

(2002) 02 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 2932 of 2001

Devendra

APPELLANT

Vs

J.M.F.C., Mhow, Distt. Indore

RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Constitution of India, 1950 — Article 20(3)

Evidence Act, 1872 — Section 73

Identification of Prisoners Act, 1920 — Section 5

Citation : (2002) 1 JLJ 391 : (2002) 3 MPHT 229 : (2002) 3 MPLJ 337

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : L.S. Chandiramani, for the Appellant; G. Desai, Dy. A.G., for the Respondent

Judgement

A.K. Gohil, J.

The applicant has filed this repeat application u/s 439, Cr.PC for grant of bail, as his earlier application (M.Cr.C. No. 2377/01) was dismissed on 18-6-01, as not pressed.

The submission of the learned Counsel for the applicant is that the applicant is in custody in connection with Criminal Complain Case No. 366/01, which has been registered by the A.C.J.M., Mhow, on a complaint made by the J.M.F.C., Mhow, under Sections 107, 109, 119, 120B, 177, 192, 193, 195, 196, 197, 198, 200, 201, 205, 215, 220, 221, 416, 419, 467, 468 and 471 of the IPC.

In nutshell, the allegation against the accused in the aforesaid complaint was that a crime, bearing No. 304/2000 was registered at Police Station, Manpur and on the basis of which a Criminal Case No. 309/2000, u/s 34 read with Section 49B of the Excise Act read with Sections 420 and 484, IPC was pending before the J.M.F.C., Mhow, in which one Kailash s/o Meghraj Wadhwani was declared absconder and a warrant of arrest dated 29-12-2000 was issued and in execution of the aforesaid warrant, on 24-1-01 the applicant Devendra s/o Rajendra

Lashkari, got himself arrested showing him to be as Kailash s/o Meghraj Wadhwani, therefore, the accused persons knowingly and intentionally with a view to involve himself in conspiracy, instigated, misrepresented and wilfully concealed the facts, abetted and designed to commit an offence, gave and prepared false information and fabricated false evidence in a judicial proceedings known to be false and the police prepared a false arrest memo showing the arrest of applicant Devendra Lashkari as Kailash Wadhwani and a case of false personation for the purpose of, to act in or proceedings in a criminal prosecution as an accused and produced before the Criminal Court. This arrest memo was prepared by constable Madanlal of P.S. Manpur. Thereafter, on 33-3-01 the Incharge Police Station, Manpur, A.S.I. Raghuvanshi submitted an identification memo of Devendra Lashkari as Kailash Wadhwani.

On 19-3-01, S.D.O.(P), Mhow sent a report of identification before the Court and submitted therein that applicant Devendra s/o Rajendra Lashkari, who is under custody in the name of accused Kailash Wadhwani, is not Kailash Wadhwani, but under impersonation he is in custody in the name of Kailash Wadhwani, though really he is Devendra s/o Rajendra Lashkari. On the same day i.e., 13-3-01, the Court granted permission to take photographs of Rajendra Lashkari, who was in custody and, thereafter, on 21-3-01, the S.D.O. (P) submitted a detailed report of identification and it was found that applicant Devendra Lashkari is in jail in the name of Kailash Wadhwani and in that connection statement of Smt. Kamlesh Lashkari, who is the mother of the applicant was also recorded and after holding a detailed enquiry and after perusal of the record of the Police Station, Manpur, the J.M.F.C. came to the conclusion that the applicant including the co-accused and police officers have committed an offence and for that he passed an order on 19-11-01 to file a complaint under the aforesaid sections before the Court of A.C.J.M., Mhow. Thereafter, the A.C.J.M., Mhow, after taking cognizance on the complaint, issued warrant of arrest against the applicant and other co-accused persons.

During the course of hearing of this petition for bail, it is submitted by learned Counsel for applicant that this petition became infructuous and, therefore, he does not want to press the same. After hearing learned Counsel for the parties and on perusal of record, this Court found that though the petition became infructuous and learned Counsel for applicant does not want to press it, but looking to the importance of the matter, as the question of public interest is involved in this case, it became necessary to dispose it of with certain directions to the concerned authorities.

It is experienced that incidents of impersonations are increasing day by day in the criminal cases before the Criminal Courts. Delay in disposal of criminal trial has also become a usual phenomenon, which may be because of various reasons. One important reason for delay in disposal of criminal cases, is service of summons on the witnesses and service of warrants on the accused persons those who are absconding. Today by the time trial takes place, evidence gets

destroyed or distorted, witnesses forget evidence or turn hostile, victims lose interest and prosecution becomes indifferent. Therefore, it became necessary that expedition and certainty have to be brought back into the criminal justice system by some drastic changes.

