

(2012) 05 DEL CK 0660
Delhi High Court
Case No: Criminal Appeal 804 of 2001

Sapan Haldar and
Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision: May 25, 2012

Acts Referred:

- Constitution of India, 1950 - Article 20(3)
- Criminal Procedure Code, 1973 (CrPC) - Section 311A
- Evidence Act, 1872 - Section 47, 73
- Identification of Prisoners Act, 1920 - Section 2, 4, 5, 8

Citation: (2012) 8 AD 533 : (2012) 191 DLT 225

Hon'ble Judges: S.P. Garg, J; Pradeep Nandrajog, J; A.K. Sikri, J

Bench: Full Bench

Advocate: Y.S. Chauhan with Mr. Madhav Singh, for the Appellant; Pawan Sharma,
Standing Counsel (Criminal) with Mr. Harsh Prabhakar, Advocate and Mr. Sahil Mongia, for
the Respondent

Judgement

Pradeep Nandrajog, J.

On the subject of admissibility of sample handwriting or signature obtained from a person accused of having committed an offence or during investigation of a crime by the Investigating Officer, the matter has been referred to a larger Bench vide order dated August 11, 2011 since the Division Bench noted a divergence of opinion on the subject by various Division Benches of this Court. Deciding a reference made to it, vide opinion dated September 30, 2011 in CrI. Appeal No. 1005/2008 "Bhupinder Singh v. State", on the question : "Whether the sample finger prints given by the accused during investigation u/s 4 of the Identification of Prisoners Act 1920 without prior permission of the Magistrate, u/s 5 of the Act will be admissible or not?", a Full Bench of this Court overruled the view taken by Division Benches holding against the admissibility of such evidence and affirmed the view taken by

Division Benches holding in favour of admissibility of such evidence but proceeded to decide the reference, as would be evident from a reading of paragraph 18 of the opinion dated September 30, 2011, as if the question referred to the Full Bench embraced even a handwriting or a signature obtained from a person accused of an offence whilst in police custody.

2. We proceed our journey by noting the relevant provisions of "The Identification of Prisoners Act 1920". At the forefront stands the definition of the expression "measurements" as defined in clause (a) of Section 2 of the said Act. It reads as under:

"Measurements" includes finger impressions and foot-print impressions;

3. Section 4 reads as under:

Taking of measurements, etc., of non-convicted persons. - Any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements to be taken in the prescribed manner.

4. Section 5 reads as under:

Power of Magistrate to order a person to be measured or photographed. - If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, it is expedient to direct any person to allow his measurements or photograph to be taken, 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 the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer :

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the First Class :

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

5. From a perusal of the definition of the word "measurements" as defined in clause (a) of Section 2 of The Identification of Prisoners Act 1920 it is apparent that the definition, being inclusive, expands on the ordinary meaning of the word "measurement". But simultaneously we would note that the expanded definition only requires, finger print impressions and foot-print impressions, to be treated as measurements.

6. With reference to Section 4 of The Identification of Prisoners Act 1920 it needs to be highlighted that it enjoins upon a person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards, upon being so required by a police officer, to allow his measurements to be taken. The section requires the measurements to be taken in the prescribed

manner i.e. it envisages a manner to be prescribed for the police officer to take the measurements of the person concerned, and for which we note that Section 8 of The Identification of Prisoners Act 1920 confers the power to make Rules on State Governments with respect to, inter-alia, the method and the procedure to be followed in taking measurements.

7. As regards Section 5 of The Identification of Prisoners Act 1920, it empowers a Magistrate, upon being satisfied that for purposes of any investigation or proceedings under the Code of Criminal Procedure it is expedient to direct any person to allow his measurements to be taken, and in respect of which power the section does not make any reference to a procedure to be prescribed.

