : A

> "73. 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 B is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.
>
> 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 C or figures alleged to have been written by such person.
>
> This section applies also, with any necessary modifications to finger-impressions".

The second paragraph of section 73 enables the Court to direct any D person present in Court to give specimen writings "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 in which or as a consequence of which it might be necessary for the Court to compare such writings. E 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'. If the case is still under investigation there is no present proceeding 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 F to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further section 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. Would it be open to a person to seek the assistance of the Civil Court for a direction to some other person G to give sample writing under section 73 of the Evidence Act on the plea that it would help him to decide whether to institute a civil suit in which the question would be whether certain alleged writings are those of the other person or not ? Obviously not. If not, why should it make any difference if the investigating agency seeks the assistance of the Court under s. 73 of the Evidence Act on the plea that a case H might be instituted before the Court where it would be necessary to compare the writings ?

A We may also refer here to Section 5 of the Identification of Prisoners Act, 1920, which provides :

> "5. If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 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".

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D Section 2(a) of the Act defines "measurements" as including "finger impressions and foot print impressions".

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 impression' are included in both E s. 73 of the Evidence Act and s. 5 of the Identification of Prisoners Act. A possible view is that it was thought that s. 73 of the Evidence Act would not take in the stage of investigation and so s. 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 F we desire to rest our conclusion. Our conclusion rests on the language of s. 73 of the Evidence Act.

Section 73 of the Evidence Act was considered by us in *State (Delhi Administration)* v. *Pali Ram*(1), where we held that a Court holding an enquiry under the Criminal Procedure Code was entitled G under s. 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the Court by which he may be tried to compare it with disputed writings. The present question whether such a direction, under s. 73 of the Evidence Act, can be given when the matter is still under investigation and there is no proceeding before the Court was expressly left open. The question H was also not considered in *State of Bombay* v. *Kathi Kalu Oghad*,(2)

(1) [1979] 1 S.C.R. 931.
(2) AIR 1961 SC 1808.

where the question which was actually decided was that no testimonial compulsion under Art. 20(3) of the Constitution was involved in a direction to give specimen signature and hand-writing for the purpose of comparison. A

The view expressed by us in the earlier paragraphs, on the construction of s. 73, Evidence Act was the view taken by the Madras High Court in *T. Subbiah* v. *S. K. D. Ramaswamy Nadar*(1), the Calcutta High Court in *Farid Ahmed* v. *the State*(2) (Mitter J., at page 32), and *Priti Ranjan Ghosh & Ors.* v. *The State*(3), the High Court of Punjab and Haryana in *Dharamvir Singh* v. *State*(4), the High Court of Madhya Pradesh in *Brij Bhushan Raghunandan Prasad* v. *The State*(5), the Orissa High Court in *Srikant Rout* v. *State of Orissa*(6) and the Allahabad High Court in the judgment under appeal. A contrary view was taken by the Patna High Court in *Gulzar Khan & Ors.* v. *State*(7) and the High Court of Andhra Pradesh in *B. Rami Reddy & Ors.* v. *State of Andhra Pradesh.*(8) We do not agree with the latter view. We accordingly dismiss the appeal and while doing so we would suggest the suitable legislation may be made on the analogy of s. 5 of the Identification of Prisoners Act, to provide for the investiture of Magistrates with the power to issue directions to any person, including an accused person, to give specimen signatures and writings. B C D

S. R. *Appeal dismissed.* E

(1) AIR 1978 Mad. 85.
(2) AIR 1960 Cal. 32.
(3) 77 C.W.N. 865.
(4) 1975 Crl. L. J. 884 (Pb. & Haryana).
(5) AIR 1957 M. P. 106.
(6) 1972(2) Cuttack Weekly Reporter 1332.
(7) AIR 1962 Patna 255.
(8) 1971 Crl. L. J. 1591 (A.P.).