It is also a matter of general experience that the criminal cases are mounting in the Criminal Courts. The trials are being delayed on account of the absence of the witnesses, there is also delay in disposal of the cases for want of service of summons on the witnesses as well as for want of appearance of the accused persons. Many a time accused persons who are either absconding after bail or absconding since very beginning are not appearing for years in the trial. Thus, it became necessary that the justice delivery system in criminal cases should be strengthened and some steps be taken to avoid the delay in disposal of criminal cases, so that number of undertrial prisoners may not languish in jails for unlimited period.

In the background of the various problems which are being faced by the Criminal Courts, it is thought that these problems can be solved to some extent by affixing the photographs of the complainant, material witnesses and accused persons along with the charge-sheet. Thus, in the public interest it is necessary to issue suitable directions to the concerned authorities to affix the photographs of the complainant, accused persons and witnesses along with challan papers and also of the sureties and witnesses in the surety/bail bonds, so that it may be helpful not only to avoid repetition of such kind of incidents of impersonation but may also be helpful in speedy disposal of criminal cases. Before issuing any such directions it was also considered proper to issue notices and to provide opportunity of hearing to State Government and all other concerned authorities. Thus, notices were issued to the Principal Secretary, Department of Home, Director General of Police and Director General of Prosecution and also to the Advocate General. The aforesaid authorities have filed a written reply.

I have heard the learned Counsel for the parties appearing in this case on the question of giving directions to the State about affixing the photographs of the witnesses, as well as accused persons on the charge-sheet, with a view to avoid cases of impersonation and to curb delay due to non-service of summons and warrants in criminal trials and appeals, and considered the rival submissions.

The submission on behalf of the State is that the cases of impersonation are not much in number and the Gujarat High Court has already issued directions and if such an action of affixing the photographs is taken, it will put an extra burden on the State exchequer. The State has also roughly calculated the expenses for the same around rupees three crores and odd per year. It was further submitted in the reply that in case of sureties the photographs are being affixed on the surety bonds. It was further submitted on behalf of the State that the identification of a person through a photograph is a faulty procedure, because of changes in the faces after the gap of a time and the affixation of the photographs in the challan papers will not be helpful to the Courts. It was further pointed out that Form No.

29 has already been prescribed under IIInd Schedule of Section 170(2) of the Cr.PC and for that there is a provision about taking of bond by the officer-in-charge of a police station at the time of forwarding an accused to a Magistrate.

It was further pointed out that under Sections 4, 5 and 6 of the identification of Prisoners Act, 1920, there is a provision of taking measurements etc. of non-convicted persons and u/s 5, if a Magistrate is satisfied that for the purpose of investigation or proceedings under the Cr.PC it is expedient to direct any person to allow his measurements or photographs to be taken and Magistrate may make an order to that effect and after taking the permission of the J.M.F.C. photographs can be taken. It was further pointed out that such a direction may create problems and prejudice the right of accused of identification and it may also create problems to take photographs of the accused persons immediately after their arrest and that may prejudice and adversely affect the case of the prosecution. It was suggested on behalf of the State Government that at the time of granting bail to the accused persons in the serious criminal cases the photographs of the accused persons can also be affixed on the surety bonds.

No doubt u/s 170(2) of the Cr.PC there is a provision for taking surety bonds from the accused persons for their appearance in the Court at the time when the charge-sheet is filed or when the accused is forwarded to a Magistrate, but this provision cannot be helpful in cases of impersonation.

In the case of Rameshwar Singh Vs. State of Jammu and Kashmir, , it was held by the Supreme Court that an identification should be held without unavoidable and unreasonable delay after the arrest of the accused and all necessary precautions and safeguards should be effectively taken so that the investigation proceeds on correct lines for punishing the real culprit.

In case of Harnath Singh Vs. State of Madhya Pradesh,), it was held that during the investigation of a crime, the police has to hold identification parades for the purpose of enabling witnesses to identify the properties which are the subject-matter of the offence or to identify the persons who are concerned therein. They have thus a two-fold objects : first, to satisfy the investigating authorities that a certain person not previously known to the witnesses was involved in the commission of the crime or a particular property was the subject-matter of the crime. It is also designed to furnish evidence to corroborate the testimony which the witness concerned tenders before the Court. It was further held by the Apex Court in the case of Mehtab Singh and Others Vs. The State of Madhya Pradesh,) that the necessity for holding an identification parade can arise only where the accused are not previously known to the witnesses.

