

2009 (8) SCR 98

**STATE OF M.P.
v.
DEVENDRA
(Criminal Appeal No . 979 of 2002)
MAY 05, 2009**

[DR. ARIJIT PASAYAT, D.K. JAIN AND DR. MUKUNDAKAM SHARMA, JJ.]

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by a learned Single Judge of Madhya Pradesh High Court, Indore Bench, which gave certain directions to the State Government in the matter of identification of prisoners and methodology for investigation. The respondent No.1 had filed an application for grant of bail in terms of Section 439 of the Code of Criminal Procedure, 1973 (in short the 'Code'). During hearing of the petition the respondent No.1 who was the applicant before the High Court stated that the petition has become infructuous. Therefore, he did not want to press the same. The High Court held that even though the petition had become infructuous certain directions were necessary to be given to the concerned authorities.

2. The stand before the High Court by the appellant-State was that there were not many cases where impersonation was involved and therefore the desirability of taking the photographs in all cases would be an additional burden on the State Exchequer. It was pointed out that Sections 4, 5 & 6 of the Identification of Prisoners Act, 1920 (in short the 'Prisoners Act') provided sufficient guidelines. Direction was given to the State about affixing the photographs of the accused persons as well as the witness. There is a likelihood of a grievance being made that the photographs were shown to the accused before the Test Identification Parade. The High Court was however of the view that at the time of filing charge sheet, the photographs of the witnesses as well as the accused persons should be given to avoid impersonation and to curb delay due to non-service of summons and warrants in criminal trials.

3. The High Court noted that though Section 170(2) of the Code provides for taking surety bonds from the accused persons for their appearance in court at the time when the charge sheet is filed or when the accused is forwarded to Magistrate, this is not sufficient safeguard in cases of impersonation. Accordingly the following directions were given:

“1. That the State shall make suitable amendments in the Police Regulations about taking and filing photographs of the complainant material witnesses and accused persons alongwith the charge sheet in all criminal cases, sessions trials, except in minor/petty offences and non-cognizable offence.

2. In a case where there is no dispute of identification of the accused, the photograph of such person should invariably be taken at the time of arrest of any person for crime, while noting his identification marks to avoid any set back on the prosecution case regarding identification and when identification is doubtful then the photograph should be taken at the time of filing charge sheet.

3. In all criminal cases and sessions trials, except in non-cognizable and minor/petty offences, at the time of filing of the challan/charge sheet the State should also file the photographs of complainant, material witnesses and all the accused persons and the same should be part of the papers of the trial. The State may also retain copy of photographs with the case diary or at the police station for the purposes of service of summons and warrants for arresting the absconding accused persons.

4. The photographs should be of enough number to show the accused clearly from his front pose and may include a photograph of the accused in standing position.

5. The photographs of the accused persons should be duly authenticated by the concerned officer, who arrested the accused persons.

6. In all sessions trials and criminal cases when warrants of arrest are issued the photographs and mark of identification should be checked with the accused.

7. In all sessions trials and criminal cases at the time of arrest the identity of the accused should be properly verified and care should be taken to ascertain his correct name and address.

8. The officer arresting the accused must certify the photographs and the particulars of his identity with a certificate which should accompany the chargesheet, which is sent to the court.

9. In all appeals against acquittal the photographs should also form part of record of the trial court and whenever notices and warrants are issued by the appellate court or High Courts the photographs and marks of identification should be cross checked by the office with the accused and when the notices are returned duly served and warrants executed, they should accompany a certificate by the officer that the accused has been duly served after verifying the identity, name and address with the photograph.”

4. It is submitted by learned counsel for the State that most of these directions are impracticable and in some cases run counter to the statutory mandate of the Prisoners Act.

5. There is no appearance on behalf of respondent.

6. Learned counsel for the State pointed out that the directions Nos. 1, 2, 3, 8 & 9 are incapable of implementation and in any event suggestions are provided in the Prisoners Act, M.P. Police Regulation (in short the ‘Regulation’) and the provisions of Code more particularly Sections 160, 161, 170 (2), 171.

7. Reference is also made to Section 54(A) of the Act. As a matter of fact the High Court’s directions are intended to meet the challenge of impersonation.

8. Sections 3, 4 & 5 of the Prisoners Act read 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 of upwards, or of any offence which would render him liable to enhanced punishment on a subsequent convicted; 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.

