



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Criminal Original Petition (MD) No. 9985 of 2011

and

M.P.(MD)Nos.1 of 2011 and 1 of 2014

Christopher Sam Miller

.. Petitioner

Versus

The Inspector of Police,
District Crime Branch,
Nagarcoil,
Kanyakumari District

.. Respondent

Criminal Revision case filed under Section 482 of the Code of Criminal Procedure, to call for the records from the impugned notice dated 24.06.2011 issued by the learned Judicial Magistrate No.I, Nagercoil in CrI.M.P.No.3020 of 2011 in Crime No.47 of 2010 on the file of the respondent and quash the same.

For Petitioner : Mr.N.Ananthapadmanaban

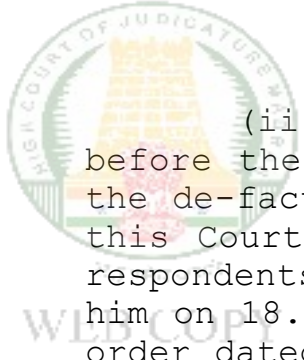
For Respondent : Mr.K.Anbarasan

Government Advocate (CrI. Side)

ORDER

The petitioner has come forward with this Criminal Original Petition challenging the notice dated 24.06.2011 issued by the learned Judicial Magistrate No.I, Nagercoil, in Cr.M.P.No.3020 of 2011 in Crime No.47 of 2010 on the file of the respondent police, in and by which the petitioner was directed to appear before the Court on 29.06.2011 for getting specimen signature in connection with the investigation in the Calander Case.

2. (i) The de-facto complainant - one Dr. Ralph Daniel has preferred a complaint on 18.02.2010, stating that he and his aunt are the owners of the land measuring an extent of 63 ½ cents, situated in Survey No.190/11 at Thirupparabu Village, Kalkulam Taluk, Kanyakumari District and patta for the said land stands in his name under Patta No.2150. According to the defacto complainant, three months prior to the complaint, the second accused approached him and submitted that he has purchased the land in question vide Document No.141/2000, registered on the file of the Thiruvattar Sub-Registrar Office. The de-facto complainant, therefore, verified the records and came to know that the said land was sold to a third party one Sundarrajan and others by impersonation of his name to him as well as the other owner of Leelabai, who is the aunt of the de-facto complainant.



(ii) Though the de-facto complainant lodged a complaint before the respondent police, no action was taken thereon, hence, the de-facto complainant filed a criminal original petition before this Court in CrI.O.P.No.5212 of 2010 seeking a direction to the respondents to register a case on the basis of complaint given by him on 18.02.2010. The said case was disposed of by this Court by order dated 20.09.2010, by recording the submission of the learned Government Advocate that the case has already been registered.

(iii) According to the defacto complainant, after registration of the case, there was no progress made in the investigation of the complaint given by the de-facto complainant, hence, he filed another petition in CrI.O.P.(MD)No.6896 of 2011 seeking a direction to the Superintendent of Police, Kanyakumari, to transfer the investigation in Crime No.47 of 2010 on the file of the respondent police to other investigating agency like C.B.C.I.D and this Court disposed of the CrI.OP (MD) No. 6896 of 2011 by an order dated 02.08.2013, directed the Investigating Officer to file final report in the case in Crime No. 47 of 2010 within a period of three months thereon.

(iv) During the course of investigation in the case in Crime No.47 of 2010, the respondent police filed a petition before the learned Judicial Magistrate No.I, Nagercoil, under Section 311-A Cr.P.C., in Cr.M.P.No.3020 of 2011, dated 22.06.2011 seeking to issue appropriate direction to the petitioner herein to give his specimen signature or thumb impression for the purpose of investigation in this case. The said Petition was allowed by the learned Judicial Magistrate No.I, Nagercoil, allowed, issued summons to the petitioner for his appearance before the Court on 29.06.2011 at about 02.00 p.m., for getting his specimen signature or thumb impression. Aggrieved by the same, the petitioner has filed the present petition.