With the development of science and new methods of the crime it also becomes necessary for the police authorities to use highly specialized and sophisticated technique in the investigation of crime, which is based on developed modern science. Various modern techniques of science, such as ultra violet and X-ray photography and use of chemical methods have become need of time. With the

invention of various techniques and looking to the most modern methods of crime, it became necessary to achieve the goal that every criminal, who is proved guilty should be punished. It also becomes necessary that the methods of investigation should be strengthened with the aid of use of latest scientific methods and techniques. In the background of such a scenario an improved method of investigation should not lost sight of the State.

Provisions of identification of Prisoners Act, 1920, authorises a Magistrate to direct any person to allow his measurements or photographs are to be taken, if he is satisfied that it is expedient for the purpose of any investigation or proceedings under the Cr.PC. It is the time when the aforesaid provisions should be used liberally and normally Magistrate should grant such a permission, if sought by a police officer.

After completing the investigation, to file photographs of the accused persons, alongwith the charge-sheet, permission of the Magistrate would be necessary to the police officer u/s 5 of the Identification of the Prisoners Act, 1920. But no permission is necessary to file the photographs of material witnesses and complainant. In order to avoid evidence by the false witnesses before Criminal Courts and to avoid cases of false personation by the witnesses as well as by the accused persons and with a view to strengthen the criminal justice system, it is necessary to file photographs of the complainant and material witnesses like eye-witnesses alongwith the charge-sheet. In the case of Mahendra Harjivan Luhar Vs. State of Gujarat and Others, the D.B. of the Gujarat High Court had already gave some directions to the State to be followed to ensure that no mischief regarding identification of the accused is played by the culprit and/or to ensure no mistake is committed by the concerned police authorities about the fixing of the photographs with the charge-sheet and also submitting the same in the Court as a part of the papers of the trial.

The provisions of Section 5 of the Identification of Prisoners Act, 1920, were subject-matter of challenge before the Supreme Court and High Courts from time to time. In the case of The State of Bombay Vs. Kathi Kalu Oghad and Others,), it has been held by the Supreme Court that there is no infringement of Article 20(3) of the Constitution by compelling an accused person to give his specimen handwriting or signature; or impressions of his fingers, palm or foot to the investigating officer or under orders of a Court for the purpose of comparison under the provisions of Section 73 of the Indian Evidence Act. And, further, Full Bench of Patna High Court in the case of Gulzar Khan and Others Vs. State, has held that the direction of a Magistrate to the accused for giving of thumb-impression, finger print or palm print is clearly covered by the term of Section 5 and does not violate Article 20(3) of the Constitution. The Punjab High Court also, in Pakhar Singh and Anr. State of Punjab (AIR 1958 P&H 94), held that the provisions of Section 5 of the Identification of Prisoners Act, 1920 cannot be held to be unconstitutional, as violative of the Constitutional guarantee against testimonial compulsion. Likewise, in Government of Manipur Vs. Thokchom

Tomba Singh and Others, the Manipur High Court has also held that giving of thumb mark or specimen handwriting does not offend against Article 20(3) of the Constitution. Therefore, there is nothing illegal in taking the photographs of the accused persons in the criminal cases.

From the reply of the State Government, it is clear that the State has no objection to follow the directions given by the Gujrat High Court in case of Mahendra Harjeevan Lohar (supra). It is not necessary to reproduce all the directions given by the Division Bench of Gujrat High Court here as I am also inclined to issue similar directions in this case to the concerned authorities. The learned Deputy Advocate General for State also submitted that there is no provision in the Police Regulations about affixing the photographs of the complainant, witnesses and also of the accused persons alongwith charge-sheet, but there is also no prohibition in the Regulations. Thus, no permission is necessary under any other law to the police authorities to affix the photographs of the complainant and witnesses on the charge-sheet. Therefore, the police authorities in the prosecution branch should file the photographs of the complainant and material witnesses alongwith the charge-sheet and also the photographs of the accused persons after taking necessary permission from the Courts and the State Government should also consider to amend the Police Regulations and to insert suitable provisions for filing the same as it would be helpful to avoid the cases of impersonation and also shall be helpful in service of summons on the witnesses during the pendency of the trial, service of warrants of arrest, in case the accused is absconding and would also be helpful to serve the summons and warrants at the stage of appeal in cases of appeals against acquittal and also service of warrants in case accused does not remain present even after obtaining bail from the Trial Courts as well as from the Appellate Courts and this process shall certainly be helpful to some extent in quick disposal of criminal cases which is the need of the time.

