

**(1989) 01 P&H CK 0019**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Revision No. 1-M of 1989

State of Punjab

APPELLANT

Vs

B.R. BAJAJ

RESPONDENT

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**Date of Decision:** Jan. 24, 1989

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 341, 342

**Citation:** (1989) 2 RCR(Criminal) 287 : (1989) 2 RCR(Rent) 344

**Hon'ble Judges:** S.D. Bajaj, J

**Bench:** Single Bench

**Advocate:** H.L. Sibal, Mr. S.C. Sibal and Mr. R.K. Handa with him, for the Appellant; A.S. Chahal, (Mr. N.S. Minhas and Mr. Chander Mohan Sharma ), for the Respondent

**Final Decision:** Allowed

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**Judgement**

S.D. Bajaj, J.

Criminal Revision No. 1-M of 1989 has been filed by the State of the Punjab against the orders dated 18th January, 1989 of learned Judicial Magistrate 1st Class, Chandigarh, disallowing its claim of privilege in respect of a note submitted by Adviser Shri J.F. Ribeiro to the Governor Shri S.S. Ray on 20th July, 1988 and the orders passed by the Governor thereon 27th July, 1988. Both these documents had been summoned by Respondent No. 1 from the custody of Secretary to Governor, Punjab, Shri Y.S. Ratra and Adviser to the Governor Shri J.F. Ribeiro for being produced as part of his preliminary evidence being adduced by him before the learned trial court in his complaint against Respondent No. 2 under Sections 341, 342, 352, 354, 355 and 509 of Indian Penal Code, for indecent behaviour towards his wife in a drunken condition inside house No. 288, Sector 16 Chandigarh, allotted to Home Secretary, Punjab Shri S.L. Kapur.

2. The State had claimed privilege on the grounds that the documents aforesaid related to the affairs of the State of Punjab. Chief Secretary Shri R.P. Ojha submitted

his own affidavit in support of the claim for privilege. Relevant paragraph 2 of the affidavit reads:

I.R.P. Ojha, Chief Secretary to Government, Punjab Department of Personnel and Administrative Reforms do hereby solemnly affirm and declare as under:

1. xx xx xx xx xx

2. That, as Head of the Department of Personnel and Administrative Reforms exercising control over the record have carefully gone through the said file. I have come to the conclusion that it is an unpublished official record relating to the affairs of the state which includes notings comments and opinion of officers at various levels and communications made in official confidence and that the disclosure of the same may expose the said officers to criticism. As such, the disclosure thereof will hamper the proper functioning of the public service as the officers would in future feel hesitant in expressing their opinions fearlessly in such administrative matters.

3. The summoned documents were also forwarded to the learned trial court in a sealed cover to facilitate their persual by the learned trial court if deemed necessary. On receiving them learned trial court initially ordered:

18-1-1989. Present: Complainant with counsel Shri Balwinder Singh, District Attorney for witnesses Shri Y.S. Ratra and Shri J.F. Ribeiro.

The documents for which the privilege has been sought have been produced in sealed envelope. But until and unless, it is opened it cannot be said as to what is the nature of documents and what sort of privilege has been sought So let it be opened.

Announced.

Dated 18-1-1989.

Sd/- (G.S. Sewak)

Judicial Magistrate 1<sup>st</sup>

Class, Chandigarh.

4. After opening the sealed cover learned trial court made the impugned order which reads:

18-1-89 Present: Complainant with counsel Shri Balwinder Singh District Attorney for the witnesses Shri Y.S. Ratra and Shri J.F. Ribeiro.

The envelope opened. I have gone through the documents which do not concern the affairs of the State at all rather these concern the individual and the privilege sought does not fall under the provisions of the Sections 123 and 124 of the Indian Evidence Act, which are as under:

Section 123. "Evidence affairs of the State. No one could be permitted to give any evidence derived from unpublished official records relating to any affairs of State. Except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he think fit."

Section 124. "Official Communications: 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."

2. In view of this position, the application seeking the privilege is disallowed.

5. The legality of the aforesaid orders has been assailed on the grounds that the two documents summoned by the learned trial court are privileged communications from the Adviser having the status of Minister during the President's rule to the Governor and that the same also pertain to affairs of the State in the Department of Personnel which administers both the I.A.S and I.P.S. Services cadre to which wife of complainant (alleged victim) and Respondent No. 2 (alleged accused) respectively belong. On these premises it has contended that the impugned orders of the learned trial court are contrary to law laid down by the Supreme Court in [The State of Punjab Vs. Sodhi Sukhdev Singh](#) .

6. In reply filed on 20th January, 1989 Respondent No. 1 stated that the matter in controversy was criminal act of Respondent No. 2 towards his wife and both the documents in respect of which State of Punjab had claimed the privilege pertained thereto and not 10 any affair of the State and that Shri R.P. Ojha, Chief Secretary, could not make the claim for privilege on behalf of the State. The claim for privilege, if all could be made by the two witnesses from whose custody the two documents aforesaid had been summoned by the learned trial Court.

7. I have heard Shri H.L. Sibal, Sr. Advocate, for the Petitioner, Shri A.S. Chahal, Advocate, for the Respondents and having carefully perused the record summoned from the learned trial courts

8. The claim for privilege is legally sustainable in terms of Article 163(3) of the Constitution which reads:

(3) The question whether any, and if so, what, advice was tendered to the Ministers to the Governor shall not be inquired into in any court.