3.Mr.N.Ananthapadmanaban, the learned counsel appearing for the petitioner submitted that the learned Judicial Magistrate has issued the impugned notice to the petitioner for his appearance without any provision of law. According to the learned counsel, the petitioner was not a party to the case in Crime No. 47 of 2010 and therefore, calling upon the petitioner to affix his signature or thumb impression is unsustainable under law. The learned counsel for the petitioner relied on Section 311-A of the Code of Criminal Procedure and submitted that no order can be passed under this Section, unless the person has at some time been arrested in connection with such investigation or proceeding. In the present case, even as per the first information report, the petitioner was not arrayed as an accused and he is only a witness and hence, the order passed by the learned Magistrate is per se illegal and against the provisions of Section 311-A of the Code of Criminal Procedure. The learned Magistrate misread the procedures under Section 311-A Cr.P.C., which pertains to a stage after commencement of trial and not during investigation. The learned magistrate has therefore no power to call upon the



petitioner to affix his specimen signature or thumb impression at the instance of the Investigating Officer, who has not filed final report in the case. The learned Judicial Magistrate has no inherent power to issue direct the petitioner to affix his signature or thumb impression even before the complaint was taken cognisance of by the Court or even before the charge sheet in the calander case is filed. The learned counsel for the petitioner therefore prayed for allowing the present Criminal Original Petition.

4. Per contra, Mr.K.Anbarasan, learned Government Advocate (Criminal Side) would submit that after receipt of the complaint from the defacto complainant, as per the direction of this Court, the respondent police conducted investigation. During the course of investigation, the signature or thumb impression of the petitioner is required to effectively conclude the investigation and therefore, the respondent filed the petition under Section 311-A of Code of Criminal Procedure. Such a petition was rightly filed by the investigation officer especially when the de-facto complainant raised an allegation in the complaint that the petitioner herein impersonated his signature for the purpose of conveying the disputed property. Further, the petitioner appeared for two hearing before the learned Judicial Magistrate, however, refused to give his specimen signature and the left thumb impression. In any event, the learned Judicial Magistrate has ample powers to require even a witness to affix his specimen signature or thumb impression in exercise of powers conferred under Section 311-A of the Code and therefore he prayed for dismissal of the Criminal Original Petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) for the respondent. The questions arise for consideration in this case are,

(i) whether the learned Judicial Magistrate No.1, Nagercoil is empowered to take specimen signature and thumb impression of the petitioner, who is cited as a witness in the case, in exercise of the powers conferred under Section 311-A of the Code of Criminal Procedure, even before the investigation officer filed the charge sheet.

(ii) Whether the main enactment of Section 311-A Cr.P.C. must be construed as a whole for determining the powers to be exercised by the learned Judicial Magistrate or restricted to only the proviso to Section 311-A of Cr.P.C..

6. Before venturing to consider the rival submissions made by the counsel for both sides, it will be apposite to look into Section 311-A of Code of Criminal Procedure, which reads as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> 311-A. Power of Magistrate to order person to give specimen signatures or handwriting:

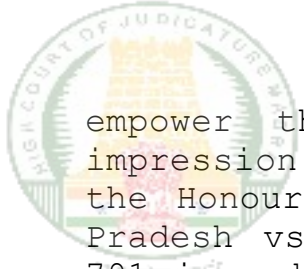


If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting.

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding".

7. On perusal of Section 311-A Cr.P.C., it is seen that it gives power to the learned Magistrate to call upon 'any person', including an accused in the case to appear before it and to give his or her specimen signature for the purpose of carrying out an effective investigation or proceeding under the Code. The word 'any person' indicated in Section 311-A of Cr.P.C. can mean and include even a witness who is proposed to be examined during the course of investigation or proceedings under the Code. However, the proviso to Section 311-A of the Code states that such an order shall be made unless the person has at some time been arrested in connection with such investigation or proceeding.