8. The Constitutional guarantee of no person accused of an offence shall be compelled to be a witness against himself, under Article 20(3) of the Constitution of India, when used as a shield against admissibility of evidence obtained from an accused by compelling him to give finger print impression or handwriting to the police during investigation came up for consideration before a Constitution Bench of the Supreme Court, and we have the opinion rendered which is reported as [The State of Bombay Vs. Kathi Kalu Oghad and Others](#), . The Supreme Court negated the contention that compelling a person who is accused of an offence to give his finger print impression or handwriting would amount to compelling the person to be a witness against his own self. But the discussion by the Supreme Court, for the purposes of answering the question by us, would be relevant, when the Supreme Court spoke of Section 73 of The Indian Evidence Act empowering a Court to obtain specimen writing or signatures and finger impressions of an accused person for purposes of comparison and Section 5 of The Identification of Prisoners Act, 1920 authorizing a Magistrate to direct any person to allow his measurements or photographs to be taken. We simply highlight for the moment that the Constitution Bench was conscious of admissibility of evidence pertaining to a writing or a signature in relation to Section 73 of The Indian Evidence Act 1872 and the requirement and admissibility of measurements of a person, which would obviously include finger print impressions and foot-print impressions de-hors Section 73 of The Indian Evidence Act 1872.

9. One T. Subbiah was arrested by the police in connection with cheating and forgery. Pending investigation the Investigating Officer filed an application before the Sub-Divisional Magistrate of the area concerned requesting him to direct T. Subbiah to give specimen signatures and handwriting for purposes of further investigation, which application was allowed, against which order T. Subbiah filed a Criminal Revision Petition before the Madras High Court urging that with respect to signature or handwriting a person can be compelled to furnish his signature or give a sample of his handwriting only as per Section 73 of the Indian Evidence Act 1872. He argued that "measurements" as defined under The Identification of Prisoners Act 1920 did not embrace a signature or a handwriting. Finding favour with the

contention urged by T. Subbiah, the Division Bench of the Madras High Court, in the decision reported as [T. Subbiah Vs. S.K.D. Ramaswamy Nadar](#), opined in paragraph 13 as under:

13. u/s 5 of the Identification of Prisoners Act, 1920 it is specifically provided that if a Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect. It also provides that in that case, the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken as the case may be, by a police officer. The word "measurements" mentioned in the said provision will include finger prints and foot prints but not the handwriting or the signatures. It is very significant to note that taking of handwriting or signature from a person by a Magistrate in the course of investigation by the police is specifically excluded. When the Parliament made this enactment, it must have had in its mind not only that Section 73 of the Evidence Act does not give power to the Court to take finger prints, signature and handwriting from a person in the course of investigation by the police but also it must have thought that it might not be necessary to include the taking of handwriting or signature of a person in the course of investigation by the police. Otherwise, there is no tangible reason for the Parliament to exclude, under the Identification of Prisoners Act, the taking of handwriting or signature. The Parliament must have probably thought that though the taking of the handwriting or the signatures of a person is one of the modes of identification, it was not an infallible one and that the better mode of proving the handwriting or signature is what is provided u/s 47 of the Evidence Act, namely, the evidence of that person who is acquainted with the signature of the person concerned. In this context, it is also worthwhile to note in contrast to Sec.73 of the Evidence Act that this section empowers the Magistrate to direct any person irrespective of the fact whether that person is a party to the cause or not, and the section also empower the Magistrate to direct a person to be produced before him at the time and place specified by him and does not confine only to those persons present in Court. By this contrite between these two provisions, though under different statutes, it appears to my mind that the Court under S.73 of the Evidence Act does not have even power to issue summons to the person to be present in Court unless he is already present in Court as a party concerned in the proceeding before it. The Magistrate can direct a person to give his finger prints in the course of investigation by the police by virtue of Section 5 of the Identification of Prisoners Act but not u/s 73 of the Evidence Act though the finger prints are included therein for the purpose of comparison.

