

(1959) 12 KAR CK 0010

In the Karnataka High Court

Case No : Civil Revision Petition No. 122 of 1958

B.R. Srinivasan and Others

APPELLANT

Vs

Bramhatantra Parakalaswamy Mutt, Mysore and Others

RESPONDENT

Date of Decision : 15-12-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115 (c)
Evidence Act, 1872 — Section 124

Citation : AIR 1960 Kar 186

Hon'ble Judges : K.S. Hegde, J

Bench : Single Bench

Judgement

(1) In this revision petition the true scope of S. 124 of the Indian Evidence Act which shall be hereinafter called "the Act", comes up for consideration.

(2) The petitioners who are defendants 1 to 3 in original Suit No. 172 of 1958 in the Court of the Munsiff, Srirangapatna, summoned the Special Officer, Efficiency Audit, Bangalore, who shall be hereinafter called the "Officer" to produce the following documents: (1) the final report submitted to the Government on 2-3-1956 in respect of the allegations made against the first defendant; (2) the Petition filed by K.V. Seetharamiah of Kalaly Village "Officer"; and (3) the statement of Narasimha Raghavachar Mukhami of the plaintiff-Mutt.

These documents were produced into Court but the person who produced the documents on behalf of the "Officer" filed a memo saying that he had been instructed by the "Officer" to claim privilege under S. 124 of "the Act". The petitioners did not press their summons as regards document No. 1. Hence we are merely concerned with the other two documents. The question for decision is whether the protection claimed under S. 124 of "the Act" is sustainable, S. 124 reads:

"No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure."

The requirements of this section are: (1) that a communication should have been made to a public officer in official confidence; and (2) the officer in question must consider that public interests would suffer by the disclosure of the communication in question. If these two conditions are satisfied then the public officer to whom the communication was made cannot be compelled to disclose the same. Whether the communication in question was made in official confidence is a matter for the Court to decide and whether the public interests would suffer by its disclosure is for the public officer to decide.

But the Public Officer before claiming protection under S. 124 must come to a positive conclusion that by the disclosure of the communication, public interests would suffer. He cannot claim the protection of S. 124 on any other ground. It is also necessary that the privilege in question should be claimed by the official concerned. In the instant case the official concerned has not directly claimed any protection under S. 124 nor was the Court informed that the disclosure of the documents called for would affect public interest. Hence no foundation is laid for claiming the privilege in question. It is also not clear whether the communications in question were made to the "officer".

(3) The more important question for consideration is whether the two documents in question are communications made to any Public Officer in official confidence. Did the persons concerned make those statements in official confidence? This is a matter for the Court to decide and the Court below did not approach the question with a correct perspective. It has not given any reason for its conclusion that the statements in question were made in the official confidence. Whether a statement is made in official confidence or not is a question of fact.

In order to define that fact the Court may have to take into consideration the nature of the statement, the nature of the enquiry etc. Before arriving at its decision the Court would undoubtedly examine the statements in question and the surrounding circumstances. It will also bear in mind that S. 124 of "the Act" is an exception to the general rule. It may be further noted that ordinarily a communication is said to be made in official confidence, when one official communicates with another official in confidence.

(4) My attention is invited by the learned Government Pleader to the decision in *In Re: Killi Suryanarayana Naidu*, . In that case the learned Judge observed:

"It is contended before me that the documents in question are not communications made in official Confidence to a public officer. In regard to this Courts have adopted a basic principle for deciding whether a particular document is a communication made in official confidence to a public officer or not, viz. whether the document produced or the statement made was under the process of law or not.

If the former is the case, Courts have held that it would be difficult to say that a document produced or statement made under the process of law is a communication made in official confidence. If on the other hand a document is

produced or a statement is made in a confidential departmental enquiry not under process of law but for the gathering of information by the department for guiding them in the future action if any they have got to take, it would be a case of communication made in borne in mind, it will not be difficult to follow the line of decisions on this point."

In the instant case, the enquiry made is not shown to be a departmental enquiry or a confidential enquiry. It is contended, that according to the above decision, whenever a communication is made to a public official voluntarily there is a presumption that it is made in official confidence. I am unable to read that decision in that manner. If it does lay down such a proposition, I respectfully dissent from it. I have not been shown any principle of law in support of such a presumption. It is clearly against the experience of life. There is neither need nor jurisdiction to convert questions of facts into questions of law. A Judge of fact with his experience of life will not find great difficulty in finding out what communications are made in official confidence. In this connection reference may be usefully made to the Full Bench decision in Governor General in Council v. H. Peer Mohd. Khuda Bux AIR 1950 E.P. 228. In that case Kapur J. (As he then was) observed:

"Section 124(1) applies to communications made in official confidence to a public officer and he need not be a head of the department who cannot be compelled to give evidence but is at liberty to waive the objection. "It is for the Court to decide as to whether such communication was in official confidence or not." (Underlining (here "into") is mine.)

(5) The learned Government Pleader next contended that even if the order of the Court below is erroneous it cannot be revised under S. 115 C.P. C. As none of the requirements of that section apply to the facts of the present case. As mentioned earlier, the decision in question was rendered without having any clear idea of S. 124 of "the Act". It was evidently done on first impressions. Such a case comes within the scope of sub-section (c) of S. 115 C.P.C.

(6) In the result, this petition is allowed and the order of the learned Munsiff is set aside. He is directed to reconsider the matter in the light of the observations made in this order. In the circumstances of the case, there will be no order as to costs.

(7) Petition allowed.