STATE AMENDMENTS

Gujarat- In clause (b) of Section 3, add the following at the end:

“or under Section 93 of the Bombay Prohibition Act, 1949”.

[Bombay Act 58 of 1953].

Maharashtra- For Section 3, substitute the following namely, —

“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 punishable under Section 19 of the Dangerous Drugs Act, 1930, 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, or under Section 93 of the Bombay Prohibition Act, 1949, or to give security for abstaining from commission of certain offences under Section 18 of the Dangerous Drugs Act, 1930.

shall if so required allow his measurements and photographs to be taken by a police officer in the prescribed manner.”

[Maharashtra Act 35 of 1970].

4. Taking of measurement, 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.

STATE AMENDMENTS

Gujarat: (i) In its application to the State of Gujarat for Section 4, the following substituted, namely:

“4. Taking of measurements of photographs of non-convicted persons. — An person —

(a) who has been arrested —

(i) under Section 55 of the Code of Criminal Procedure, 1898, or under Section 4 of the Bombay Beggars Act, 1945;

(ii) in connection with an offence punishable under Section 122 of the Bombay Police Act, 1951, or under Section 6 or 9 of the Bombay Beggars Act, 1945, or in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards, or

(b) in respect of whom a direction or order under Section 55 or 56 of the Bombay Police Act, 1951, or under sub-section (1) or (2) of Section 23 of the Bombay Beggars Act, 1945, or under Section 2 of the Bombay Public Security Measures Act, 1947, has been made,

shall, if so required by a police officer, allow his measurements or photograph to be taken in the prescribed manner.”

Karnataka- In its application to the State of Karnataka, for Section 4 substitute the following:

“4. Taking of measurements or photographs of unconvicted persons.

— Any person —

(a) who has been arrested in connection with an offence punishable under Section 96 of the Karnataka Police Act, 1963, or in connection with an offence punishable of the Karnataka Police Act, 1963, or in connection with an offence punishable with rigorous imprisonment for a term of one year or upward or in connection with an offence for the commission of which on a second or subsequent occasion enhanced penalties have been provided for under any law for the time being in force; or

(b) in respect of whom direction or order under Section 54 or 55 of the Karnataka Police Act, 1963, has been made,

shall if so required by a police officer, allow his measurements or photographs to be taken in the prescribed manner.

“4-A. Taking of measurements, etc. of habitual offenders against whom restriction order is made. — Any person against whom an order of restriction has been made under the provisions of the Karnataka Habitual Offenders Act, 1961, shall if so required by a Police Officer, allow his measurements of photograph to be taken in prescribed manner”.

[Karnataka Act 29 of 1975].

(ii) After Section 4-A as inserted in Karnataka insert the following the following:

“4-B. Taking of measurement, etc., of beggars under the Karnataka Prohibition of Beggary Act, 1975. — Any person who has been arrested and not released under sub-section (2) of Section 11 of the Karnataka Prohibition of Beggary Act, 1975 (Karnataka Act 27 of 1975) or against whom an order of detention has been made under sub-section (1) of Section 12 of the said Act, shall, if so required by an officer-in-charge of a receiving centre or relief centre allow his measurements and photographs to be taken in the prescribed manner.”

[Karnataka Act 1 of 1987].

5. 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 the 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.”

9. Section 3 deals with taking of measurement of the convicted persons. The photographs and measurements and photographs can be taken by the police

officer in the manner prescribed. Section 4 deals with taking of measurement etc. of non-convicted persons. It is taken if the police officer so requires it and it has to be done in the prescribed manner. So far as Section 5 is concerned it deals with the power of the Magistrate to direct any person for measurement or photographs to be taken if he is satisfied that for the purpose of any investigation or proceedings under the court the same is necessary.

10. Directions 1 & 3 are overlapping to certain extent. So far as the accused is concerned the Prisoners Act apply at both pre trial and post trial stages. So far as the complainant and the witnesses are concerned their role is during the trial.

11. The directions given by the High Court are modified to the following extent:

So far as para 8 of the directions is concerned the identification has to be based on the basis of information relating to identification of somebody. So far as the direction No.9 is concerned only when it is so necessary by the Magistrate action shall be taken. Needless to say the directions are subject to provisions of the Act, the Regulation and the Code. In case of conflict statute itself prevails. In case of complainant as well as witnesses, where prosecution wants to protect the identity, the reasons, therefore, must be recorded. In case of rape victims, photographs should not be taken.

12. The appeal is accordingly disposed of.

JUDGMENT