Gujarat High Court
Naiabhai Ranchhod And Anr. vs The State Of Gujarat on 4 October, 1971
Equivalent citations: 1972 CriLJ 1605
Author: T Mehta
Bench: T Mehta
ORDER T.U. Mehta, J.

1. This is a reference made by the Sessions Judge. Rajkot in Cri. Revn. Application No. 39/71 of his file wherein he has recommended that the order made by the Court of J. M. F. C. Rajkot in Criminal Case No. 483/70 of his file compelling the accused-petitioner to get himself medically examined in order to determine the age of the defect in the vision of one of his eves should be set aside. The learned Sessions Judge is of the opinion that the Criminal Procedure Code contains no provisions under which an accused person can be ordered to submit to medical examination which is likely to enable the prosecution to obtain incriminating evidence against him.

2. It is an admitted position that the petitioner No. 1, Naiabhai Ranchhod. who is the accused No. 1 before the learned Magistrate, is prosecuted for the offence under Section 419 read with Section 34. I. P.C. on the allegation that with a view to obtain a driving licence from the Regional Transport Office, he requested the accused No. 2. Gandalal Vashram. to appear before the Regional Transport Officer under pretext that he was himself Naiabhai Ranchhod. The allegation of the prosecution is that the petitioner did so as he apprehended that on account of his defective vision, the Regional Transport Officer would not issue a driving licence to him.

3. After almost the entire evidence of the prosecution was over, the Public Prosecutor gave an application that since one of the questions involved in the trial was whether petitioner Najabhi Ranchhod was defective in his vision on the day on which he obtained licence, it would be in interest of justice if he was ordered to submit himself to the medical examination with a view to determine the age of the defect in his vision. This application was given by the learned Prosecutor to the trial Court on 21-5-71. The petitioner resisted that application but the learned Magistrate passed an order on 23rd June. 1971 requiring him to produce himself medical examination "to determine the age of the blindness of his one eye."

4. Against this order both the original accused preferred revision application in the Court of Sessions Judge. Raikot, where the said application was registered as criminal revision application No. 39/71. As stated above, the learned Sessions Judge is of the opinion that the order of the learned Magistrate was not sustainable. He has. therefore, made this reference.

5. Shri Thakkar. who appeared on behalf of the State has conceded that the reference should be accented. In my view the concession is rightly made by Shri Thakkar. because there is no provision in the Criminal Procedure Code under which a Court can compel an accused person to get himself medically examined. In M. P. Sharma y. Satish Chandra. . the Supreme Court has considered the principle underlying Article 20(3) of the Constitution, which save that no person accused of any offence shall be compelled to be a witness against himself. This Article of the Constitution obviously contains a prohibition against what is known as testimonial compulsion. While considering the

scope of this article, the Supreme Court has made certain observations which are very pertinent to the facts of this case. It was contended before the Supreme Court in the above referred case that guarantee in Article 20(3) of the Constitution against testimonial compulsion is confined only to oral evidence of a person standing his trial for an offence when he is called to the witness-stand. Rejecting this contention, the Supreme Court has said that there is no reason to confine the content of the constitutional guarantee to its barely literal import and. therefore to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. After saving this, the Supreme Court has made the following observations:

To be a witness is nothing more than to furnish evidence and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes.

These observations clearly show that a person can be a witness and can furnish evidence against himself by different varieties of modes. One method would be to appear for medical examination and. thereby, to enable the prosecution to obtain some evidence against him. In the above referred decision the Supreme Court has discussed the extent of the protection given by "Indian law" against self-incrimination and has stated that so far as Indian Law is concerned. It may be taken that the protection against self-incrimination continues more or less the same as in the English Common Law so far as the accused and the production of documents are concerned. Ultimately, the Supreme Court has made the following observations, which are useful in the decision of this matter:

Considered in this light. the guarantee under Article 20(3) would be available to persons against whom a First Information Report has been recorded as accused therein. It would extend to any compulsory Process for production of evidentiary documents which are reasonably likely to support a prosecution against them.

This decision of the Supreme Court is referred to and followed in subsequent decisions, namely. the Bombay case of Deonman Shamji Patel v. The State . the Supreme Court case of State of Bombay v. Kathy Kale Goad and An. Supreme Court decision of State of Gujarat v. Shyamlal Mohanlal Choksi AIR 1965 SC 1251.

6. The learned Magistrate has thought that since the above referred decisions relate to the production of documents, they would not apply to the facts of the Present case. In my opinion, the learned Magistrate has missed to catch the ratio of the Supreme Court decision given in , which is referred to above. The point is that no accused person can be compelled to do anything which is likely to furnish evidence to the prosecution against himself. This compulsion may be in the form of requiring him to produce a document, or in any other form, but if once it is held that the protection which is extended by the English Common Law to the accused is available to the accused even under the Indian Law then it is impossible to distinguish the case in which the accused person is ordered to produce some document from the case in which he is asked to do something which is ultimately likely to help the prosecution in providing evidence against him.

7. I find that even in cases which, are covered by Hindu Marriage Act (XXV of 1955) this Court has taken a view that there is no provision under that Act or any other law which would show any power

in the Court to compel any party to undergo medical examination. This decision is given in Bipinchandra Shantilal v. Madhuriben . It proceeds on the principle that a compulsion to undergo medical examination is certainly an interference with the personal liberty of a citizen and such personal liberty could only be interfered with under the provisions of any penal enactment or in exercise of any other coercive process vested in the Court under law. As soon as the Court finds that medical examination is such an interference with personal liberty the same could not be ordered without any specific powers for the same given to the Court by some statute. The ratio of this decision applies with greater force in criminal cases where the liberty of the accused is concerned. It is an admitted fact that there is no provision of law under which an accused person can be compelled to submit himself to medical examination for enabling the prosecution to procure some evidence against him.

8. Under these circumstances. I allow the reference and set aside the order passed by the learned Magistrate of the trial Court on 23rd June. 1971 compelling the accused. Naiabhai Ranchhod, to produce himself for medical examination for the determination of the age of the blindness of one of his eves. The rule is made absolute accordingly.