8. In this context, it will be useful to state that prior to 2006, there was only one enactment framed by our legislature called The Identification of Prisoners Act, 1920 (Act 33 of 1920) wherein such a procedure is contemplated to take out the measurements, finger impression, foot prints and photographs of persons convicted or arrested in connection with certain offences. The object with which Identification of Prisoners Act was framed is to provide legal authority to the investigation agency to take finger impression, foot prints or photographs of the prisoners who are in legal custody and to make use of such finger impression, foot prints or photographs during the course of investigation or proceedings relating to a criminal offence for which such person is confined in custody. However, in the Code of Criminal Procedure, there was no such provision requiring the person against whom a criminal proceeding is sought to be launched, to obtain his specimen signature or thumb impression akin to Identification of Prisoners Act. Thus, there is a difference with which the two enactments namely Identification of Prisoners Act and the Code were enacted by the legislature with the intention to carry out an effective investigation. While the provisions contained under Identification of Prisoners Act relate to procedures for taking photographs, footprints etc., of the prisoner who is in lawful custody, Section 311-A of the Code came into force with an object of assisting the investigation relating to commission of an offence. Considering the need to incorporate necessary changes in the Code of Criminal Procedure to



empower the Courts to take the specimen signature or thumb impression of a person even during the course of investigation, the Honourable Supreme Court, in the Judgment in (State of Uttar Pradesh vs. Ram Babu Mishra) reported in AIR 1980 Supreme Court 791 issued directions and suggested for a suitable legislation to be made akin to Section 5 of Identification of Prisoners Act, 1980 to provide for the investiture to the Magistrates. This is how Section 311-A of the Code came to be inserted empowering the Magistrates to issue appropriate direction to any person, including an accused person to give his specimen signatures and thumb impression for the purpose of investigation.

9. Recently, the Hon'ble Supreme Court in the case of Sukh Ram vs. State of Himachal Pradesh [Criminal Appeal No.224 of 2012], at Paragraph Nos.17 and 19, has held as follows:

"17. The question is whether the Judicial Magistrate/Executive Magistrate was authorized to take specimen writing and signatures of the said accused during the investigation of the case when no matter was pending before either of them. Section 311-A of Cr.P.C has been introduced by Act No.25 of 2005 with effect from 23.06.2006 with respect to the powers of the Magistrate to over the person to give specimen signatures or handwriting; but no such powers were there prior to the year 2006. Section 311-A Cr.P.C. has been inserted on the suggestion of the Supreme Court in State of Uttar Pradesh v. Ram Banu Misra, (1980) 2 SCC 343: AIR 1980 SC 791, that a suitable legislation be brought along the lines of the Section 5 of Identification of Prisoners Act, 1980, to provide for the investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting but no such powers existed prior to such amendment. The said amendment is prospective in nature and not retrospective.

19. After referring to Section 5 of the Identification of Prisoners Act, 1980 in Ram Babu Misra's case, this Court suggested that a suitable legislation be made along its lines to provide for investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting. Accordingly, a new Section 311-A was inserted in the Criminal Procedure Code. Section 311-A Cr.P.C. reads as under:-

"311-A. Power of Magistrate to order person to give specimen signatures or handwriting:

If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and

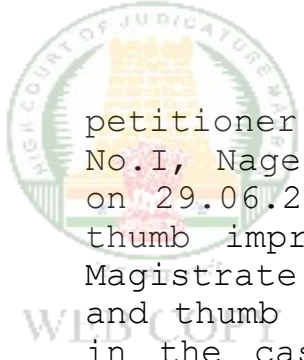


in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting.

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding".