Not only this the provisions of identification of Prisoners Act, 1920 should be used liberally by the police authorities as well as by the Trial Courts and the filing of the photographs of the accused persons alongwith the charge-sheet should also be a routine and regular matter. Such permissions, should also be granted liberally by the Courts.

The State Government can also give executive directions in the discharge of its executive functions to the concerned authorities to affix the photographs, as being pointed out by this Court in this case and as has been held by the Supreme Court in the case of Vineet Narain and Ors. v. Union of India and Anr., reported in Vineet Narain and Others Vs. Union of India (UOI) and Another, , that till the legislature acts to perform its role by enacting proper legislation, the judiciary may provide a solution till such time and the executive may fill the vacuum by suitable executive orders.

To avoid the apprehension of the State on the question of taking photographs before identification of the accused in case where his identification is doubtful the

same can be taken after the completion of the investigation at the time of filing charge-sheet and this slight vigilant act, on the part of investigating agency, can over rule the doubt of the State as well as the prosecution agency.

It is the duty of the welfare State to protect the life, liberty and property of the citizens and also to maintain peace and harmony in the society. It is also the duty of the State to see that their investigation should be proper and their Court management should be aimed in such a manner so that no guilty person should remain unpunished. Money should not be made as an excuse in strengthening the criminal justice system and the Court management by the State Government because what is alarming today is the slow pace of criminal justice and low percentage of conviction.

The words of Justice Holmes remind me : "The law must keep its promise". Our Constitution inscribe justice as the first promise of the republic, which means that State power will execute the pledge of justice in favour of millions who are the republic. The then Chief Justice of India, Hon''ble Justice Dr. A.S. Anand has already expressed his serious concern over the slow pace of criminal justice and low percentage of conviction.

"Justice delayed is justice denied." Slow justice is the anti-thesis of fair procedure enshrined in Article 21 of the Constitution of India. Time and again, the Apex Court, in number of cases, has held that-- "It is the fundamental right both on principle and precedent, that the trials of all criminal prosecutions of all offences, irrespective of their nature, should be speedy and this principle not only applies equally to the proceedings in the Court but also to the proceedings in the police investigation. This constitutional right of speedy trial is also applicable on the hearing of appeals against conviction and also appeal against acquittal.

Therefore, this petition is being disposed of with the following directions to the State Government which will be implemented by the State Government:--

(1) That the State shall make suitable amendments in the Police Regulations about taking and filing photographs of the complainant, material witnesses and accused persons alongwith the charge-sheet in all criminal cases, sessions trials, except in minor/petty offences and non-cognizable offences.

(2) In a case where there is no dispute of identification of the accused, the photograph of such person should invariably be taken at the time of arrest of any person for crime, while noting his identification marks, to avoid any set back on the prosecution case regarding identification and when identification is doubtful then the photograph should be taken at the time of filing charge-sheet.

(3) In all criminal cases and sessions trials, except in non-cognizable and minor/petty offences, at the time of filing of the challan/charge-sheet the State should also file the photographs of complainant, material witnesses and all the accused persons and the same should be part of the papers of the trial. The State may

also retain copy of photographs with the case diary or at the police station for the purposes of service of summons and warrants for arresting the absconding accused persons.

(4) The photographs should be of enough number to show the accused clearly from his front pose and may include a photograph of the accused in standing position.

(5) The photographs of the accused persons should be duly authenticated by the concerned officer, who arrested the accused persons.

(6) In all sessions trials and criminal cases when warrants of arrest are issued the photographs and mark of identification should be checked with the accused.

(7) In all sessions trials and criminal cases at the time of arrest the identity of the accused should be properly verified and care should be taken to ascertain his correct name and address.

(8) The officer arresting the accused must certify the photographs and the particulars of his identity with a certificate which should accompany the charge-sheet, which is sent to the Court.

(9) In all appeals against acquittal the photographs should also form part of record of the Trial Court and whenever notices and warrants are issued by the Appellate Court or High Court, the photographs and marks of identification should be cross-checked by the office, with the accused and when the notices are returned duly served and warrants executed, they should accompany a certificate by the officer that the accused has been duly served after verifying the identity, name and address with the photograph.

Thus, this petition stands disposed of. A copy of this order be forwarded to the concerned authorities of the State Government for necessary action. A copy of this order be also forwarded to the Main Registry for its circulation to all the Subordinate Courts.

Record be returned.