



**122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1857-2024 (O&M)
Date of decision: 20.09.2024

Gagan Chawla and anotherPetitioners

Versus

State of U.T. Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vinay Yadav, Advocate
for the petitioners.

Mr. Manish Bansal, P.P., U.T. Chandigarh with
Mr. Navjit Singh, Advocate
for the respondent.

HARPREET SINGH BRAR, J.

1. The present revision petition is preferred against impugned order dated 11.09.2024 passed by learned Special Court, Chandigarh vide which the application moved moved by the Investigating Officer seeking specimen handwriting from the petitioners-accused, in the case stemming from FIR No. 476 dated 25.12.2023 registered under Section 21, 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sector 36, Chandigarh (hereinafter 'NDPS Act'), was allowed.

2. Briefly, the facts are that on 25.12.2023, the police party, headed by SI Baljit Singh, had put up a checkpoint at Dividing road, Sector 52, Chandigarh. Around 5:25 PM, one person riding an Activa scooter arrived at the said location but tried to escape when he saw the police party ahead. On seeing SI Baljit Singh approaching him, the said person pulled out one transparent polythene pouch from the right pocket of his tracksuit and tried to



throw it away. However, SI Baljit Singh caught his hand and recovered the polythene pouch. On instruction, Constable Ashok brought the Drug Detection Kit from the car and the contents of the polythene pouch were found to be weighing 54.72 g and positive for amphetamine. Subsequently, the said person identified himself as Mohammed Imtiyaz.

3. Learned counsel for the petitioners *inter alia* contends that the moving of an application to obtain specimen handwritings of the petitioners by the Investigating Officer, when the final report under Section 173 Cr.P.C. has already been presented amounts to further investigation, which cannot be allowed without prior sanction/permission of the trial Court. Further, the application ought to have been moved under Section 311-A Cr.P.C., however, it remains ambiguous as to what provision was invoked as the application does not mention any statutory provisions. He further submits that a perusal of the final report under Section 173 Cr.P.C. presented by the Investigating Agency indicates that the investigation stands completed in all respects, as such the investigating agency cannot be allowed to approbate and reprobate in the same breath by moving the aforesaid application. Moreover, no explanation is forthcoming as to why the investigating agency has not obtained the specimen handwritings of the petitioners during the statutory period of investigation, especially when the diaries were already in its possession. Further still, the investigating agency was previously granted permission to obtain specimen handwritings of the petitioners vide order dated 01.05.2024 passed by the learned Judicial Magistrate Ist Class, Chandigarh(hereinafter 'JMIC') however, it failed to do the same. It must also be noted that the said diaries were not sealed or produced before the concerned Court. The conduct of the investigating agency amounts to testimonial compulsion which is expressly



forbidden by Article 20 of the Constitution of India. The learned Court below has failed to appreciate the facts of the case in the light of the settled law in the peculiar circumstances of this case, therefore, the impugned order deserves to be set aside.

4. *Per contra*, learned State counsel submits that the diaries, containing details of sale and purchase of Heroin, were recovered pursuant to a disclosure statement furnished by petitioner No. 2-Sukhpreet Singh during the course of investigation and from a shop at MC Market, Jagadhari on 03.01.2024 and flat owned by him in Kharar on 08.01.2024, respectively. Therefore, it is not a matter of discovery of new material as the diaries already form a part of the final report. They would be produced before the learned trial Court at the appropriate stage to prove the case set up by the prosecution.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that two diaries were recovered at the instance of the petitioners. The prosecution claims that the diaries contain information regarding the sale and purchase of Heroin. While the application might not indicate what provision of procedural law has been invoked to move it, it would be contrary to the cause of justice to refuse to consider the same for this reason alone. The legislature, in its wisdom, has carved out a specific provision in Section 311A Cr.P.C. to obtain specimen signatures or handwriting, which reads as follows:

Section 311A- 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.

Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

6. The argument made by the learned counsel for the petitioners with respect to self-incrimination cannot be appreciated, it is imperative to note that obtaining a specimen for handwriting or signature of the accused under Section 311A during criminal proceedings is not hit by the bar of Article 20(3) of the Constitution of India. The issue was resolved by an eleven Judge bench of the Hon'ble Supreme Court in ***The State of Bombay vs. Kathi Kalu Oghad, 1961 AIR 1808*** wherein the following observations were made:

"11. The matter may be looked at from another point of view. The giving of finger impression or of specimen signature or of handwriting, strictly speaking, is not "to be a witness.""To be a witness" means imparting knowledge in respect of relevant facts, by means of oral statements or statements in writing by a person who has personal knowledge of the facts to be communicated to a court or to a person holding an enquiry or investigation. A person is said 'to be a witness' to a certain state of facts which has to be determined by a court or authority authorized to come to a decision, by testifying to what he has seen, or something he has heard which is capable of being heard and is not hit by the rule excluding hearsay, or giving his opinion, as an expert, in respect of matters in controversy. Evidence has been classified by text writers into three categories, namely, (1) oral testimony; (2) evidence furnished by documents; and (3) material evidence. We have already indicated that we are in agreement with the Full Court decision in Sharma's case, that the prohibition in clause (3) of Article 20 covers not only oral testimony given by a person accused of an offence but also his written statements which may have a bearing on the controversy with reference to the charge against him. The accused may have documentary evidence in his



