

(1939) 03 CAL CK 0008
In the Calcutta High Court

Agent, Assam Bengal Railway Co. Ltd.	APPELLANT
Vs	
Surendra Chandra Chakravarty	RESPONDENT

Date of Decision : 14-03-1939

Acts Referred:

Evidence Act, 1872 — Section 124

Citation : AIR 1939 Cal 386

Hon'ble Judges : Derbyshire, C.J.; Nasim Ali, J

Bench : Full Bench

Judgement

Derbyshire, C.J.—In this matter the learned Munsif at Jorhat on 17th January 1939, made an order upon the Agent of the Assam Bengal Railway Company for the production in Court of certain documents. The agent obtained a rule against that. order and the matter has now come on before us for hearing. The plaintiff in the suit one Surendra Chandra Chakravarty was, formerly a guard on the Assam Bengal Railway and the defendant, B. Sing, a Traffic Inspector on the Railway. The plaintiff alleges that the defendant falsely and maliciously made a report concerning him to his (the defendant's) superior which was conveyed eventually to the Agent and resulted in the plaintiff's dismissal from the railway service. The plaintiff has not sued the Railway Agent for wrongful dismissal but has sued the defendant for defamation. The plaintiff has claimed the production of the documents in question from the agent. Those documents include, according to the order made by the Judge who had got information from the plaintiff himself (a) reports of the Traffic Inspector, (b) reports of the District Traffic Superintendent or D.T.S., (c) the letter of Mr. K. Cheliha with an enclosed letter of Mr. G. Sutradhar written to the Agent, (d) the reply of the Agent to Mr. K. Cheliha, (e) letter No. 12/66 dated 9th March 1937 written by Mr. Falconer of Lukwah Tea Estate to Mr. Cuffe, and (f) reply of (e) by the Agent. The plaintiff says that the production of those documents in Court is necessary in this case. How he knew that those documents were in that file can only be guessed. The Agent of the railway company has objected to produce the documents u/s 124, Evidence Act claiming that he is a public officer and that public interest will suffer

by the disclosure. It has been argued that he is a public officer by reason of the provisions of Section 2, Sub-section (e), Civil P.C., which says that "every person who holds any office by virtue of which he is empowered to place or keep any person in confinement" is a public officer. The Agent of course is the Agent of the railway company which is a company run for profit subject to restriction and regulation by the Government.

2. It is contended on behalf of the Agent of the railway company that he has power u/s 131, Railways Act, to arrest certain persons for offences committed on the railway. It should be noted that Section 131(2) states that "a person so arrested shall, with the least possible delay be taken before a Magistrate having authority to try him or commit him for trial." It is said that that power of arrest brings him within the definition of "public officer" cited above. I am of opinion that the power to arrest which is given, even if it is possessed by the agent, does not bring him within the definition of "public officer." To place or keep a person in confinement, in my view, connotes something more than mere arrest. Arrest connotes a check or stoppage of the activities of a person. Having regard to Section 50, Criminal P.C., it would appear that a person is arrested when he is subjected to such restraint as is necessary to prevent his escape, and no more restraint. To place or keep a person in confinement Connotes much more restraint than arrest. It connotes a person being surrounded with restraints so that his movements on each side are very materially limited. For those reasons I am of the opinion that the Agent is not a public officer. That being so, his claim to refuse to disclose the documents in question is invalid. It is his duty to produce the documents specified either personally or by a duly authorized agent to the Court for the Court's inspection and not for the inspection of any of the parties until the Court has decided upon their admissibility. At the same time I think it right to point out that the documents must be produced subject to all just objections as to their admissibility in evidence in this case. The learned Judge must see that such documents as are used in evidence are such as are strictly relevant and admissible according to law having regard to the issue which is raised between the parties. Discovery of this kind should not be made other than for the bona fide purpose of determining the issue which is to be tried between the parties. In my view this rule must be discharged. I hope the Judge will have regard to the warning that I have given. There will be no order as to costs in this rule. Let the record be sent down, without delay.

Nasim Ali, J.

3. I agree.