

Section 311-A, CrPC- Deciphered

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“Not all words fit their meanings; sometimes what is said is not meant.”

State of Bombay v. Kathi Kali Oghad (AIR 1961 SC 1808) is an 11 Judge Bench judgment dealing with Art. 20(3), among other things. It makes it clear that no compulsion under Art. 20(3) of the Constitution is involved in a direction to an accused person to give specimen signature and hand-writing for the purpose of comparison.

One must be aware that the Criminal Procedure Code (CrPC in short) initially did not contain any provision under which an accused could be made to give his specimen signatures.

Sec. 311-A was inserted in the CrPC by the Amendment Act of 2005. It deals with power of a Magistrate of the First Class to direct any person including an accused to give specimen signature. However, the proviso suggests that no such order shall be passed unless the person has been arrested in connection with the investigation or proceeding.

Section 311-A, CrPC reads as under:

“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.”

Section 311-A has been placed in Chapter XXIV of the CrPC that deals with the general provisions as to inquiries and trials. However, it is clearly intended as a general provision for investigation as well. Its placement in Chapter XXIV and the use of the phrase “investigation or proceeding” suggests that it can have an overlapping application during investigation, inquiry or trial.

Now, the question that vexes me is whether Section 311-A, CrPC can be used by a Magistrate to direct a person who is not an accused to give specimen signatures or handwriting. The

question is vexing because while the main body of the provision is suggestive of the fact that the order can be given to any person (including, of course, an accused person), the proviso makes it incumbent that such an order can be passed only against a person who has at some time been arrested in connection with the investigation or proceeding.

A cursory glance at Section 311-A CrPC reveals that an element of compulsion or coercion is inherent in the section. It is in regard to a person who would otherwise not give his signature on his own volition. In such a situation, the Magistrate would direct him to give such a signature.

Now, to understand the nature, scope and application of Section 311-A, CrPC, we need to trace its history.

Section 311-A Cr.P.C. was inserted into the CrPC following the Supreme Court's recommendations made in **State of Uttar Pradesh v. Ram Babu Misra, (1980) 2 SCC 343**. After holding that a Judicial Magistrate has no power to direct an accused to give his specimen writing for the purposes of investigation, the Supreme Court had suggested to the Parliament that a suitable legislation be brought along the lines of Section 5 of Identification of Prisoners Act, 1920, to provide for the investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting.

The Supreme Court recognize that a Court could under section 73 of Indian Evidence Act obtain specimen signatures but Section 73 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.

Ram Babu Misra (supra) was specifically considering the issue of lack of a specific statutory provision under which an accused person can be directed to give his specimen signature. And so, it gave the directions that suitable legislation be brought to invest Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting. And the same was accordingly done in the form of incorporation of Section 311-A, CrPC. The legislature retained the words "any person including an accused person" in the body of the Section. However, the judgment which provided the source for the provision was squarely dealing with the case of specimen signature of an accused.

Moreover, Section 311-A, CrPC including its proviso must be understood in the context of Section 5 of the Identification of Prisoners Act since the Section was brought to mirror Section 5, except that it covered the earlier uncovered area of specimen signatures and handwriting.

To unravel Section 311-A, CrPC, we first need to unlock Section 5 of the Identification of Prisoners Act. The same is reproduced below:

“If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898 (5 of 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, 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.”

The legislative intent behind Section 5 becomes clearer by referring to the two preceding sections in the Identification of Prisoners Act- *Sections 3 and 4-* and also by contextualizing the Statement of Objects and Reasons thereof.

Section 3 provides for taking of measurements of convicted persons which is as follows:

“3. Taking of measurements etc., of convicted persons.– Every person who has been–

(a) convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence which would render him liable to enhanced punishment on a subsequent conviction; or

(b) ordered to give security for his good behaviour under section 118 of the Code of Criminal Procedure, 1898 (5 of 1898) shall, if so required, allow his measurements and photograph to be taken by a police officer in the prescribed manner.”

Section 4 deals with taking of measurements of non- convicted persons which is to the following effect:

“4. 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.”

Section 3 is generally applicable for convicts. Section 4 comes into the picture for persons who have been arrested for offences punishable with rigorous imprisonment upwards of 1 year. In both these cases, a police officer can directly take measurements. There is no requirement for Magisterial intervention.

Section 5, however, mandates that a Magistrate's order be taken for collecting measurements. Unlike for a convict or an arrested person (for offences with rigorous imprisonment upwards of 1 year), here the police officer cannot directly take measurements, photographs etc. Section 5 brings within its ambit persons other than convicts or arrested persons (for offences with rigorous imprisonment upwards of 1 year).

Now, if we refer to the Statement of Objects and Reasons of the Identification of Prisoners Act, 1920, the same reads:

“The object of this Bill is to provide legal authority for the taking of measurements, finger impressions, foot-prints and photographs of persons convicted of, or arrested in connection with, certain offences. The value of the scientific use of finger impressions and photographs as agents in the detection of crime and the identification of criminals is well known, and modern development in England and other European countries renders it unnecessary to enlarge upon the need for the proposed legislation.

The existing system by which the police in India takes finger impressions, photographs, etc., of criminals and suspected criminals is void of legal sanction, except as regards registered members of criminal tribes, in whose case provision exists for the taking of finger impressions in section 9 of the Criminal Tribes Act, 1911 (III of 1911). The need for legalizing the practice has long been recognised, but it was not thought expedient to take the matter up so long as no practical difficulties arose. Instances have recently been reported to the Government of India where prisoners have refused to allow their finger prints or photographs to be taken. With a view to prevent such refusals in future it is considered necessary without further delay to place the taking of measurements, etc., which is a normal incident of police work in India as elsewhere, on a regular footing. No measurement, etc., of any person will be taken compulsorily unless that person has been arrested.”