10. The aforesaid view taken by the Division Bench of the Madras High Court, has found favour with the Supreme Court in the decision reported as [State of Uttar Pradesh Vs. Ram Babu Misra](#), as was T.Subbiah, accused of forgery and cheating, and as in the case of T.Subbiah, the Investigating Officer moved an application in

the Court of the Chief Judicial Magistrate, Lucknow praying that Ram Babu Mishra be directed to give his specimen writing, stating that it was required for the purpose of comparison with certain disputed writings. The Investigating Officer sought to impress upon the Chief Judicial Magistrate that he had the power to do so u/s 5 of The Identification of Prisoners Act 1920. The learned Chief Judicial Magistrate declined, holding that he had no power and that it was only the power of the Court concerned where Ram Babu Mishra would be tried, to so direct. The appeal by the State before the High Court was dismissed. The matter reached the Supreme Court. With reference to the definition of the word "measurements" as defined in clause (a) of Section 2 of The Identification of Prisoners Act 1920, in paragraph 6 of its opinion, the Supreme Court held:

There are two things to be noticed here. First, signature and writing are excluded from the range of S.5 of The Identification of Prisoners Act and, second "finger impressions" are included in both S.73 of the Evidence Act and S.5 of The Identification of Prisoners Act. A possible view is that it was thought that S.73 of the Evidence Act would not take in the stage of investigation and so S.5 of The Identification of Prisoners Act made special provision for that stage and even while making such provision, signature and writings were deliberately excluded as we said, this is a possible view but not one on which we desire to rest our conclusion. Our conclusion rests on the language of S.73 of the Evidence Act.

11. In the next paragraph, the Supreme Court held that with reference to specimen signatures and handwriting it is only the Court which would hold the trial as per the Criminal Procedure Code which would be the Court having jurisdiction to direct the accused to furnish his specimen signatures or handwriting as per Section 73 of the Evidence Act 1872, and we highlight that in paragraph 8, the Supreme Court affirmed, after noting, the view taken by the Division Bench of the Madras High Court in T. Subbiah's case (supra).

12. We see hardly any scope for a controversy to be built, unless one intends to be argumentative for the sake of raising an argument, in view of the categorical pronouncement by the Supreme Court in Ram Babu Mishra's case (supra), which we find is an opinion expressing itself very briefly, but he who desires an argumentative process of reasoning before satisfying his cognitive faculties, may seek satisfaction to the elaborate reasoning of the Division Bench of the Madras High Court in T. Subbiah's case (supra).

13. It is no doubt true, as held in the decision reported as 384 US 757 *Schmerber v. California* that a handwriting exemplar, like a body of a person, is an identifying characteristic, but would highlight that there is a considerable difference between the human body, characterized by its physical features and the handwriting of a person. Whereas a handwriting is developed over a period of time, the physical attributes of the body are inherent by birth. Whereas the physical attributes of the body are biological, a handwriting is a trait acquired by a person over a period of

time and thus in relation to a tool of identification would be fallible, as was observed by the Division Bench of the Madras High Court in T.Subbiah's case (supra). Thus, identification of a human body with reference to physical characteristics is a subject distinct from the subject of a handwriting, which may also link itself to a person, in the context of the authorship of a writing.

14. We once again reflect upon the definition of the word "measurements" as defined in clause (a) of Section 2 of The Identification of Prisoners Act 1920 which only includes finger impressions and foot-print impressions as encompassed in the word "measurements".

15. The Webster New World Dictionary 3rd College Edition, inter-alia, defines "measurement" to mean "extent, quality, or size as determined by measuring". It defines the word "measure", inter-alia, to mean "the extent, dimensions, capacity etc. of anything, especially as determined by a standard." The word "standard" is defined to mean, amongst others, "something established for use as a rule or basis of comparison in measuring or judging capacity, quantity, content, extent."

16. It can thus safely be said that a "standard" applies to some measure or a principle with which things of the same class are compared by applying a criterion. Thus, in relation to the human body, to take measurements of the body, would mean to take such physical attributes or characteristics of the human body, which with reference to a standard, would make the body a subject of comparison with other bodies. For example, by applying the criterion of there being 21 identifiable ridges on the human fingers known to scientists, in relation to the place where one or more of these 21 identifiable ridges are located, to distinguish one body from the other or with reference to a finger print impression, link the body to the fingerprint impression. There is a science and thus a theory which is empirical in the study of fingerprints. It is not so in relation to handwriting, which may be the subject of a specialized knowledge, but lacks the scientific temperament which a subject of science inheres.

