2024:DHC:9930-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ***Reserved on: 4th November, 2024***

Date of Decision: 23rd December, 2024

\+ **CRL.REF. 3/2019**

COURT ON ITS OWN MOTION .....Petitioner

Through: Mr. Puneet Mittal, Sr. Adv. (*Amicus Curiae*) with Mr. Rupendra Pratap Singh, Ms. Sakshi Mendiratta & Mr. Sammeer Vatts, Advocates (M-9718346706)

versus

STATE .....Respondent

Through: Ms. Nandita Rao, ASC (Crl.) for the State with Mr. Amit Peswani, Advocate (M-9999031918).
Mr. Anurag Ahluwalia CGSC with Mr. Tarveen Singh Nanda GP (M-9811418995)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present reference under Section 395 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') has been made by Sh. Harjyot Singh Bhalla, learned Additional Chief Metropolitan Magistrate (for short, 'ACMM'), South, New Delhi, in Case No.

17236/2018 arising out of FIR No. 424/2018 registered at Police Station Ambedkar Nagar, titled as 'State v. Meenakshi & Ors.' *vide* order dated 30.07.2019.

2. The Predecessor Bench of this Court *vide* order dated 30.09.2019 has formulated the following question of law for which the present reference has been made: -

> "Whether Proviso to Section 311A of the CrPC is constitutionally valid?"

FACTUAL BACKGROUND

3. Before adverting to answer the Reference, it would be appropriate to refer to the factual background in which the aforesaid order was passed by the learned ACMM which is thus: -

i) Investigating Officer in the aforesaid FIR, on 12.12.2018 was directed to be summoned with directions to file progress report *qua* investigation, particularly obtaining specimen signatures of the accused, Ms. Seema, who was not arrested, in the aforesaid FIR.

ii) On 30.07.2019, learned Counsel for the Complainant appeared before the learned ACMM and raised an objection that the said specimens if obtained from the accused persons in the present case, who were not arrested, would be hit by the proviso to Section 311A of the CrPC.

iii) It was further submitted before the learned ACMM that the accused persons were not arrested before their specimen signatures were taken, therefore, they must be arrested, and then only, the exercise of taking the specimen signatures be carried out again.

iv) Thereafter, learned ACMM formulated the following questions which he deemed arose, in view of the aforesaid submissions made by the learned Counsel for the Complainant, in the present FIR which reads thus: -

> "Firstly, whether when a person appears before the court or Magistrate pursuant to the application by the IO for giving specimen signatures, is it essential that he must be arrested at that stage or must be in custody at any stage prior thereto in view of the proviso under Section 311A of the CrPC. Thereby implying that the proviso is a mandatory provision.
>
> Secondly, is the proviso to Section 311A of the CrPC imposing excessive restriction on fundamental right to Article 14, 19, 20, 21 and 22 of Constitution of India."

v) Learned ACMM then, after noting the background in which the Section 311A of the CrPC was enacted and the statutory provision for compelling specimen signatures under Section 5 of the Identification of Prisoners Act, 1920, (for short, 'IPA') and the law laid down by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar & Anr.**[1] regarding the arrest of an accused person thereby curtailing the rights and liberty of

[1] (2014) 8 SCC 273

a suspect or accused persons, observed thus: -

> "Therefore, clearly, the Supreme Court has taken a view j against automatic and autocratic arrest of persons accused of an offence or against whom there is a suspicion of having committed an offence. The proviso to Section 311A of Cr. PC under consideration creates a situation which runs counter to the mandate of the Supreme Court, as also seems to be in conflict the provisions of Section 41 and 41 A of Cr.PC. Unless a person has been arrested at some point of time, his specimen signatures cannot be taken under the provision of Section 311A of Cr.PC. The provision definitely puts the cart before the horse. Unless there is a proper investigation and a prima facie view that forgery has been committed ordinarily, arrest should not be made in view of the decision in Arnesh Kumar (supra). On the other hand, no specimen signatures can be taken unless a person has been arrested as per the proviso.
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> In these circumstances, when police is yet to come to a conclusion that forgery has been committed by a suspect, it would be really unjust and harsh to take recourse to the proviso to Section 311 A Cr.PC and seek his arrest before taking specimen signatures. Of course, the FSL result may take a long time and may even come out to be in favour of the suspect/accused. That would be real travesty of justice, as an innocent person would have faced arrest.
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> Therefore, firstly, incorporation of this provision may have to be read down by a Constitutional Court; in the alternative.
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> Secondly, if the mischief rule of interpretation of statute is applied in the present case, mischief/shortcoming in law that the Supreme Court found was that there was are no provision in Cr.PC to allow the Investigating Officer to obtain specimen signatures and therefore and amendment was introduced to prevent advantage being taken by the accused of this loop hole in law. The Supreme Court never envisage that a person must be arrested before his specimen signatures could be taken when purpose was to seek custody of the person.
>
> I think the interpretation by and large given to the provision should be in consonance with the Fundamental Rights guaranteed under the Constitution.

