

## K. Hirianna Setty Vs State of Mysore

**Court:** Karnataka High Court

**Date of Decision:** Oct. 18, 1973

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 94  
Factories Act, 1948 â€” Section 67

**Citation:** (1975) CriLJ 96 : (1973) 2 MysLJ 528

**Hon'ble Judges:** Santosh, J

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

Santosh, J.

Petitioner before this Court is the 2nd accused in C.C. 2992/72 on the file of the II City Magistrate, Mysore. Proceedings had

been instituted against accused 1 and 2 u/s 67 of the Factories Act, 1948. While the case was pending on the application made by the A.P.P. u/s

94, Cr.P.C. the learned Magistrate issued summons to the 2nd accused to produce certain documents which were in his custody. This order

issuing summons to the 2nd accused, is challenged in this revision petition.

2. Sri V. N. Satyanarayana, learned counsel appearing on behalf of the petitioner, has contended that the learned Magistrate was not competent to

issue such summons to the petitioner as the same is hit by Sub-clause (3) of Article 20 of the Constitution of India. Strong reliance is placed on the

decision of the Supreme Court in M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, and on the decision of the

Madras High Court in In Re: C.T. Sambandam and Others, in support of the said contention. The learned counsel has also referred to the decision

of the Supreme Court in The State of Bombay Vs. Kathi Kalu Oghad and Others,

3. In M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, referred to above, their Lordships of the Supreme Court

have pointed out that guarantee under Article 20 (3) would be available to an accused when any compulsory process is issued against him for

production of any evidentiary documents which are reasonably likely to support a prosecution case against him.

4. In" In Re: C.T. Sambandam and Others, the Bench consisting of the Chief Justice Rajamannar and Rajagopala Iyyangar, J. have held that the

guarantee under Article 20 (3) would extend to any compulsory process for production of evidentiary documents which are reasonably likely to

support a prosecution against the accused.

5. In *Shyamlal Mohanlal Vs. State of Gujarat*, their Lordships have held that summons u/s 94, Cr.P.C. cannot be issued to an accused to produce

documents which are likely to be used in evidence against him. Their Lordships have pointed out that Article 20 (3) has been construed by the

Supreme Court in *The State of Bombay Vs. Kathi Kalu Oghad and Others*, referred to above to mean that an accused person cannot be

compelled to disclose documents which are incriminatory and based on his knowledge. If Section 94 is construed to include an accused person,

some unfortunate consequences would follow. Though the language of Section 94 is general, there are indications that the Legislature did not intend

to include an accused person.

6. It is clear from the decision in *Shyamlal Mohanlal Vs. State of Gujarat*, referred to above that summons u/s 94 cannot be issued to an accused

to produce documents which are incriminatory in nature and may be used against him at the trial. It, therefore, follows that the order of the learned

Magistrate issuing summons to the accused to produce documents which are likely to be incriminatory is illegal and has to be set aside.

7. In the result, for the reasons mentioned above, I allow the revision petition and set aside the impugned order passed by the learned Magistrate

issuing summons to the petitioner-2nd accused to produce documents.