

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case Nos.829 and 843 of 2015
and
M.P.Nos.1 and 1 of 2015

1. Roopesh @ Prasanth @ Praveen @ Prakash
@ Ruban @ Kariyan
2. Kannan @ Senthil @ Kumar @ Minnal
3. Veeramani @ Natraj @ Sunilkumar @
Sara @ Eswar @ Vajramani @ Riswan
4. Shyna @ Shyni @ Shoba @ Rajee
5. Anup Mathew George. Petitioner in both
the revisions

Vs

The Deputy Superintendent of Police
'Q' Branch CID
Coimbatore Range
Coimbatore District. Respondent in both
the revisions

Criminal Revision Cases filed under Sections 397 read with
Sec. 401 of Cr.P.C. as against the order dated 31.07.2015 passed
by the learned Principal Sessions Judge, Coimbatore in
Crl.M.P.No.1897 of 2015 and Crl.M.P.No.1898 of 2015 respectively.

For Petitioners : Mr.R.Sankarasubbu
in both the cases
For Respondent : Mr.V.Arul
in both the cases Government Advocate
(Crl.side)

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COMMON ORDER

These revisions have been filed as against the orders dated
31.07.2015 passed by the learned Principal Sessions Judge,
Coimbatore in Crl.M.P.No.1897 of 2015 and Crl.M.P.No.1898 of
2015 respectively in allowing the petitions filed by the
respondent seeking to direct the petitioners/accused to execute
their signatures in four languages, viz., Tamil, Malayalam,
Kannada and English.

2. The case of the prosecution in brief is as follows:

On 04.05.2015 at about 15.00 hrs, based on the information received from the reliable sources stating that the petitioners/accused seems to be Maoists and that they are trying to involve several youngsters from various States of Tamil Nadu, Andhra Pradesh, Kerala and Karnataka in the Terrorist Act, by assembling near Karumathampatti, the 'Q' Branch Inspector along with their force were waiting near R.C.Bakery in Karumathampatti and watched the activities of the petitioners. During such course, the respondent seized some documents from the petitioners and in order to verify the signatures found in the said documents along with the signatures of the petitioners/accused herein, the respondent filed the above petitions seeking the signatures of the petitioners in all the four languages and the said petitions were allowed by the Court below. Challenging the same, the petitioners/accused have come forward with these revisions.

3. Learned counsel for the petitioners/accused would put forth the following contentions:

(i) That the Court below has given an illogical reasoning for ordering such an application, especially in view of the fact that Section 311-A of the Criminal Procedure Code, Amendment Act (2005) w.e.f. 23.06.2006 was omitted insofar as Tamil Nadu is concerned by virtue of Tamil Nadu Amendment Act 2006, relating to IPC and Criminal Procedure Code as the same is not notified in Tamil Nadu.

(ii) When the petitioners are not willing to offer their signatures the Court cannot compel them to do the same.

(iii) The respondent may use the signatures so obtained by the respondent for implicating the petitioners in some other case.

(iv) The Court below has erred in ordering the petitions filed by the prosecution for obtaining the signatures of the petitioners/accused in four different languages, which is in violation of Article 21 of the Constitution of India.

(v) The respondent by using the signatures so obtained from the petitioners may create any other document and that there cannot be any compulsion to make signatures in the unknown language of the petitioners.

In this connection, the learned counsel for the petitioners by relying upon various judgments including the American Judgment in the case of Miranda vs. Arizona reported in 384 U.S. 436 [1966] and prayed for setting aside the orders passed by the Court below.