The said amendment is prospective in nature and not retrospective"

10. On perusal of the aforesaid provision, it is seen that if a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, it is expedient to direct any person, including an accused person, to give specimen signatures or thumb impression, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or thumb impression. It is by virtue of such powers conferred under Section 311-A of the Code, the learned Judicial Magistrate No.1, Nagercoil has issued summons to the petitioner for his appearance. The specimen signature of the petitioner is required during the course of investigation into the complaint given by the petitioner who has alleged that the property owned by him was alienated by impersonating him and by creating forged and fabricated records. It is in this context, during the investigation into the complaint given by the petitioner, the investigating agency sought the signature or thumb impression of the petitioner for comparison so as to clinchingly conclude the investigation. Further, during the course of investigation, it has unfolded that the defacto complainant had sent a letter dated 10.08.2010 to the Sub-Inspector of Police, District Crime Branch, Nagercoil, stating that the petitioner, without his knowledge represented him by impersonation, affixed his signature or thumb impression in the documents and thereby executed a sale deed in respect of sale of 63 ½ cents land in New Survey No.190 of 2011, which was registered in Document No.141 of 2000, for which, investigation is being conducted. The petitioner, however, categorically denied that he did not affix his signature or any thumb impression in the document. In order to ascertain as to whether the petitioner has really signed the document in question or not, the investigation agency sought his signature and when it was refused by the petitioner, the instant petition has been filed before the learned Judicial Magistrate by the investigation agency invoking Section 311-A of the Code in Cr.M.P.No.3020 of 2011, dated 22.06.2011. Having regard to the above facts and the nature of complaint given by the defacto complainant, the learned Judicial Magistrate No.1, Nagercoil, allowed the said petition and granted permission to the respondent police to obtain the signature and thumb impression from the



petitioner. For the said purpose, the learned Judicial Magistrate No.1, Nagercoil, issued summons to him to appear before the Court on 29.06.2011 at 2.00 p.m. for getting his specimen signature or thumb impression. Therefore, I hold that the learned Judicial Magistrate No.1, Nagercoil is empowered to take specimen signature and thumb impression of the petitioner, who is cited as a witness in the case, in exercise of the powers conferred under Section 311-A of the Code of Criminal Procedure, even before the investigation officer filed the charge sheet.

11. At this juncture, it is useful to refer the Sections 4 (1) and 2(h) Cr.P.C., which relate to investigation and the same read thus:

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

"Section 4(1) of 1898 Code:

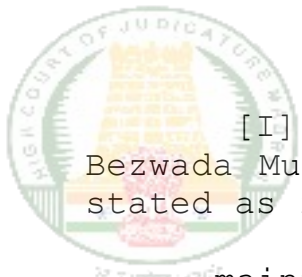
4(1) 'investigation' includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf."

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 Magistrate in this behalf"

12. On perusal of the aforesaid provisions, it is abundantly clear that it is inclusive definition and not an exhaustive definition. Unless there is a statutory prohibition inhibiting the police from obtaining specimen signatures and thumb impression from any person, it cannot be stated that the learned Magistrate has no power to issue direction to any person to give specimen signature and thumb impression for the purpose of investigation. Section 311-A Cr.P.C. gives power to the learned Magistrate to issue a direction to any person including this petitioner, who alleged to have committed the offence by impersonating the de-complainant and by affixing his signature in the document. Since the de-facto complainant had made an allegation that the petitioner impersonated him and subscribed his signature as that of the signature of the defacto complainant, it is necessary to investigate whether the signature and thumb impression appeared in the document and the petitioner's signature and thumb impression are one and the same. When Investigating Agency approached the learned Magistrate by invoking the Section 311-A Cr.P.C., for the purpose of obtaining specimen signature and thumb impression from any person/witness or accused, it does not violate the Section 311-A Cr.P.C.

<https://hcservices.ecourts.gov.in/ResForm> 13. Before dealing with the next point that arise for consideration in this case, it will be useful to refer the decisions of the Hon'ble Apex Court relating to effect of Proviso.