possession which may throw light on the controversy. If it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon by the Court to produce that document in accordance with the provisions of Section 139 of the Evidence Act, which, in terms, provides that a person may be summoned to produce a document in his possession or power and that he does not become a witness by the mere fact that he has produced it; and therefore, he cannot be cross-examined. Of course, he can be cross-examined if he is called as a witness who has made statements conveying his personal knowledge by reference to the contents of the document or if he has given his statements in Court otherwise than by reference to the contents of the documents. In our opinion, therefore; the observation of this court in Sharma's case, that Section 139 of the Evidence Act has no bearing on the connotation of the word 'witness' is not entirely well-founded in law. It is well established that clause (3) of Article 20 is directed against self-incrimination by an accused person. Self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge. For example, the accused person may be in possession of a document which is in his writing or which contains his signature or his thumb impression. The production of such a document, with a view to comparison of the writing or the signature or the impression, is not the statement of an accused person, which can be said to be of the nature of a personal testimony. When an accused person is called upon by the Court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony.' The giving of a 'personal testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation, cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness.'

7. Further, a Constitution Bench of the Hon'ble Supreme Court in

Selvi vs. State of Karnataka (2010) 7 SCC 263 and a Division Bench of this



Court in ***Dewan Singh @ Ram Singh v. State of Haryana 2023(4) R.C.R. (Criminal) 17***, have categorically held that there is a distinction between the physical evidence and testimonial evidence. Physical evidence can be utilized for explaining relevant facts within the meaning of Sections 9 and 11 of the Indian Evidence Act, 1872. As such, there is no bar in directing the accused to give his fingerprints, blood sample, signatures specimen etc. Thus, providing such physical evidence lies outside the scope of Article 20(3) of the Constitution of India.

8. Further, this Court is unable to appreciate the contention of the learned counsel for the petitioners that the said section can only be availed during the stage of investigation. The words “*proceeding under this Code*” should naturally include the stages of enquiry and trial. If the argument of the learned counsel is accepted, it would lead to a situation where this provision would be rendered purposeless. At this juncture it would be profitable to cite the judgment of a Co-ordinate bench of the Kerala High Court in ***A.S. Subin vs. State of Kerala and another 2012(1) KLT 82***. The relevant part of the said judgment reads as follows:

“11. The words "proceeding under this Code" should receive wider meaning. If such a wider meaning is given it can be reasonably held that it includes inquiry and trial as well. Though the word 'trial' is not specifically mentioned in Section 311A, the reasonable interpretation should be that the expression 'proceeding under this Code' 'Code' includes inquiry and trial. In other words, inquiry and trial are proceedings under the Code. Therefore, the argument advanced by the learned counsel for the petitioner that Section 311A has no application, as the case is now pending trial also cannot be countenanced.

*12. In the decision in **State of U.P. v. Ram Babu, (AIR 1980 Supreme Court 791)** the Apex Court suggested that suitable legislation may be made on the analogy of Section 5 of the Identification of Prisoners Act to provide for the investiture of*



Magistrates-with the power to issue directions to any person, including an accused person, to give specimen signatures and writings. It was in view of the suggestion made by the Apex Court in the decision cited supra. Section 311A was inserted in the Code as per Act 25 of 2005. Therefore, there can be no doubt that the Magistrates are invested with the power to issue directions to any person including an accused person to give specimen signatures and writings, in any proceeding under the Code which would include inquiry and trial also. By sending the entries in the register/account books and the specimen handwriting and signature of the accused for comparison, no prejudice, what so ever, is likely to be caused. As such I find no reason to differ from the view taken by the learned Magistrate.”

9. Further, a perusal of the record indicates that an application to obtain the specimen of the handwritings of the petitioners-accused was previously moved and the same was allowed by the learned JMIC vide order dated 01.05.2024. In furtherance of said order, production warrants were issued against the petitioners for 02.05.2024, however, they were not in fact produced in the Court below. Since the order to obtain the specimen could not be passed in absence of the petitioners-accused, the learned JMIC disposed of the application while granting liberty to the Investigating Officer to file a fresh application if found necessary. Therefore, the Investigating Officer was justified in moving the present application at this stage.

10. The discovery and vindication of truth is the solemn duty of the Court during the trial which ensures the conviction of the guilty and protection of the innocent. Therefore, the Courts must proceed with an intention to seek the truth and make genuine efforts within judicial sphere to ensure that the foundational right of the accused to a fair trial is not trampled and all stakeholders are insulated from any prejudice caused by deviating from the prescribed procedure. As previously mentioned, the diaries recovered at the instance of the petitioners on the basis of disclosure statement suffered by them



contain details qua sale and purchase of Heroin. Allowing the request of the prosecution to obtain the specimen handwritings of the accused for the purpose of comparing them with the alleged handwriting available in the diaries recovered from them on the basis of their disclosure statements help the learned trial Court to ascertain whether the entries were made by them and ultimately uncover the truth regarding the allegations made qua them by way of result oriented investigation *qua* these facts. Moreover, no prejudice will be caused to the petitioners-accused, if handwriting samples of the petitioners are obtained for resolving the said controversy/dispute/allegation etc. regarding the alleged diaries recovered from them.

11. In view of the discussion above, this Court is of the considered opinion that the learned trial Court has passed the impugned order dated 11.09.2024 on the basis of correct appreciation of facts and the law. Accordingly, the present petition is dismissed and the impugned order is upheld.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

20.09.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No