The Statement of Objects and Reasons suggests that prior to the enactment of the statute, since Police in India had been taking finger impressions, photographs etc. of criminals and suspected criminals, without legal sanction, the above mischief was sought to be remedied by the 1920 Act. In the last part of the Statement of Objects and Reasons the purpose has been clearly mentioned i.e.

“with a view to prevent such refusals in future it is considered necessary without further delay to place the taking of measurements, etc., which is a normal incident of Police work in India as elsewhere, on a regular footing”.

Thus, in essence, it was intended through the Act that measurements of all arrested persons be taken through legal sanction.

In its 87th Report, the Law Commission made an extensive study of the Identification of Prisoners Act. The Law Commission observed that the principal object of the Act of 1920 is to permit the taking of certain coercive measures in order to facilitate the “identification” of-

- (1) convicts,
- (2) persons arrested in connections with certain offences, and
- (3) persons ordered to give security in certain cases.

The Law Commission also recognized the dichotomy in the Act in the sense that it makes a distinction between

- (i) situations where the power to take such evidence is given to a police officer; and
- (ii) situations where an order of the Magistrate is considered a pre-requisite before taking such evidence.

The distinction so made is obviously based on the solicitude of the law for the freedom of the individual even while he is under arrest.

The Identification of Prisoners Act proceeds upon the principle that the less serious the matter, the more restricted should be the power to take coercive measures. Thus, Section 3 (which is mainly confined to persons who have been convicted or directed to give security for good behaviour) confers the specified powers on a police officer. But, in contrast, Section 5 (which has a much wider scope) requires Magisterial orders before coercive measures can be taken thereunder. Section 5 is applicable to action to be taken for the purposes of “*any investigation or proceeding under the Code of Criminal Procedure*” (provided the person has been previously arrested) and is thus much wider than section 3.

Speaking in respect of Section 5, the Law Commission noticed that the Section spoke of “any person” though under the proviso its application was limited to persons who had at some point been arrested. The Law Commission observed that the ambit of the scope of the Section was very wide.

Thus, in essence, if the person was a convict or was ordered to give security, or was a person arrested for an offence punishable with rigorous imprisonment of 1 year or upwards, the police could take measurements, finger impressions, photographs etc on its own. But for any other person, it would require a Magistrate's order.

That being said, Section 5 uses “any person” and “not any other person”. So even in cases covered by Sections 3 and 4, the Magistrate would be empowered to direct the person to give measurements, though it would not be mandatory.

The usage of the words "any person" in Section 5, thus read in light of Sections 3 and 4 and the Statement of Objects and Reasons of the Act, does not mean any person other than an accused person. Rather it would mean any person who had been arrested in the course of an investigation and would also include in its ambit persons covered by Sections 3 and 4. However, Section 5 is primarily intended for persons beyond those covered by Sections 3 and 4- *persons of interest in any investigation or proceeding under the Code of Criminal Procedure but who had been arrested prior in connection with such investigation or proceeding.*

Going by the principle of elimination, those may include accused persons arrested for offences carrying punishment of imprisonment less than 1 year or who may be arrested in the course of an investigation or other proceeding, not necessarily as an accused.

So, a person who is not an accused but is only a suspect in the commission of an offence and has been arrested as such would come within its purview. Section 41, CrPC subtly hints at arrest of persons who are suspected of commission of cognizable offences and not necessarily accused of such offences. Section 437, CrPC, additionally, recognizes the detention of two classes of persons who may seek bail- accused and suspect.

There are other classes of persons as well who are not accused of offences who may be arrested. For instance, as per Section 2(h), CrPC, a police officer who collects evidence is said to be investigating. If in the course of investigation, he is obstructed from execution of his duty, he may arrest the person so obstructing under Section 41, CrPC, though he may not be an accused of the offence which the police officer is investigating. A police officer may arrest a person under section 151, CrPC to prevent commission of a cognizable offence. If the police officer requires their measurements etc, he would require a Magisterial order.

But in essence, as is apparent from the Statement of Objects and Reasons, the 1920 Act is essentially intended for taking measurements, finger impressions, photographs etc of criminals and suspected criminals.

So, “any person” in Section 5, Identification of Prisoners Act cannot ordinarily be taken to be taken to mean only an accused person but it would also include an accused person. The only essential requirement would be that the person must be one whose freedom was curtailed through his arrest in the course of the investigation or proceeding in which he is a person of interest.

As the Legislature while enacting Section 5 of the Identification of Prisoners Act did not deem it necessary to include the taking of handwriting or signature of a person in the course of investigation by the police, this lacuna was filled up by Section 311-A, CrPC.

Section 311-A, CrPC is a sequel- an extension- of Section 5 of the Identification of Prisoners Act and its nature and scope must be understood in that context.

Unlike in the case of **Kathi Kali Oghad (supra)** which held that the specimen signature of an accused can be taken without self incrimination, Section 311-A, CrPC provides legal sanctity to the collection of such specimen signature. It also provided a considerable extension of the circumstances than that was visualized in **Kathi Kali Oghad (supra)**.

Section 311-A, CrPC is applicable to any action to be taken for the purposes of “*any investigation or proceeding under the Code of Criminal Procedure.....*” in respect of any person provided the person had been previously arrested. Section 311-A, CrPC brings within its ambit such persons who may have been arrested in the course of an investigation or proceeding but who may not necessarily be an accused in the offence that the police is investigating but may also be a suspect, among other persons.

This, in so many words, is my understanding of Section 311-A, CrPC.