[I] In Madras and Southern Mahratta Railway Co. Ltd., Vs. Bezwada Municipality reported in AIR 1944 Privy Council 71, it is stated as follows:

"The respondents contest this reading and maintain that the proviso does not impliedly prohibit resort to capital value as a means of getting at annual value in every case not covered by the proviso, and that the chief purpose of the proviso is to be found in the limitation to 6 per cent. Which it contains. Their Lordships cannot accept the appellants' argument which in their opinion involves a misinterpretation of the effect of the proviso. The proviso does not say that the method of arriving at annual value by taking a percentage of capital value is to be utilized only in the case of the classes of buildings to which the proviso applies. It leaves the generality of the substantive enactment in the subsection unqualified except in so far as concerns the particular subjects to which the proviso relates. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms."

[ii] In Dwarka Prasad v. Dwarka Das Saraf reported in AIR 1975 Supreme Court 1758, it has been held as follows:

"18. We may mention in fairness to counsel that the following amount other decisions, were cited at the bar bearing on the uses of provisos in statutes: Commr. of Income-tax v. Indo-Mercantile Bank Ltd. (1959) Supp 2 SCR 256 at p. 266 = (AIR 1959 SC 713 at p. 718); M/s. Ram Narain Sons Ltd. v. Asst. Commissioner of Sales Tax, (1955) 2 SCR 483 at p. 493 = (AIR 1955 SC 765 at p. 769); Thompson v. Dibdin, 1912 AC 533 at p. 541; Rex v. Dibdin, 1910 P.D. 57 at pp. 110, 125 and Tahsildar Singh v. State of U.P., (1959) Supp 2 SCR 785 at p. 893 = (AIR 1959 SC 1012 at p. 1022). The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context' (1912 A.C. 544). If the rule of construction is that prima facie a proviso



should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

"The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail."

(Maxwell on Interpretation of Statutes, 10th Edn. p. 162)"

[iii] In S.Sundaram Pillai etc. v. V.R.Pattabhiraman etc. reported in AIR 1985 Supreme Court 582, while interpreting a Proviso and Explanation, the Hon'ble Apex Court has held as follows:

"42. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) It may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

45. We have now to consider as to what is the impact of the Explanation on the proviso which deals with the question of wilful default. Before, however, we embark on an enquiry into this difficult and delicate question, we must appreciate the intent, purpose and legal effect of an Explanation. It is now well settled that an Explanation added to a statutory provision is not



a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in 'Interpretation of Statutes' while dwelling on the various aspect of an Explanation observes as follows:

(a) The object of an explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute."

14. On perusal of the aforesaid decisions, it is clear that a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein, but for the proviso it would be within purview of the enactment. The Code of Criminal Procedure is a procedural law and it is not substantial law. The learned counsel for the petitioner mainly relied on Proviso to Section 311-A Cr.P.C. When the said Proviso states that a person must be arrested for some time in connection with such investigation or proceeding, in the present case, the petitioner is neither arrayed as an accused nor a witness. The learned counsel for the petitioner relied on the said Proviso without mentioning the main enactment of When there is no doubt that the main provision is unambiguous and clear, its effect and tenor cannot be cut down by the Proviso. The proviso appended to Section 311A of Code must be read as a whole along with Section 311-A of the Code and it cannot be read in isolation. The second point arise in this petition is answered accordingly.

15. The learned counsel appearing for the petitioner after concluding his arguments, submitted that if this Court uphold the summons issued by the learned Magistrate and the Law Enforcing Agency takes a coercive steps against the petitioner to obtain his signature or thumb impression, liberty may be granted to the petitioner to work out his remedy available under the law. It is needless to say, the petitioner is entitled to seek the remedy available under the law, if the respondent police takes a decision after investigation.

16. In view of the above discussions and the decisions cited supra, I do not find any error or illegality in the order passed by the learned Judicial Magistrate No.I, Nagercoil. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AE)



To

- 1.The Judicial Magistrate No.I,
Kanyakumari at Nagercoil.
- 2.The Chief Judicial Magistrate,
Kanyakumari at Nagercoil.
- 3.The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P (MD) .No.9985 of 2011
21.11.2017

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