
(1969) 10 GUJ CK 0008
In the Gujarat High Court

Himatlal Ratilal Rajyagor

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-10-1969

Acts Referred:

Evidence Act, 1872 — Section 51

Penal Code, 1860 (IPC) — Section 114, 114, 34, 408, 472

Citation : (1971) 12 GLR 167

Hon'ble Judges : N.G. Shelat, J

Bench : Single Bench

Judgement

N.G. Shelat, J.—The petitioner-original accused No. 3 and opponents Nos. 2 to 6 have been charge sheeted for offences under Sections 408, 467, 477, 477A, 472 read with Sections 34 and 114 of the Indian Penal Code and u/s 5 of the Entertainment Duty Act and also under Rule 114 of the Cinema Rules before the Court of the City Magistrate, 7th Court, Ahmedabad. Before the inquiry or the trial, as the case may be, commenced an application was presented by the learned Advocate appearing for accused No. 2 requesting the Court to direct the prosecution to supply him with the following documents:

(1) Photographic enlargements of disputed and admitted handwritings of the accused on which prosecution relies Exs. A to A-6 and B-1 to B-34 and others, if any.

(2) The grounds for the opinion given by the expert in respect of writings (case No. 304/67) A to A-5 and Exs. B-1 to B-6, B-7 to B-18 and B-19 to B-34.

The learned Magistrate found that the accused are not entitled to get copies of photographic enlargements of those documents. As to the other request, it is observed by the learned Magistrate that "the report of expert containing grounds of his opinion has been supplied to the accused". Feeling dissatisfied with that order passed on 1 -2-69 by Mr. N.M. Chhaya, City Magistrate, 7th Court, Ahmedabad, the petitioner has come in revision before this Court.

2. The petitioner happens to be accused No. 3 in the case and not accused No. 2 on whose application the order dated 1-2-69 came to be passed by the learned Magistrate. Unfortunately the petitioner's learned Advocate has taken the order as if it were passed on the petition of accused No. 3, though no grievance was made by him before the learned Magistrate. His application before this Court without having so moved the lower Court, would therefore ordinarily be liable to be rejected. The accused No. 2 is absent in this Court. It was, however, pointed out by Mr. Patel, the learned Advocate for the petitioner-accused No. 3, that the order is of a general character affecting all the accused in the case, and that therefore, as the accused No. 2 has not come in revision against that order, it should not debar any of the other accused in the case from challenging the same. The order is wide enough to cover all the accused and not particularly accused No. 2, and the grievance appears also to be of all the accused. In those circumstances and when grievances set out by accused No. 2 in his application were also the grievances of other accused in the case who are parties-opponents in this proceeding, the order affecting all of them can well be considered. One need not be so technical, and allow the proceedings to be delayed. Mr. Acharya, the learned Advocate for opponent No. 6, also says that the grievance is the same and affects all the accused, and therefore this Court should consider the same so as to finally decide the points raised in the case. In those circumstances, I allow the points raised by the petitioner to be considered in this revision application. A Court in revision can do so and its powers are wide enough to consider the correctness or otherwise of any such order passed in any matter affecting all the accused in the case.

3. From the order it appears that report of the handwriting expert who examined those documents containing grounds of his opinion has been supplied to the accused and on that basis that point has not been considered. The learned advocates appears for the petitioner and for accused No. 6 opponent No. 6 state that no such grounds of his opinion have been supplied is the bare opinion of the Chief State Examiner of Questioned Documents, C.I.D.G.S. Ahmedabad and that has been annexed with this application. The learned Assistant Government pleader is not able to satisfy us by showing that the grounds of opinion have been also supplied to the accused. It is, therefore, necessary to consider whether the accused are entitled to claim the grounds or reasons which led the handwriting expert to give an opinion in respect of the writings in question. Section 173 Sub-section (4) of the Criminal Procedure Code requires the police officer in charge of the case to furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under Sub-section (1) and of the first information report recorded u/s 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements etc. The words "and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely" would obviously cover not only the opinion but also grounds or reasons for giving such an opinion given by the handwriting expert. If therefore, the grounds are sought to be relied upon by

the prosecution for determining the question of identity of the handwriting of certain documents in the case, they form one homogeneous document and cannot be separated. It is not that his opinion can be exhibited as in case of some other opinions etc. contemplated in Section 545 of the Criminal Procedure Code and it has, therefore, to be proved. The expert has, therefore, to be proved. The expert has, therefore, to be examined and he would have to state before the Court his grounds for such an opinion. Those grounds should, therefore, be supplied to the accused if they are sent by him to the investigating officer and that would be in the nature of a statement obtained from him as it were u/s 162 of the Criminal Procedure Code. Besides, the opinion becomes relevant in any such case u/s 45 of the Indian Evidence Act. At the same time, Section 51 of the Evidence Act provides that whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant. In other words, the grounds on which any such opinion is based and the opinion which he ultimately gives are both relevant in any such inquiry and if the prosecution were to rely upon any such opinion as a piece of evidence against the accused in any Criminal trial, that has to be supplied to the accused u/s 173(4) of the Code. If the grounds are not supplied, the accused would not be able to know on what basis such an opinion was arrived at. He would be put to disadvantage in his defence, and fairness in a criminal trial demands that they have to be supplied to the accused. The accused should not be taken unware at the time of trial for, after all, the intention of the Legislature behind Section 173(4) of the Criminal Procedure Code is to appraise the accused of all such evidence that is likely to be produced against him in the case. Now when no such grounds, on which the opinion has been given by the expert, are supplied to the accused, as urged before me, the learned Magistrate shall see that the same are supplied to each one of the accused before the trial or inquiry commences.

3.1 Now so far as the photographic enlargements of the disputed and admitted J writings of the accused are concerned, it is difficult to say that they would be covered within the meaning of "and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely" for the reasons that what the prosecution relies upon are the original documents before the Court which are said to have been forged and all that the accused are entitled to claim is only the copies thereof. The copies of such documents have been supplied to the accused and there is no grievance in that respect. The photographic enlargements are taken by the handwriting expert with a view to facilitate his work in arriving at the correct opinion in respect of those writings and they cannot, therefore, be treated as the documents on which the prosecution can be said to rely for the case against the accused. If they are, however, placed before the Court at the time of giving evidence, they can be taken for the purpose of facilitating the appreciation of the grounds of the opinion given by the hand-writing expert and in respect of which his evidence is being recorded. They can as well be seen by the accused at that stage. If, however, they desire to have any photographic enlargements for the purpose of their defence, it would be open to the accused

to make a suitable request to the Court for being permitted to take such photographs in the presence of any officer of the Court. But they cannot claim as of right any such photographic enlargements of such writings made by the hand-writings expert for giving an opinion in respect thereof. The learned Magistrate was, therefore, right in rejecting that part of the request of the accused.

4. The result, therefore, is that the grounds of opinion of the handwriting expert in respect of the documents in the case, are directed to be furnished to the accused and the learned Magistrate shall see that done before the inquiry or trial begins. The other request for giving photographic enlargements of the writings is rightly rejected by the learned Magistrate, and the rule issued in that regard shall stand discharged.