

Kishan Diyal vs The State on 15 July, 1952

Equivalent citations: 1953CRILJ162

ORDER

Chowdhry, J.C.

1. This is an application in revision by Kishan Diyal who is being retried for offences punishable under Sections 409 and 477a, Penal Code, and Section 5, Prevention of Corruption Act, 19-17, in compliance with the decision of this Court dated 16.1.1952.

2. On an application on behalf of the State the petitioner was directed by the trying Magistrate, under Section 73, Evidence Act, to write certain words and figures and signatures. The petitioner has come up in revision against that direction. Since the making of that direction the case has been transferred by the District Magistrate to his own file under Section 528(3), Criminal P.C. The Sessions Judge being the complainant in the case, the petitioner has come up direct to this Court in revision. There is also a prayer that, pending the disposal of this petition, the execution of the said direction be stayed.

3. The petition relates to the State of Bilaspur. There is no prospect of my going in circuit there for the next three months. As it appeared to be inexpedient to postpone disposal of this matter for such a long time, I had a mind to fix an early date here at Simla for its disposal and to issue notices to the petitioner and the State accordingly. I am, however, of the opinion that this is one of those cases to which the provisions of the first paragraph of Section 440, Criminal P.C. should be applied. In other words, this is a matter in respect of which the petitioner has no right to be heard either personally or by a pleader for the disposal of his revision petition, and therefore the revision petition may be disposed of without any notice to him. I am clearly of the opinion that this case does not fall under the proviso to the section just mentioned, or under Sub-section (2) of Section 439 of the Code, for an opportunity under these provisions of being heard is only to be granted where the order in exercise of the revisional jurisdiction is calculated to be made to the prejudice of the accused. That cannot, however, be predicated of an order directing an accused under Section 73, Evidence Act, to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with some disputed words or figures.

The stage of benefit or prejudice to the accused has not yet arrived. It will only arise when, the writing so procured, has been compared by an expert witness and the testimony of that witness and the other evidence pro and con in the case has been considered by the Magistrate, for it will be only then that the Magistrate will be in a position to decide whether the disputed words, figures or signatures are, or are not, in the handwriting of the accused. One possible conclusion that the Magistrate may arrive at is that the disputed words, figures and signatures are not in the handwriting of the accused. The direction of the trying Magistrate which is sought to be impugned by the present revision, and the present order maintaining that direction, might therefore benefit rather than prejudice the petitioner. Irrespective, however, of what the result of the said evidence

may be, the reason for my disposing of the present revision without giving the petitioner an opportunity of being heard in support of it is that a mere direction to an accused to write any words or figures under para. 2 of Section 73, Evidence Act, cannot be said to amount to the making of an order to the prejudice of the accused under Section 439(2), Criminal P.C.

4. Coming to the merits of the revision, it may be said at once that it has no force since in making the said direction the trying Magistrate was only carrying out the specific direction of this Court contained in the aforesaid decision dated 15.1.1952.

5. It is therefore not contended in the revision petition that the said direction could not be given to the petitioner. The sum and substance of the grounds of revision is that the stage at which the direction was made was not the proper stage for doing so. It was urged that the order in question was premature as no list of witnesses had been put forward by the prosecution. It must, however, be self-evident from the direction itself that the prosecution purported to examine a hand-writing expert. And, as it takes time to obtain expert opinion, the trying Magistrate was quite right in taking the earliest opportunity of obtaining the specimen writing of the accused. It was next urged that as the execution of the order would amount to the examination of the accused, the proper stage would be when all the prosecution witnesses had been examined. The contention is absurd since to allow the contention to prevail would be to exclude totally the production of the expert witness in question. Furthermore, a direction to an accused under Section 73, Evidence Act, is not tantamount to his examination under Section 342, Criminal P.C.: *Emperor v. Nga Tun Hlaing* A.I.B. 1924 Bang. 115 (F.B.).

6. The revision has no force and it is hereby summarily rejected without notice. Let the District Magistrate concerned be informed of its rejection without delay and directed to proceed with the trial of the petitioner according to law.