> Therefore, in my view, this is a fit case for making reference to the High Court under Section 395 of Cr.PC as 1 am satisfied that the question as to the validity of the proviso to Section 311 A of Cr.PC has arisen, the determination of which is necessary for the disposal of this case."

vi) This Court *vide* order dated 30.09.2019 had appointed Mr. Puneet Mittal, Senior Advocate, as *Amicus Curiae* in the present case to assist the Court. Learned Standing Counsel for Union of India and learned Counsel for the Govt. of NCT of Delhi were also directed to examine the present Reference and file written submissions.

SUBMISSIONS ON BEHALF OF UNION OF INDIA

4. Learned Standing Counsel for Union of India has submitted that the Section 311A of the CrPC was inserted on the basis of the observation by the Hon'ble Supreme Court in **State of UP v. Ram Babu Mishra[2],** to provide for a suitable legislation akin to Section 5 of the IPA for vesting Magistrates with the powers to issue directions to any person including an accused person to give specimen and handwriting.

5. It is further submitted that, in terms of proviso to Section 311A of the CrPC, it is not mandatory for the investigating agency to arrest the person including an accused person to give signatures or handwriting in connection with the investigation or proceeding of a case and the said proviso is to be read as directory in nature. Reliance

[2] AIR 1980 SC 791

has been placed on **Alapati Srinivas Kumar v. State of A.P. REP PP AND Anr.**[3] to contend that the learned Single Judge of Hon'ble Telangana High Court while dealing with a case wherein the complainant's signatures and thumb impression were to be obtained for referring to an expert, has held that the word 'person' used in the Section 311A of the CrPC refers to the accused only in the main section and not in the proviso of the said Section. The relevant observation made by the learned Judge in the said case reads thus: -

> "11) …….. This order should be understood with reference to Section 311-A Cr.P.C. and hence the said section is extracted below:
>
> > "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."
>
> This Section upholds the power of a Magistrate to direct any person including an accused person to give specimen signatures and handwriting for the purpose of any investigation or proceedings under the Code. The proviso to Section says that no order shall be made under this section unless the person at some time been arrested in connection with such investigation or proceeding. Section 311-A has been inserted in the Cr.P.C. as per Cr.P.C. (Amendment) Act, 2005 w.e.f. 23.06.2006, on the analogy of Section 5 of the Identification of Prisoners Act, 1989. While the main Section says the Court has power to direct any

[3] Criminal Petition No. 7755/2017 decided *vide* order dated 17.08.2018

> person including the accused, the proviso illustrates that the order shall not be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding. Needless to emphasize that the word 'person' used in the proviso is with reference to accused in the main section but not others. Therefore, in a given case, the Court may have to obtain the specimen signatures and handwriting of not only accused in that case but also the complainant. Since the question of arrest of the complainant at some time in connection with such investigation or proceeding does not arise, such arrest in the proviso, in my view, shall be referred to the accused in the main case……"

6. It has been pointed out that the legislature in its wisdom while enacting similar provision in the new procedural law, i.e., Section 349 of the Bharatiya Nagarika Suraksha Sanhita, 2023, (for short, 'BNSS') has, by inserting another proviso to Section 349 of the BNSS, clarified the aforesaid position by bestowing the power with the concerned Magistrate whereby he may after recording reasons in writing direct any person to give specimen or such sample without him being arrested.

