

(1983) 08 AHC CK 0045

In the Allahabad High Court

Case No : Criminal Misc. Petition No. 6028 of 1983

Uma Shanker Vishwakarma

APPELLANT

Vs

Smt. Geeta Devi and Another

RESPONDENT

Date of Decision : 03-08-1983

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 125, 162, 53(1)
Penal Code, 1860 (IPC) — Section 494

Citation : (1983) 7 ACR 464

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : Tej Pal, for the Appellant;

Final Decision : Dismissed

Judgement

M. Wahajuddin, J.—In a petition u/s 125 Code of Criminal Procedure by the opposite party, claiming to be the wife of the applicant, the applicant has been directed by the VI Munsif Magistrate, Varanasi, as per his order dated 31-3-1983 to give his specimen signature by the next date for expert's opinion. This has been done on the prayer of the opposite party, who applied that as the present applicant has denied his signature on the alleged application given by him his signature may be obtained, so that expert's opinion regarding the disputed signature may be obtained.

2. It is alleged in the present application that the applicant is facing a trial u/s 494, IPC also and it will amount to compelling him to be a witness against himself and it is urged that the applicant is protected under Article 20(3) of the Constitution in the matter and his objection to give a specimen signature in the proceeding should have been upheld, because that very specimen signature may also be later used in the proceeding u/s 494, IPC for proving the alleged earlier marriage with the present opposite party. The objection was over-ruled by the Magistrate and the order of the Magistrate has been upheld by the revisional

Court. The prayer is that the orders in question be quashed.

3. The proceeding u/s 125 Code of Criminal Procedure is of a quasi civil nature, though under the Code of Criminal Procedure that proceeding does not relate to any prosecution for any offence, nor the position of the applicant in that proceeding is that of an accused person. It is, however, urged that the position of the accused in the other case u/s 494 IPC is that of an accused and the protection is being sought on that consideration, though he may not be an accused in the proceeding u/s 125, Code of Criminal Procedure Reliance has been placed by the applicant upon the case of *Nandini Satpathy Vs. P.L. Dani and Another*, . It has been held in that case that the prohibitive sweep of Article 20(3) of the Constitution goes back to the stage of police investigation not commencing in Court only and the protection is with regard to other offences also pending or eminent which may deter the accused from voluntary disclosure of criminatory matter. Reliance is also placed upon the case of *Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another*, at page 35 observing, "it has been held that the said constitutional protection is not confined only to criminal cases, but it extends even to civil proceedings."

4. Two more cases were referred, i.e. *Romesh Chandra Mehta Vs. State of West Bengal*, and *Mahabir Mandal and Others Vs. State of Bihar*, . In the first case what has been held is that person against whom enquiry is held under certain provisions of Sea Customs Act is not a person accused of any offence within the meaning of Article 20(3) of the Constitution. In the later case it has been simply held that the bar of inadmissibility created by Section 162 Code of Criminal Procedure operates also on statements of accused made to the Police Officer. None of these two rulings, therefore, are on the point. So far as former two rulings are concerned, I have already mentioned the proposition of law laid down therein. In none of these four cases any question of specimen signature etc. was involved as to whether that would also be covered under Article 20(3) of the Constitution or not.

5. I may mention that on my pointing out that I remember of some pronouncement in which the matter of criminatory compulsion was considered, namely that of *Jamshed v. State of U.P.* 1976 CP 1680 , the learned Counsel for the applicant showing cooperation to the Court produced that ruling. In that case it was held that taking the blood of the accused person is permissive to establish the guilt. Reliance was also placed on Section 53(1) Code of Criminal Procedure. It was also held in that case that it will not amount to compelling the accused to be a witness against himself within the meaning of Article 20(3) of the Constitution. Reliance was placed upon a Supreme Court case, namely, *The State of Bombay Vs. Kathi Kalu Oghad and Others*, . This pronouncement is a direct authority on the matter of taking of specimen signatures, finger prints or foot prints. It is a pronouncement of a Constitutional Bench of the Supreme Court consisting of eleven Hon"ble Judges, i.e. largest Bench. It has been held in that case per majority:

giving thumb impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression "to be a witness" within the meaning of Article 20(3) of the Constitution.

6. I am bound by the view of the largest Bench of the Supreme Court directly on the point and I hold that any protection under Article 20(3) of the Constitution is not afforded in the matter of giving a specimen signature and that being the position of law this application has no force and it is summarily rejected.