

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

SMW (C) No(s). 1 OF 2019

IN RE : MATTER OF GREAT PUBLIC
IMPORTANCE TOUCHING UPON THE
INDEPENDENCE OF JUDICIARY -
MENTIONED BY SHRI TUSHAR MEHTA,
SOLICITOR GENERAL OF INDIA

Petitioner(s)

VERSUS

Respondent(s)

O R D E R

1. Mr. Utsav Singh Bains, Advocate, is present in Court today. He has filed yet another affidavit. The same is taken on record and it should be kept in a sealed cover.

2. We have heard the learned counsel for the parties as well as Mr. Utsav Singh Bains, who appears in person. With respect to the privilege claimed in the affidavits, we have considered Section 126 of the Evidence Act. The same reads as under :-

"126. Professional communications.—No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional

employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment: Provided that nothing in this section shall protect from disclosure—

- 1. Any such communication made in furtherance of any illegal purpose;*
- 2. Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.*

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.— The obligation stated in this section continues after the employment has ceased.

Illustrations -

(a) A, a client, says to B, an attorney—“I have committed forgery, and I wish you to defend me”.

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney—“I wish to obtain possession of property by the use of a forged deed on which I request you to sue”.

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement,

retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure."

3. The provisos to Section 126 of the Evidence Act make it clear that no such privilege can be claimed in respect of such communication. It is further apparent from Illustration (c), as extracted above, that such information cannot be claimed to be a privileged information.

4. Apart from this, we have considered the Judgment of this Court in People's Union for Civil Liberties and Another Vs. Union of India, reported in (2004) 9 SCC 580. Para 38 of this Judgment reads as under :-

"38. It is settled position of law that a journalist or lawyer does not have a sacrosanct right to withhold information regarding crime under the guise of professional ethics. A lawyer cannot claim a right over professional communication beyond what is permitted under Section 126 of the Evidence Act. There is also no law

that permits a newspaper or journalist to withhold relevant information from Courts though they have been given such power by virtue of Section 15(2) of the Press Council Act, 1978 as against the Press Council. (See also : M.S.M Sharma V. Shri Sri Krishna Sinha and Sewakram Sobhani V. R.K Karanjia, which quoted Arnold V. King Emperor with approval and also British Steel Corpn. V. Granada Television and Branzburg V. Hayes.) Of course the investigating officers will be circumspect and cautious in requiring them to disclose information. In the process of obtaining information, if any right of citizen is violated, nothing prevents him from resorting to other legal remedies."

5. Apart from this, Sh. Rakesh Kumar Khanna, learned senior counsel, has relied upon a Judgment passed by Allahabad High Court in Ganga Ram Vs. Habib-Ullah & Anr. The relevant portion of the Judgment is quoted hereinbelow :-

"The second paragraph of the section lays down that the court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility. This paragraph certainly lays down that the court has a discretion in the matter, if it deems fit, to inspect such a document, even though there is an objection to its production or to its admissibility, provided that it does not

refer to matters of State. Except in the case of matters of State, the court may inspect the document, though there is an objection as to its production. Indeed, under the last paragraph, the court may even get the document translated by a translator, who may be enjoined to keep the contents secret, unless the document is to be given in evidence. It would, therefore, follow that the Mukhtar could not validly object to the order of the court to produce the document, at least for the inspection of the court, before the court decided whether the objection to its production was or was not valid."

6. It is apparent from the above decision that without production of the information, the Court cannot be deprived of inspecting the document. The ground raised by Mr. Utsav Singh Bains as to privilege is wholly unsustainable. He is bound to disclose the information as may be required.

7. It is relevant to quote the order passed by this Court yesterday i.e. on 24.04.2019 :-

"Mr. Utsav Singh Bains, Advocate, is present in Court today.

He has given an affidavit in Court in a sealed cover. The same is taken on record. It is to be kept in a sealed cover in total confidentiality, as it contains highly sensitive information

pertaining to the alleged conspiracy, according to him, to frame Hon'ble The Chief Justice of India into a case of sexual harassment. In that connection, he has stated to have met with certain persons at certain places.

We requested the Director of Central Bureau of Investigation (CBI), The Director of Intelligence Bureau (IB) and the Commissioner of Police, Delhi, to report to this Court and requested them to seize the relevant material in order to support the contents of the affidavit furnished by the officer of the Court, Mr. Utsav Singh Bains, Advocate.

He has further mentioned in the affidavit that the disgruntled employees have ganged together in order to frame Hon'ble The Chief Justice of India in the false charge of sexual harassment after their dismissal from their services. He has named in particular, names of Tapan Kumar Chakraborty and Manav Sharma and others.

In the affidavit, he has also given certain names and has also alleged that they have asserted that they could fix the Bench of the Judges. This is a very serious aspect of the affidavit filed by Mr. Utsav Singh Bains, a young man whose entire career is before him. He knows the consequences of filing false affidavit in this Court. Considering the seriousness of the allegations as the system has absolutely no place for such fixers, we cannot leave the matter at

that. It becomes our responsibility to keep this Institution clean as well as to ensure that the image of this Institution is not tarnished by such allegations to undertake the probe in the matter. Before we order that and work out the modalities since Mr. Utsav Singh Bains, Advocate, has submitted that he is in the process of filing an additional information in the form of an affidavit and that he will file the affidavit by 10.30 AM tomorrow i.e. on 25.04.2019, let him file the affidavit in the Court at 10.30 AM tomorrow, containing all the relevant information.

