

(1975) 07 AHC CK 0047

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No's. 2213 of 1974 and 3450 of 1975

Iqbal Ahmad

APPELLANT

Vs

Smt. Ketki Devi

RESPONDENT

Date of Decision : 31-07-1975

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 342(1), 482, 493
Evidence Act, 1872 — Section 73
Penal Code, 1860 (IPC) — Section 109, 465

Citation : (1975) AWC 477

Hon'ble Judges : H.N. Kapoor, J

Bench : Single Bench

Advocate : D.N. Wali, for the Appellant;

Final Decision : Dismissed

Judgement

H.N. Kapoor, J.—The applicant has filed this petition u/s 482 Code of Criminal Procedure with the prayer that the order of the Sessions Judge dated 16-5-1974 be quashed. The applicant was being tried in Sessions Trial No. 11 of 1970 in a case u/s 465/109 IPC on the basis of a complaint filed by Smt. Ketki Devi. During the pendency of the trial, an application was move 1 on behalf of the complainant praying that the court in the interest of justice be pleased to take thumb-impressions of the accused Iqbal Ahmad u/s 73, Indian Evidence Act and to send them to the Government Handwriting and Fingerprints Expert for comparison with his thumb-impression affixed in the relevant book of the Registration office. On this application, the learned Sessions Judge passed the impugned order dated 16-5-1974 which is as follows:

The statement of the accused was taken u/s 342(1) of the Code of Criminal Procedure. He is called upon to give his thumb-impression for comparison by expert, but it is explained to him that he is not bound to give his thumb mark as if it goes against him after comparison it may be an evidence against him. He

may refuse to give his thumb-mark but in that case a presumption may be drawn against him.

"HAMKO SAMAJHNE KA MAUKA DIYA JAWE"

DASTKHAT Iqbal Ahmad in Urdu.

The accused wants time to consult his counsel. He will be called upon to give his statement after lunch interval.

Sd. R.B. Srivastava, 16-5-1974.

2. The accused Iqbal Ahmad then moved a revision application in this Court which was rejected as it was against an interlocutory order. He also filed a transfer application in this Court which was also rejected. He then filed the present petition u/s 482 Code of Criminal Procedure.

3. Learned Counsel for the Petitioner has challenged the order of the learned Sessions Judge on two grounds:

Firstly, according to him the counsel for the complainant had no locus standi to move any such application as the case was to be conducted by the public prosecutor u/s 493 Code of Criminal Procedure (old). Secondly, he has argued that the court should not have passed any order which had the effect of helping the prosecution. According to him, u/s 73, Indian Evidence Act, the court could have asked the accused to give his thumb-impression only for the purpose of its being compared by the court itself. He has also argued that there is nothing to show that the Sessions Judge was himself satisfied that such comparison of the thumb-impression was necessary for deciding the case. In support of his contention, he has placed reliance on the following cases:

R.B. Khajotia v. A.S.T. Zaidy 1973 CriLJ Bom. 1499, Hiralal Agarwalla Vs. The State, and State v. Poonamchand Gupta AIR 1958 Bom 208.

These are single Judge decisions in which it was held that the court cannot order thumb-impressions or signatures to be taken u/s 73, Indian Evidence Act and to hand them over to the prosecution for sending them to Handwriting Expert and thus to enable the prosecution to create evidence against the accused. It has been held by Hon'ble Supreme Court in the case of State of Bombay v. Kathi Kalu 1961 (2) CriLJ SC 856 by a majority judgment that it does not amount to compelling the accused to be a witness against himself within the meaning of Article 20(3) of the Constitution by asking him to give specimen handwritings or impressions of fingers, palm or foot etc. u/s 73, Indian Evidence Act, the learned Sessions Judge was fully authorised to ask the accused to give his thumb-impression failing which an adverse inference could be drawn against him. Section 73, 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.

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 or figures alleged to have been written by such person.

(This section applies also, with any necessary modifications, to finger-impressions).

Finger prints by implication are to be compared with a disputed finger prints with the help of the Expert. It is not possible to put the limited interpretation on the words "for the purpose of enabling the Court to compare" that the Court can itself compare the finger impressions and cannot send them to the Handwriting Expert directly and invite the opinion of the Handwriting Expert. No doubt, it would be deemed that the Court has itself considered the Expert's evidence on this point necessary and the Expert may be examined as a Court witness. The request in the application was that the finger impression of the accused may be taken and sent to the Government Handwriting Expert by the Court. They will of course be sent by the Court to the Government Expert under its own seal and will not be handed over to the prosecution for making such use as the prosecution may consider necessary. It is true that the complainant himself had no locus standi u/s 493, Code of Criminal Procedure (old), but the counsel for the complainant could move the application under the direction of the public prosecutor and there is nothing to show that this application was moved against the wishes of the public prosecutor. Counsel for the complainant is often allowed by the public prosecutor even to advance arguments. In fact, by the aforesaid application the attention of the Court was drawn to this aspect and it was ultimately for the Court to be satisfied whether it was a fit case in which it would like to take the finger prints of the accused for comparison. The order ultimately passed by the learned Sessions Judge was obviously passed on his own satisfaction. There is, thus, no illegality in the order passed by the learned Sessions Judge. It is a perfectly just order.

4. In the result, the petition is dismissed. The stay orders, dated May 28, 1974 and 18-7-1975 are vacated. A copy of this order shall be sent to the Sessions Judge concerned at an early date. The Sessions Judge shall now proceed with the trial without further delay.