

(1964) 02 PAT CK 0019
In the Patna High Court
Case No : Civil Revision No. 517 of 1961

Ganga Ram

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 04-02-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Evidence Act, 1872 — Section 123, 124

Citation : AIR 1964 Patna 444

Hon'ble Judges : V. Ramaswamy, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : Keshari Kishore Saran, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner has obtained a rule from the High Court calling upon the opposite party to show cause why the order of the 1st Additional Subordinate Judge of Gaya, dated the 10th March, 1961, holding that the enquiry report submitted by the Board of Enquiry to the Chief Operating Superintendent and the memo of evidence recorded by the Board of Enquiry are privileged documents u/s 123 of the Evidence Act should not be set aside by the High Court in its revisional jurisdiction.

2. On behalf of the petitioner it was submitted that the order of the lower Court is erroneous in law because there is a previous order of Mr. S.N. Jha, dated the 27th July, 1960, holding that the same documents are not protected u/s 123 of the Evidence Act and the claim of privilege put forward by the defendant has no substance. The argument of learned Counsel for the petitioner is that a civil revision application was filed by the defendant against the previous order of the Subordinate Judge, dated the 27th July, 1960, and this civil revision application, namely, Civil Revision No. 856 of 1960, was summarily dismissed by the High Court on the 1st September, 1960. It was, therefore, submitted that the question

cannot be raised again by the opposite party and the principle of res judicata applies to this case. In our opinion the argument of the petitioner is well founded and must be accepted as correct. It was not open to the Subordinate Judge in the present case to examine the question again and hold that the documents are privileged u/s 123 of the Evidence Act.

3. On behalf of the opposite party it was, however, submitted that the privilege is also claimed u/s 124 of the Evidence Act which states that "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". Learned Counsel for the opposite party referred to the affidavit dated the 25th July, 1960, in the lower Court from which it appears that the defendant claimed that the documents were privileged documents u/s 124 of the Evidence Act and the contents of those documents cannot be disclosed for the sake of public interest. It was argued on behalf of the opposite party that the lower Court did not apply its mind to the question whether the claim u/s 124 of the Evidence Act was substantiated or not. In our opinion there is substance in this contention of the opposite party. There is distinction between the provisions of Section 123 and Section 124 of the Evidence Act. If the document comes within Section 123, the Court cannot inspect it, though it can take other evidence to determine the character attributed to the document. Of course it is for the Court to ultimately determine whether the document in respect of which the privilege is claimed is a State document within the meaning of Section 123 of the Evidence Act.

The procedure which is to be followed in a case u/s 123 of the Evidence Act has been laid down by a Division Bench of this Court in Lakhuram Hariram Vs. Union of India (UOI) and Another, . In the present case, however, we are considering Section 124 of the Evidence Act, and if a document falls within the ambit of Section 124 of the Evidence Act, the Court can inspect the document to determine the claim of privilege. In the present case, therefore, it is the duty of the Court to inspect the documents and to determine whether the communications have been made in official confidence and whether the public interest will suffer by the disclosure of the contents of the documents within the meaning of the language employed in Section 124 of the Evidence Act. As the lower Court has not followed this procedure in the present case, it follows that the order of the lower Court, dated the 10th March, 1961, is vitiated by error of jurisdiction and should, therefore, be set aside. We accordingly allow this application, set aside the order of the lower Court, dated the 10th March, 1961, and remand the matter to it for considering whether the claim of privilege made by the defendant in respect of the documents in question can be supported u/s 124 of the Evidence Act.

4. We accordingly allow this application in civil revision, but there will be no order as to costs.