7. Reliance has also been placed on **State of Bombay v. Kathi Kalu Oghad**[4]**,** to contend that giving thumb impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression "to be a witness" and merely the fact that an accused person had made a statement while in police custody would not *ipso facto* lead to the inference that the accused was compelled to make the statement as he cannot, while giving such specimen writings or showing parts of the body by way of identification, be said to have been compelled to be a

[4] 1961 SCC OnLine SC 74

witness against himself. It is further contended that under Section 311A of the CrPC, the concerned Magistrate, after being satisfied, would be calling upon any person to provide his specimen or handwritings voluntarily and, in case, the said person refuses to do so, then, an adverse inference can be drawn against him and non-giving of specimen signatures or handwriting, consequently, cannot lead to the arrest of the said person. It is further submitted that once the trial begins the concerned Trial Court is *seisin* of the case and such Court under Section 73 of the Indian Evidence Act, 1872, (for short, 'IEA') can direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures alleged to have been written by such person.

SUBMISSIONS ON BEHALF OF GOVT. NCT OF DELHI

8. Learned Additional Standing Counsel for the GNCTD, relies upon the status report filed on behalf of the GNCTD, to submit that at present the procedure adopted by the Investigating Officers ('for short, 'IO') is that the persons from whom such specimen signature/ handwriting ought to be obtained are divided into three categories *viz*,

i) The IOs usually obtain the directions from the Magistrate in respect of un-arrested persons with their consent.

ii) Insofar as suspects who joined the investigation and with consent give the handwriting of signatures, the same is taken by the IO on their own.

iii) Further, insofar as accused who have been arrested at some point in time are concerned, an application is moved under Section 311A of the CrPC for issuance of directions to take the specimen signature/handwriting.

Paragraph 7 of the status report dated 15.10.2021 authored by Deputy Commissioner of Police, Legal Cell, Police Headquarters, Delhi, filed on behalf of the GNCTD, is relevant and reads thus: -

> "7. That in view of the position held by the Hon'ble Supreme Court of India, the investigating officers have adopted separate mechanism in respect of persons identified in the two categories (not arrested). Some I.Os take specimen signature/handwriting of not arrested accused persons after obtaining directions from the concerned Magistrate and in some cases I.Os ask the suspect persons to Join the investigation and as per the requirement and his consent specimen hand writing/signatures is taken by the I.O. on his own. As far as other accused persons are concerned, who have been arrested at some point of time, the I.O. moves an application under section 311-A Cr.P.C. before the Ld. Court for issuance of directions to the accused person to give his specimen signature/handwriting to the I.O. for the purpose of investigation."

Reliance has also been placed upon **Rekha Sharma v. CBI**[5] and **Selvi v. State of Karnataka**[6]**,** to contend that voluntary giving of the signature or a specimen handwriting would not be hit by Article 20(3) of the Constitution of India.

9. It has also been pointed out that the instant case has been listed for the consideration of the supplementary chargesheet before the

[5] 218 (2015) DLT 1
[6] (2010) 7 SCC 263

Court of competent jurisdiction.

SUBMISSIONS ON BEHALF OF *AMICUS CURIAE*

10. Learned a*micus curiae* has referred to various decisions which deal with Section 311A of the CrPC. Reliance has been placed upon the judgment of Hon'ble Kerala High Court in **BC Radha Krishnan & Ors. v. Saju Thuruthikunnen & Anr.[7],** where the complainant had sought the signatures of the accused. In the context of the said case, the Hon'ble Kerala High Court had observed that arrest is essential for invocation of power under Section 311A of the CrPC.

11. Reliance has also been placed upon **Dr. Suyog v. State of Maharashtra[8],** where the signature specimen of the survivor was sought and again Section 311A of the CrPC was interpreted to mean that since the survivor is neither an accused nor a person arrested, hence, Section 311A of the CrPC would be of no application.

12. In **M Durga Reddy v. State of Andhra Pradesh[9]**, the Andhra Pradesh High Court holds clearly that the term 'person' in Section 311A proviso refers to the accused person.

13. He also placed reliance on the decision of the Full Bench of this Court in **Sapan Haldar v. State[10],** which contains the detailed discussion under Section 311A of the CrPC. Reliance has also been

[7] 2014 Crl.L.J. 425
[8] 2014 (3) Bom CR (Crl) 254
[9] 2011 SCC OnLine AP 1005
[10] 2019 (191) DLT 225

placed on the view of the Hon'ble Calcutta High Court in **Amit Kumar Ghosh v. The State**[11]**,** to argue that an order under Section 311A of the CrPC would require reasons to be given by the Magistrate as to why it is expedient to obtain the sample signatures/handwriting. However, if after the recording of the satisfaction and a direction is passed to the accused to give such samples which are refused, then merely an adverse inference can be drawn against the said person.