4. Whereas the learned Government Advocate (Crl.side) would contend that there is no compulsion as regards the execution of the document. What is enumerated under sub-clause (3) of Article 20 of the Constitution of India has been protected by the Hon'ble Supreme Court itself in the judgment reported in AIR 2010 SC 197491) [Smt.Selvi and others vs. State of Karnataka] wherein the Hon'ble Supreme Court has held that execution of signatures will not amount to testimonial compulsion. Accordingly, he would submit that the argument advanced by the learned counsel for the petitioners that the prosecution may use the specimen signatures so obtained compulsorily from the petitioners in some other case is not correct. Further, insofar as to the implementation of Section 311-A is concerned, this Court in two different judgments, viz., reported in 2013-1-L.W. (Crl.)164 [S.Sundari vs. The State rep.by the Inspector of Police, District Crime Branch, Tirunelveli District] and 2015-1-L.W.(Crl).657 [Babitha Surendran vs. State rep.by Inspector of Police, Chennai] has referred to the above Section and in the latest judgment reported in 2015-1-L.W.(Crl).657 has stated that Section 311A is an enabling provision, which comes to the aid of the Investigating Agency, when a suspect or accused refuses to give his specimen signatures or handwriting. Even otherwise, as far as the case on hand is concerned, it is only at the initial stage of investigation. To verify only during the course of investigation, the signature has to be obtained from the petitioners and this will not cause any prejudice to them. Accordingly, he would submit that this Court need not interfere with the order passed by the Court below.

5. Heard both sides.

6. On a careful perusal of the entire documents and the order passed by the Court below, the fact is that the Court below has ordered for obtaining specimen signatures from the petitioners in the the languages, which is alleged to have been known to them.

7. Now let us consider the impact of the same on the accused, in regard to the case on hand.

8. As far as the petitioners are concerned, the petitioners according to the prosecution, have been apprehended as a Maoist threat persons and they by assembling in a Bakery were imparting

training to the youth from Tamil Nadu, Kerala, Karnataka to strengthen their squad at the tri-junction area and for collection of funds for the Maoist organization for furthering their activities of terrorism. During the process of search, the respondent have seized cell phones, incriminating documents and other materials from the said place including certain signed documents. The investigating agency by obtaining the signatures of the petitioners, wanted to compare the same with the documents, which have already been seized from the said place. In fact, they want signatures especially, in all the four languages, viz., Tamil, English, Kannada and also in English as the petitioners were found doing the activities in the tri-junction area. Whereas per contra, as per the defence, they go one step further by stating that no documents have been recovered from them. Therefore, apprehend, by virtue of getting their signatures that too in, different languages, the prosecution could utilize the same for roping them in some other case. But the Court below has categorically taken into consideration the fact that the prosecution is seeking to obtain the signature only to further elucidate into the investigation.

9. We have to look at the stage. The stage of the present case is that the petitioners have been arrested and the investigation is pending. If certain signed documents are seized and to verify the same, if any sample signatures are obtained, whether it would amount to compulsion is the only question that has to be decided in the case on hand. For this question, this Court in the judgment reported in 2015-1-L.W. (Cr1.) 657 cited supra, wherein this Court has held as follows:

"8. The power of the police to obtain handwriting and signatures during the course of investigation from witnesses, suspects and accused has never been questioned, because it was considered as concomitant power of investigation that inheres in the police.

9. The word "investigation as defined in the 1898 Code and 1973 Code is as follows:

"Section 4(1) of 1898 Code:

4(1) "investigation" includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf."

Section 2(h) of 1973 Code:

2(h) "investigation" includes all the proceedings under this Code for the collection of evidence

conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

10. From the aforesaid texts itself it is abundantly clear that it is an inclusive definition and not an exhaustive definition. As long as there is no constitutional or statutory prohibition inhibiting the Police from obtaining specimen handwritings and signatures from an accused, it cannot be stated that the police is denuded of this power. The mere obtaining of specimen signatures or handwritings from the accused cannot by itself fasten any criminal liability on him, because the same has to be compared by an Expert with the disputed one for fastening criminal liability, unlike a statement to a Police Officer which proprio vigore may mulct the suspect with criminal liability if it is in the nature of a confession. The handwriting or signatures obtained from an accused cannot by itself fasten any criminal liability, unless it is sent to an expert to be compared with the disputed one and opinion obtained.

12. In my view, Kathi Kalu Oghad case is a complete answer to this issue and it requires no further deliberation. The Supreme Court has very clearly held that giving of specimen signatures and handwritings to the police will not amount to testimonial compulsion prohibited by Article 20(3) of the Constitution of India. Thus, there is no Constitutional bar for the police to obtain specimen handwritings and signatures from an accused.