17. We close the debate by highlighting that when we talk of measurements in relation to a human body, with dictionary in hand and the meaning of the words "measurement" and "standard" in mind, it would be difficult for us to escape from the conclusion that the measurements of a human body encompass only those standards which relate to the physical attributes of the human body and would encompass none else. Now, the height, the shape and size of the nose, eyes, ear, face, fingers, limbs, neck, torso, and all whatever would constitute the features of the body would relate to the measurement of the human body and so would fingerprints and footprints as they too relate to the physical features of the human body, but not a handwriting, which is a trait acquired by a person over a period of time.

18. Thus, it is apparent that neither Section 4 nor Section 5 of The Identification of Prisoners Act 1920 would encompass a handwriting. Thus, neither a police officer during investigation, nor even a Magistrate can direct a person accused of having committed an offence to give his sample signature or handwriting sample, the former u/s 4 and the latter u/s 5. The power is that of the Court concerned and is to be found in Section 73 of the Indian Evidence Act 1872.

19. Having concluded as above, and in respect of which conclusion, we have been guided not only by reason but even precedents, we would be failing if we do not note a few decisions on the subject of specimen finger impressions obtained from a person accused of having committed an offence by the investigating officer without obtaining orders from the Magistrate concerned and in cases where the specimen finger impressions were obtained with the permission of the Magistrate concerned.

20. As noted by us, Section 4 of The Identification of Prisoners Act, 1920 authorizes a police officer to take the measurements of a person who has been arrested in connection with an offence, but mandates that this would be subject to the manner prescribed for doing the needful. Section 5 of The Identification of Prisoners Act, 1920 empowers the Magistrate to direct a person to give his measurements, upon being satisfied that the same is necessary for purposes of investigation. And, needless to state measurements would include finger print impressions.

21. What happens if there is no manner prescribed for an investigating officer to take the measurements of a person accused of having committed an offence? In the decision reported as [Mahmood Vs. State of U.P.](#), specimen finger print impressions taken by the investigating officer u/s 4 of The Identification of Prisoners Act, 1920, in the absence of a manner prescribed for taking the finger print impressions, was held to be a case of evidence not being admissible with respect to the finger prints obtained and the opinion of the expert thereon. The Supreme Court held that in said situation Section 5 of The Identification of Prisoners Act, 1920 ought to have been followed.

22. In the decision reported as [Shankaria Vs. State of Rajasthan](#), noting that the State of Rajasthan had framed the necessary Rules pertaining to the manner in which an investigating officer could obtain the specimen finger prints of a person accused of an offence; there being complete compliance with the requirements of Section 4 of The Identification of Prisoners Act, 1920, the same being followed, it was held that evidence pertaining to the specimen finger prints was admissible. Similar was the view affirmed by the Supreme Court in the decision reported as [Mohd. Aman, Babu Khan and another Vs. State of Rajasthan](#), But relevant would it be to note that the Supreme Court affirmed so with a caveat, being to dispel any suspicion as to the bona-fides of the police and eliminate the possibility of fabrication of evidence, it being desirable that measurements should be obtained by following the procedure contemplated by Section 5 of The Identification of Prisoners Act, 1920.

23. A somewhat discordant note with respect to both, finger prints and handwriting, has been struck by the Supreme Court in the decision reported as [State through SPE and CBI, AP Vs. M. Krishna Mohan and Another](#), but we would simply highlight that the decision presumes as if a handwriting would be included within the meaning of the word "measurement"; and there is no discussion on the said subject. The decisions noted by us hereinabove and in particular the earlier decision of the Supreme Court in Ram Babu Mishra's case (supra) has not been noticed and so are two more decisions which we are noting in the next paragraph of our opinion, not noted.

24. With respect to specimen handwritings obtained from an accused by the investigating officer, in the decisions reported as [Sukhvinder Singh and Others Vs. State of Punjab](#), and [State of Haryana Vs. Jagbir Singh and Another](#), the Supreme Court categorically held that said evidence was totally inadmissible in evidence.