ANALYSIS AND FINDINGS

14. Heard the learned counsel for the parties and perused the records.

15. As noted hereinabove, Section 311A of the CrPC was inserted by Act 25 of 2005, s. 27 (w.e.f. 23.06.2006), in view of the observations made by the Hon'ble Supreme Court in the case of **Ram Babu Mishra (*supra*)** regarding need for suitable legislation similar to the provision under Section 5 of the IPA empowering magistrates to issue directions to any person including an accused person to give specimen signatures or handwriting. Section 311A of the CrPC 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

[11] 2014 SCC OnLine Cal 19437

> time and place specified in such order and shall give his specimen signatures or handwriting:
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> 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."

16. The word 'shall' used in the aforesaid proviso, if is in interpreted to be a mandatory provision, then the consequences, as prayed for by the complainant in the application before the learned ACMM, is that the concerned accused person has to be mandatorily arrested before he can give his specimen signatures or handwriting in aid of the investigation. It is well settled principle of law that arrest of an accused, even in a case involving non-bailable offences, is not mandatory. The need to arrest an accused person in such cases is left to the discretion of the concerned Investigating Officer or his superiors. In catena of judgments, it has been consistently held by the Hon'ble Supreme Court that arrest of an accused person is not automatic and the requirement of such a step has to be justified by the Investigating Officer in a given set of facts and circumstances of the case.

17. The aforesaid provision was inserted with a purpose to balance the interest of the accused person and requirement of the investigating agencies to obtain such specimen signature or handwriting to arrive at logical end of investigations. The need for the same had arisen because of the challenge being made by the accused persons whose specimen handwriting or signature were taken while they were in custody. In order to give legitimacy to such a procedure being adopted by the Investigating Officer, it was thought necessary that such a

power would be invested with the learned Magistrate who may ensure that the specimen signature or handwriting are taken in accordance with law which would be similar to Section 5 of the IPA. Thus, in essence, the aforesaid provision was meant to safeguard the interest of an accused person as well to ensure that the investigation is not impeded in any manner.

18. Thus, in view of the above, if the aforesaid proviso is held to be mandatory, then, the same would run contrary to the settled principles of criminal jurisprudence which provide that arrest of an accused person is not a mandate but a discretion vested with the Investigating Officer which has to be exercised fairly and in accordance with law. This Court, therefore, has to determine whether the expression 'shall' appearing in the proviso to Section 311A of the CrPC is mandatory or directory in nature.

19. The Hon'ble Supreme Court in **May George v. Special Tahsildar**[12]**,** while determining the nature of Section 9(3) of the Land Acquisition Act, 1894, has observed and held as under: -

> "15. While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The provision is mandatory if it is passed for the purpose of enabling the doing of something and prescribes the formalities for doing certain things.

[12] (2010) 13 SCC 98

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23. In *State of Haryana* v. *Raghubir Dayal* [(1995) 1 SCC 133] this Court has observed as under : (SCC pp. 135-36, para 5)

> "5. The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word 'shall' as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory."

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25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance with the provision could render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject-matter and object of the statutory provisions in question. The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non-compliance with the provisions and as to whether the non-compliance is visited by small penalty or serious

consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid."

20. Similarly, the Hon'ble Supreme Court in **Lalita Kumari v. Govt. of UP**[13]**,** while determining the nature of Section 154 of the CrPC has analysed the import of word "shall" in the following the manner: -

> "***"Shall"***
>
> 50. The use of the word "*shall*" in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.
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> 51. In *Khub Chand* [*Khub Chand* v. *State of Rajasthan*, AIR 1967 SC 1074] , this Court observed as under : (AIR p. 1077, para 6)
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> > "*6.* … The term 'shall' in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations."
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> 52. It is relevant to mention that the object of using the word "shall" in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable offences is promptly registered by the police and investigated in accordance with the provisions of law.

[13] (2014) 2 SCC 1

53. Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.

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55. In view of the above, the use of the word "shall" coupled with the scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer in charge of the police station. Reading "shall" as "may", as contended by some counsel, would be against the scheme of the Code. Section 154 of the Code should be strictly construed and the word "shall" should be given its natural meaning. The golden rule of interpretation can be given a go-by only in cases where the language of the section is ambiguous and/or leads to an absurdity.

