

Shipra Chowdhury Vs. Sumantra Chowdhury

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Court : Kolkata

Decided On : Sep-25-1992

Reported in : (1993)1CALLT111(HC),I(1993)DMC522

Judge : Samir Kumar Mookherjee and ; Sachi Kanta Hazari, JJ.

Acts : [Evidence Act, 1872](#) - Section 124

Appellant : Shipra Chowdhury

Respondent : Sumantra Chowdhury

Advocate for Def. : A.P. Chatterjee and ; Milan Bhattacharjee, Advs.

Advocate for Pet/Ap. : P.B. Sahoo and ; S. Biswas, Advs.

Judgement :

S.K. Mookherjee, J.

1. The opposite party husband filed the above matrimonial suit for a decree for divorce substantially on the ground of cruelty inflicted by the petitioner-wife. The occupation of a flat at Board Street, allegedly belonging to the opposite party, by the petitioner-wife forcibly was pleaded as one of the several acts constituting cruelty. In course of trial to substantiate the denial of the said allegation, on behalf of the wife, a prayer was made and was allowed by the learned trial Judge and the assets statement of the husband-opposite party were directed to be produced. The

Chief Secretary caused production of the said asset statements of the husband-opposite party in a sealed cover through a competent person with a prayer claiming privilege on the ground of the said documents being confidential official communication.

2. On behalf of the wife-petitioner an objection was filed. The learned Judge by the impugned order accepted the claim of privilege in terms of Section 124 of the Indian Evidence Act and decided to hold the documents in Court's custody for perusal if it became necessary at the time of argument.

3. We have heard Mr. Roy Chowdhury in support of the Revisional Application and Mr. A.P. Chatterjee on behalf of the husband-opposite party. Section 124 of the Indian Evidence Act had fallen for consideration of the Apex Court of the country in the case of *State of Punjab v. Sodhi Sukhdev Singh* reported in : [1961]2SCR371 and the law relating to claim of privilege under the said Section has been clearly settled. We propose to quote the relevant observations of the Supreme Court which stand as follows :-

'It is clear, and indeed it is not disputed, that in dealing with an objection against the production of document raised under Section 124 of Court would have first to determine whether the communication in question has been made in official confidence. If the answer to the said question is in the negative then the document has to be produced; if the said answer is in the affirmative then it is for the officer concerned to decide whether the document should be disclosed or not.'

4. In the case of *S.P. Gupta v. Union of India* reported in : [1982]2SCR365 , the above ratio relating to Section 124 of the Indian Evidence Act seems not to have been altered or disapproved as the documents, which for years had been recognized by law as entitled, in public interest, to be protected against disclosure and which protection was needed for proper functioning of the public service, were allowed to enjoy such exemption on the basis of *Rajnarain's* case reported in : [1975]3SCR333 .

5. From the impugned order, it is clear that the Court did not advert to any of the aspects mentioned in the aforesaid Supreme Court's decision nor did it record any

finding on the required criteria. In fact, on a reading of the impugned order, no positive conclusion made by the Court, save and except a partial compliance with Section 162 of the Indian Evidence Act, appears to have been made.

6. In the result the Revisional Application succeeds.

7. The Impugned order is set aside and the Court below is directed to reconsider the prayer made on behalf of the petitioner for making of the 'asset statements' of the opposite party as exhibits according to law and in the light of the observation indicated above. It is needless to add that in doing so the objection taken on behalf of the Chief Secretary, Government of West Bengal through the purported application dated 12th May, 1992 should also be taken into consideration according to law.

8. There will be no order as to cost.

Mr. S.K. Hazari, J.

9. I agree.

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