25. In the decision reported as [Thavaraj Pandian, Palani, Raja and Packianathan Vs. State](#), the Division Bench of the Madras High Court noted that no Rules were framed in the State of Tamil Nadu with respect to the manner in which an investigating officer could obtain the finger prints of a person accused of an offence as contemplated by Section 4 of The Identification of Prisoners Act, 1920 but noted that there were executive instructions with respect to the manner in which finger print impressions could be taken by the investigating officer and therefore opined that in said circumstance evidence relating to finger print impressions obtained by the investigating officer would be admissible in evidence; but on facts noted that the said instructions were not followed and therefore held the evidence to be inadmissible.

26. Thus, with respect to a handwriting obtained from a person accused of having committed an offence or from any person during investigation, the law is entirely different vis-à-vis finger print impressions and a handwriting. With respect to handwriting neither can the investigating officer obtain a sample writing nor can even a Magistrate so direct. The Identification of Prisoners Act, 1920 is applicable only to measurements which include finger print impressions. Even with respect to finger print impressions, the weight of the judicial pronouncements leans to hold that unless there is a manner prescribed, be it under the Rules framed by the State Government or an executive instruction issued, evidence pertaining to finger print impressions obtained by the investigating officer would be inadmissible in evidence; and even when the same is provided, as held by the Supreme Court in Mohd. Aman's case (supra), to obviate any suspicion, it should be desirable that procedure prescribed u/s 5 of The Identification of Prisoners Act, 1920 should be followed.

27. There is yet another argument which needs to be considered with respect to Section 4 of The Identification of Prisoners Act, 1920. The Section empowers a police officer to take measurements of a person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or

upwards. Ex-facie, the Section would have no application where the person is suspected of having committed an offence which is punishable with death or imprisonment for life, as was held by a Division Bench of the Bombay High Court in the decision reported as ILR 1983 Bom. 1508 Nizammuddin Usman vs. State of Maharashtra.

28. We note that the legislature has taken corrective action, when by virtue of Act No. 25 of 2005, with effect from June 23, 2006, Section 311A has been inserted in the Code of Criminal Procedure, 1973 and has empowered a Magistrate to direct a person accused to give specimen signatures or handwriting. Section 311A reads as under:-

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.

29. Thus, with effect from June 23, 2006 the legislative empowerment has empowered the Magistrate concerned with reference to signatures and handwriting; the lacuna in the law which was noted by the Supreme Court in the year 1980 when Ram Babu Mishra's case (supra) was decided has been removed.

30. We answer the reference as follows:

(i) Handwriting and signature are not measurements as defined under clause (a) of Section 2 of The Identification of Prisoners Act, 1920. Therefore, Section 4 and Section 5 of The Identification of Prisoners Act, 1920 will not apply to a handwriting sample or a sample signature. Thus, an investigating officer, during investigation, cannot obtain a handwriting sample or a signature sample from a person accused of having committed an offence.

(ii) Prior to June 23, 2006, when Act No. 25 of 2005 was notified, inter-alia, inserting Section 311A in the Code of Criminal Procedure, 1973, even a Magistrate could not direct a person accused to give specimen signatures or handwriting samples. In cases where Magistrates have directed so, the evidence was held to be inadmissible as per the decision of the Supreme Court in Ram Babu Mishra's case (supra). According to Section 73 of the Indian Evidence Act, 1872, only the Court concerned can direct a person appearing before it to submit samples of his handwriting and/or signature for purposes of comparison.

31. Though not falling for consideration in this reference, with respect to finger prints, which are included in "measurements", the weight of the authorities is that if by way of Rules or Executive instructions the manner is prescribed to take the measurements, alone then can an Investigating Officer, u/s 4 obtain the measurements but strictly as per manner prescribed; but it would be eminently desirable, as per the decision in Mohd. Aman's case (supra) to follow the procedure ordained u/s 5 of The Identification of Prisoners Act, 1920. Relevant would it be to further note that in relation to offences punishable with death or imprisonment for life, Section 4 of The Identification of Prisoners Act, 1920 would not be applicable because the said provision specifies a prerequisite : that the person concerned is accused of having committed an offence which is punishable with a sentence to undergo rigorous imprisonment for a term of one year or upwards i.e. the sentence must relate to imprisonment for a term and would thus exclude such offences where either capital punishment or imprisonment for life is the sentence contemplated.