

(1963) 02 GUJ CK 0005
In the Gujarat High Court

Keshavlal Trikamlal and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-02-1963

Acts Referred:

Constitution of India, 1950 — Article 20
Evidence Act, 1872 — Section 73

Citation : (1964) CriLJ 94 : (1964) GLR 298

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—What is challenged in this criminal revision application is an order of the City Magistrate, 3rd Court, Ahmedabad, asking the accused persons, namely the applicants, to go to the" police station and give their handwritings and signatures to the police. It is true that the giving of signatures or giving of handwriting is not hit by Article 20 of the Constitution as held by their Lordships of the Supreme Court in The State of Bombay Vs. Kathi Kalu Oghad and Others, . But the question before me is not whether the giving of signatures or giving of handwriting is hit by Article to of the Constitution, but the-question is whether the Magistrate has power to ask the accused persons who are on bail to go to the police and give their specimens of signatures and handwriting. The powers of Magistrates and Police Officers are prescribed under various laws. Those powers cannot be enlarged. There must be-something in the law for the exercise of power if such power is to be exercised by a police officer or by a Magistrate. If there is no provision in-the law for the exercise of a power, that power cannot be exercised by a police officer or by a Magistrate or by a Judge.

2. The learned Counsel for the Government and the learned Counsel for the complainant rely on Section 156 and Section 157, Cri. Pro. Code. Of course, the police has got powers of investigation, but that does not mean that the police can compel an accused person to give his specimen signature and hand-writing. Section 73 of the Evidence Act provides 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....

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. If the accused is present in Court, then the powers given u/s 73 of the Evidence Act can be used by the Court. But that is not what is being done now. The accused are not before the Court and the case against them is still under investigation. No provision of law has been pointed out to me, whereby such a power can be exercised.

3. I The revision application is, therefore, allowed and the order passed by the learned Magistrate is set aside.