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56. In view of the above, we are satisfied that Section 154(1) of the Code does not have any ambiguity in this regard and is in clear terms. It is relevant to mention that Section 39 of the Code casts a statutory duty on every person to inform about commission of certain offences which includes offences covered by Sections 121 to 126, 302, 64-A, 382, 392, etc. of the Penal Code. It would be incongruous to suggest that though it is the duty of every citizen to inform about commission of an offence, but it is not obligatory on the officer in charge of a police station to register the report. The word "shall" occurring in Section 39 of the Code has to be given the same meaning as the word "shall" occurring in Section 154(1) of the Code."

21. The Hon'ble Supreme Court in **Vijay Dhanuka and Ors. v.**

Najima Mantaj and Ors.[14]**,** while determining the scope of expression "shall" used in Section 202(1) of the CrPC, has observed and held as under: -

> "12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:
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> > "False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."
>
> The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

[14] (2014) 14 SCC 638

22. Thus, if in the present context, the expression "shall" as used in the aforesaid proviso to Section 311A of the CrPC is held to be mandatory, then, in a situation like the one before the learned ACMM, where the accused person, who otherwise has not been arrested in the case so far and is volunteering to give his specimen signature or handwriting which is essential for the purpose of investigation, would have to be arrested, and only then, his specimen signature or hand writing could be taken. This in the opinion of this Court, will be inconsistent with cardinal legal principles, as noted hereinbefore, of the criminal jurisprudence. This is also evident from the fact that the legislature in the new procedural law while providing for the similar corresponding provision to Section 311A of the CrPC, i.e., Section 349 of the BNSS, has inserted another proviso thereby clarifying the aforesaid position, while maintaining the same power vested with the concerned Magistrate, the said provision reads as under: -

> **"349. Power of Magistrate to order person to give specimen signatures or handwriting, etc. -** If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including 35 an accused person, to give specimen signatures or finger impressions or handwriting or voice sample, 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 finger impressions or handwriting or voice sample:
>
> 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:
>
> **Provided further that the Magistrate may, for the reasons to be recorded in writing, order any person to give**

such specimen or sample without him being arrested."

(emphasis supplied)

23. This interpretation is also supported by the learned Counsel appearing on behalf of Union of India as well as the Additional Standing Counsel appearing on behalf of GNCTD of Delhi. It has been pointed out hereinbefore that, presently, the procedure adopted by the Investigating Officer before the enactment of BNSS was that, the concerned Investigating Officer used to appear before the learned Magistrate so as to obtain directions to take specimen signature or handwriting of the person(s) concerned with their consent, and cases wherein, the person has been arrested application under Section 311A of the CrPC used to be filed for the said purpose.

24. In view of the aforesaid circumstances and discussion, this Court is of the opinion that the expression "shall" appearing in proviso to Section 311A of the CrPC has to be interpreted as directory in nature which is also fortified by the position in the newly enacted procedural law as pointed out hereinabove.

25. Thus, in the facts and circumstances of the case, the reference made by the learned ACMM to this Court is answered in the following manner: -

> **Question No. 1**: Whether, when a person appears before the court or Magistrate pursuant to the application by the IO for giving specimen signatures, is it essential that he must be arrested at that stage or must be in custody at any stage prior

thereto in view of the proviso under Section 311A of the CrPC. Thereby implying that the proviso is a mandatory provision.

Answer: In view of the aforesaid discussion, the proviso to Section 311A of the CrPC is directory in nature and not mandatory. Thus, when a person voluntarily appears before the Court or Magistrate, pursuant to the application filed by the Investigating Officer, for giving specimen signature or handwriting, it is not essential to arrest him.

Question No. 2: Is the proviso to Section 311A of the CrPC imposing excessive restriction on fundamental right to Article 14, 19, 20, 21 and 22 of Constitution of India

Answer: In view of the aforesaid opinion rendered by this Court, the proviso to Section 311A of the CrPC, being directory in nature, is constitutionally valid as the same does not impose any excessive restriction on the fundamental rights under Articles 14, 19, 20, 21 and 22 enshrined in Part III of the Constitution of India.

26. The Reference made by the learned ACMM is answered in the aforesaid terms and disposed of accordingly.

27. The learned ACMM shall decide the case in accordance with the observations made herein above and in terms of answers to the Reference.

28. Copy of the judgment be sent to the learned Trial Court for necessary information and compliance and to all the learned Principal District and Sessions Judges for necessary information, who shall bring the same to the notice of all the concerned Courts.

29. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J.

PRATHIBA M. SINGH, J.

DECEMBER 23, 2024/*nk*