At the same time, with respect to some information in the affidavit filed earlier, he has claimed that certain information is privileged. Before we further dilate whether any privilege can be claimed or not, we would like to hear him as well as the learned Attorney General and the President of the Supreme Court Bar Association, who is incidentally present in Court today. They are requested to assist and guide us as to how much privilege can be claimed in such matters and to what extent.

Ms. Indira Jaising, learned senior counsel, has requested us to make it clear that the affidavits filed in Court and the order passed should not affect the inquiry to be conducted on administrative side in any manner whatsoever. We clarify that the exercise which is undertaken by the Court on

judicial side is outside the scope of the said matter, the correctness of which has to be looked into on the administrative side by the appropriate authorities. We are taking up the matter so as to ascertain the correctness of the averments made in the affidavit, to ascertain the various aspects which have been mentioned which cannot be done without proper investigation and any order passed on judicial side by this Court shall not affect the matter on administrative side.

Let the police protection given to Mr. Utsav Singh Bains, Advocate, continue until further orders.

Let the matter be listed tomorrow i.e. on 25.04.2019 at 10.30AM."

8. Considering the factual gamut noted in the order quoted above and considering the affidavits filed by Mr. Utsav Singh Bains, Advocate, we appoint Hon'ble Sh. Justice A. K. Patnaik, retired Judge of this Court, to hold an inquiry into the allegations made in the affidavits. However, at the same time, we make it clear that this inquiry shall not be with respect to the alleged misbehaviour involving Hon'ble The Chief Justice of India. This is with respect to the contents of the affidavits, whether the affidavits are correct or not.

9. We again reiterate that the outcome of the inquiry shall not affect the in-house procedure/inquiry which is pending in the administrative side in any manner whatsoever.

10. As we are appointing Hon'ble Sh. Justice A. K. Patnaik (Retd.), we request the Director of Central Bureau of Investigation (CBI), the Director of Intelligence Bureau (IB) and the Commissioner of Police, Delhi, to cooperate with the Hon'ble Judge as and when their services are required at any point of time for the purpose of investigation of the matter, especially required by the Hon'ble Judge. We leave it to the Hon'ble Judge to take the assistance of whosoever else His Lordship desires.

11. We request Hon'ble Sh. Justice A. K. Patnaik (Retd.) to submit a report to this Court on the basis of the inquiry as to the allegations mentioned in the affidavits. Let affidavits filed by Mr. Utsav Singh Bains, Advocate, be transmitted to Hon'ble Sh. Justice A. K. Patnaik (Retd.) along with other materials.

12. List the matter after the inquiry report is received.

13. We appreciate the services rendered by Mr. Rakesh Kumar Khanna, learned senior counsel, in assisting the court.

.....J.
[ARUN MISHRA]

.....J.
[ROHINTON FALI NARIMAN]

.....J.
[DEEPAK GUPTA]

New Delhi;
APRIL 25, 2019.

ITEM NO.301

COURT NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SMW (C) No(s). 1/2019

IN RE : MATTER OF GREAT PUBLIC
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SHRI TUSHAR MEHTA,
SOLICITOR GENERAL OF INDIA

Petitioner(s)

VERSUS

Respondent(s)

(ALONG WITH AFFIDAVIT FILED BY MR. UTSAV SINGH BAINS, ADVOCATE)

Date : 25-04-2019 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE DEEPAK GUPTA

Counsel for the
parties

By Courts Motion, AOR

Mr. K. K. Venugopal, Attorney General
Mr. Tushar Mehta, Solicitor General
Mr. R. Balasubramaniam, Sr. Adv.
Mr. Ankur Talwar, Adv.

Ms. Pinky Anand, ASG
Ms. Saudamini Sharma, Adv.
Ms. Snidha Mehra, Adv.

Mr. Rakesh Kumar Khanna, Sr. Adv.
Mr. Pradeep Kumar Rai, Sr. Adv.
Mr. Jitender Mohan Sharma, Sr. Adv.
Mr. Jayant K. Sud, Sr. Adv.
Mr. Manjit Dalal, Sr. Adv.
Mr. Vinay Kumar Garg, Sr. Adv.
Mr. Vikrant Yadav, Adv.
Ms. Sadhana Sandhu, Adv.
Mr. Ajay Bansal, Adv.
Mr. Gaurav Yadava, Adv.
Ms. Veena, Adv.
Mr. Vikas Bansal, Adv.
Mr. Sanjay Kumar, Adv.
Mr. Rohit Pandey, Adv.
Mr. Upendra Mishra, Adv.
Ms. Preeti Singh, Adv.

Mr. Upendra Narayan Mishra, Adv.
Mr. Amrender Kumar Singh, Adv.

Ms. Indira Jaising, Sr. Adv.
(in-person)

Mr. Utsav Singh Bains, Adv.
(in-person)

UPON hearing the counsel the Court made the following
O R D E R

In terms of the signed order, Hon'ble Sh. Justice A. K. Patnaik, retired Judge of this Court is appointed to hold an inquiry into the allegations made in the affidavits supplied by Mr. Utsav Singh Bains, Advocate.

The affidavits and the document (in original and one set of photocopy) have been sealed and handed over to Sh. Sanjeev S. Kalgaonkar, learned Secretary General, which has been duly received by his Secretariat.

The learned Secretary General is directed to hand over a set of photocopy of the affidavits and the document, along with this Record of Proceeding and Signed Order, to Hon'ble Sh. Justice A. K. Patnaik (Retd.) forthwith.

The affidavits and the document (in original), in a sealed cover, shall remain in the custody of the learned Secretary General until further orders.

List the matter after the inquiry report is received.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER

(Signed order is placed on the file)