14. This issue can also be looked at from two other perspectives, namely (a) what is not prohibited is permitted and (b) when a power is given to an authority to do something, it includes such incident or implied powers, which would ensure proper doing of that thing. I am conscious of the fact that the aforesaid principles cannot be extended to protect all actions of the police, for, that may lead to disastrous consequences. The above principle can be applied on a case to case basis. In the present context, the aforesaid principles can be safely applied because, specimen signatures and handwritings by themselves cannot fasten criminal liability on an individual. The damage to the administration of criminal justice system will be more if the said power is not conceded to the police.

15. To say that Section 311-A is the only repository of the power to obtain signatures and handwriting from the accused during investigation, would amount to denuding a power which always existed with the police. Section 311-A was introduced in the Statute nearly 25 years, after the Supreme Court made a suggestion in State of Uttar Pradesh vs. Ram Babu Misra [(1980) 2 SCC 341].

16. In my considered opinion Section 311A Cr.P.C. is an enabling provision which comes to the aid of the Investigating Agency, when a suspect or accused refuses to give his specimen signatures or handwriting."

21. When a Police Officer obtains the specimen signatures and handwritings from a witness, suspect or accused, he does not violate any statutory provision or provisions of the Constitution of India."

10. Therefore, when there is no constitutional bar for the police to obtain specimen handwritings and signatures from an accused, the apprehension of the petitioners, that it could be utilized for some other case also does not arise. Further, the case is only in the process of investigation.

11. Secondly, the petitioner would contend that they did not even know the language.

12. After all they have been arrested in a tea shop in the tri-junction area, viz., in the border of Tamil Nadu, Karnataka and Kerala. According to the petitioner they have been arrested in Coimbatore, Kavundampalayam. Therefore, at least they must be knowing one language viz., Tamil or any other language. However, they would now contend that they do not any of the languages, viz., Tamil, English, Malayalam or Kannada. Can this be accepted? and it is for the prosecution to verify during the course of investigation and it is for the petitioners to establish in whatever language they know. For this purpose, definitely, they have to put their signatures and they cannot say they do not know any of the aforesaid languages. Therefore, the court below did not accept the defence case and allowed the petitions.

13. Learned counsel for the petitioner would rely upon the decision of this Court reported in that 2013-1-L.W.(Cr1.)164 cited supra for the proposition that the Court below should not have allowed the petition as Section 311-A inserted by Cr1.P.C. Amendment Act (2005) has been omitted insofar as Tamil Nadu is

concerned cannot be accepted as this Court has categorically held as follows:

"11. Also, this Court aptly points out the decision of the Hon'ble Supreme Court in State vs. Pali Ram [Air 1979 Supreme Court 14], wherein it is laid down that

"The Court of Law is empowered to direct the accused to give the specimen handwriting and that the said direction can be given to enable the same to be compared by the Handwriting expert".

12. As far as the present case is concerned, even though Section 311(A) of Cr.P.C., (Central Act 2/74) is omitted by virtue of the Indian Penal Code and the Code of Criminal Procedure [Tamil Nadu Amendment] Act, 2006, yet this Court is of the considered view that as per Section 73 of the Indian Evidence Act, 1872, the learned Magistrate can direct the petitioner/A4 present in Court to give her fingerprint impression for the purpose of comparison. In this regard, the Court can either be a Court holding the Enquiry or trying the accused in the considered opinion of this Court. More importantly, the power as per Section 73 of the Indian Evidence Act, 1872 is to enable a Court of Law to compare the writings and not to enable the Investigating Agency or any other Agency to compare such writings. Viewed in that perspective, this Criminal Revision Petition fails."

14. The Hon'ble Apex Court in the judgment reported in (1994) 3 SCC 299 [State of Punjab vs. Balbir Singh] while interpreting the statutes whether it is mandatory or directory has held as under:

"17. As discussed above, in considering whether a provision in a statute is mandatory and the effect of non-compliance of the same, the Courts should keep in mind the real intention of the legislature keeping in view the whole scope of the Act and the particular provisions to be construed in the context. Keeping these principles in view, we shall proceed to consider the nature of some of these relevant provisions.

18. Under the Act wide powers are conferred on the officers and deterrent sentences are also provided for the offences under the Act. It is obvious that the legislature while keeping in view the menace of illicit drug trafficking deemed it fit to provide for

corresponding safeguards to check the misuse of power thus conferred so that any harm to innocent persons is avoided and to minimise the allegations of planting or fabricating by the prosecution, Section 50 is enacted.

24. Sections 52 and 57 come into operation after the arrest and seizure under the Act. Somewhat similar provisions are also there in the Cr.P.C. If there is any violation of these provisions, then the Court has to examine the effect of the same. In that context while determining whether the provisions of the Act to be followed after the arrest or search are directory or mandatory, it will have to be kept in mind that the provisions of a statute creating public duties are generally speaking directory. The provisions of these two sections contain certain procedural instructions for strict compliance by the officers. But if there is no strict compliance of any of these instructions that by itself cannot render the acts done by these officers null and void and at the most it may affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. Therefore, it has to be shown that such non-compliance has caused prejudice and resulted in failure of justice. The officers, however, cannot totally ignore these provisions and if there is no proper explanation for non-compliance or where the officers totally ignore the provisions then that will definitely have an adverse effect on the prosecution case and the courts have to appreciate the evidence and the merits of the case bearing these aspects in view. However, a mere compliance or failure to strictly comply by itself will not vitiate the prosecution."

15. In view of the above, if the petitioners execute the document by putting their signatures, it will not amount to restrain themselves. Keeping this in view, the court below has allowed the said petition.

16. Under these circumstances, I do not find any reason to interfere with the order passed by the Court below to obtain the signatures of the petitioners in their known languages for comparing the same with the documents seized by them.

17. In the result, both the criminal revision cases are dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vj2

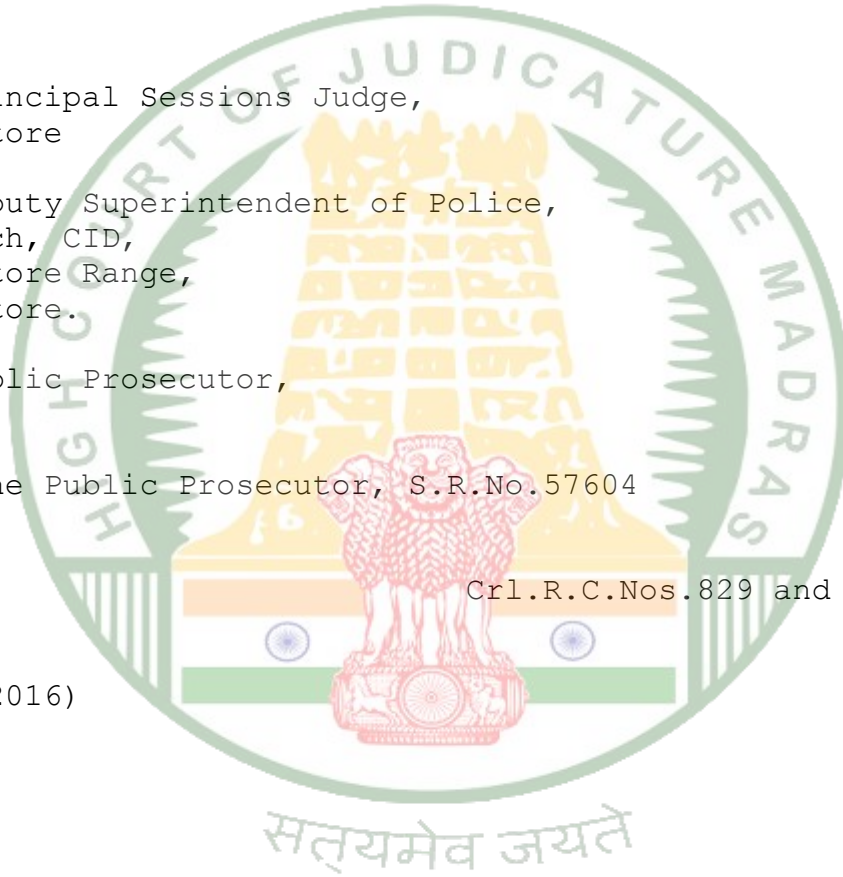
To

1. The Principal Sessions Judge,
Coimbatore
2. The Deputy Superintendent of Police,
Q Branch, CID,
Coimbatore Range,
Coimbatore.
3. The Public Prosecutor,
Madras

+1cc to the Public Prosecutor, S.R.No.57604

Cr1.R.C.Nos.829 and 843 of 2015

SAI (CO)
CA(27/01/2016)



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