This is so because Shri J.F. Rebeiro Advisor to the Governor, Punjab, is during the continuance of the President's rule in the State enjoying the status of a Minister and his note dated 20th July, 1988 addressed to the Governor embodies only his advice in relation to the conduct of I.P.S. Officer in Respondent No. 2 towards the wife of complainant who herself belongs to I.A.S. cadre. Their lordships of the Supreme Court observed in [Doypack Systems Pvt. Ltd. Vs. Union of India \(UOI\) and Ors](#) . "Cabinet papers are therefore protected from disclosure not by reason of their contents but because of the class to which they belong."

9. The aforesaid note can also be described to be pertaining to the affairs of State and a privileged document on this score as well because its disclosure will hamper the proper functioning of public service. The claim made by the State in this regard is again supported by the Supreme Court observations in [S.P. Gupta Vs. President of India and Others](#), , which read. "There is one such class of documents which for years has been recognised by the law as entitled in the public interest to be protected against disclosure and that class consist of documents which it is really necessary for the proper functioning of the public service to withhold from disclosure. The documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong" While discussing the effect of privilege learned authors in Phipson on evidence (10th 1963 Edition) at page 564 in note 566 observed. "Unlike the rule in case of private privilege (post Chap. 15), the exclusion, when allowed, is here absolute, so that in the case of documents no secondary evidence is admissible."

10. Learned Counsel for Respondent No. 1 on the other hand referred me to the observations made in [Amar Chand Butail Vs. Union of India \(UOI\) and Others](#), . The Union of India v. Raj Kumar Gujral AIR 1967 P&H. 387, Niranjana Bass Sehgal v. State of Punjab through Secy. to Govt. of Punjab Dept., Forest and Ors. (1968) 70 P.L.R. 65, [Raj Narain Vs. Smt. Indira Nehru Gandhi and Another](#), and [S.P. Gupta Vs. President of India and Others](#), to contend, in the complaint case pending before the learned trial court against Respondent No. 2 the probity of his conduct qua the wife of Respondent No. 1 is in issue and. therefore, the State cannot screen his (Respondent No. 2) conduct as depicted by Shri Rebeiro in his note of 20th July, 1988 addressed to the Governor from the purview of the Court on the ground that it is an affair of the State and, therefore, sacrosanct and consequently needs to be insulated from the reach the Court as evidence. In such circumstances it has been asserted that public interest served by disclosure of the contents of the note clearly outweigh the one served by non-disclosure; and (i) that the claim for privilege could be made by Shri J.F. Rebeiro, Minister-in charge in the Home Department and not by R.P. Ojha, Minister-in charge in the Department of Personnel and Administrative Reforms.

11. Both the arguments advanced by the learned Counsel for Respondent No. 1 are wholly without merit Observation made in the authorities cited in support thereof are in different context and do not support the arguments advanced by the learned Counsel Adverting to the second argument of competence of Shri R.P. Ojha to claim privilege and file supporting affidavit alongwith application made for the purpose before the learned trial court, it must be said that in the Government of Punjab Allocation of Business Rules, 1986 the subject of "Removal of grievances" is assigned to Chief Secretary in the Department of Personnel and Administrative Reforms; more so when those are of an I.A.S. Officer against an I.P.S. Officer because the services cadre personnel belonging to the two services are dealt with in this Department. This Department was entrusted to Shri R.S. Ojha vide Presidential Order No. 6/91(Sic)88 IAS(Sic)3/5869, dated 11th April, 1988. Shri R.P. Ojha was thus

fully competent to put in the claim and swear in a supporting affidavit as Head of the Department aforesaid.

12. Shri J.F. Ribeiro is not alleged to be an eye-witness to the occurrence and as such could not depict or reflect the conduct of Respondent No. 2 in his note of 20th July, 1988 from his personal knowledge. Narration thereof to Shri Ribeiro by alleged victim in the wife of Respondent No. 1, author of the privileged note could not serve Respondent No. 1 better than its narration to the learned trial court by the alleged victim herself in the course of her statement as PW-2 recorded by the learned trial court on 4th January, 1989. No public interest worth the name is, therefore, likely to be served by its disclosure to promote the ends justice.

13. Much ado about nothing has been made of the alleged publication of contents of the summoned documents in different newspapers and magazines on the alleged authority of Governor or/and his adviser Suffice it to say that this Court is concerned only with the legality and sustenance of the claim privilege and for deciding both these matters the alleged publication may be with or without authority is of no consequence at all. The claim for privilege is being sustained because the summoned documents belong to a class envisaged in Article 163(3) of the Constitution and the exclusion to which they are entitle is absolute, unmindful of the notoriety that the alleged contents of these documents may have gained through their alleged publication mentioned in para 6 of the reply filed by Respondent No. 1.

14. Furthermore, as already observed on the basis of Supreme Court observations in [Doypack Systems Pvt. Ltd. Vs. Union of India \(UOI\) and Ors](#), and the provisions of Article 163(3) of the Constitution of India the summoned record enjoy an absolute immunity and is wholly privilege both in regard to its nature and contents. In this view of the matter, Criminal Revision Petition No. 1-M of 1989 is allowed, impugned order dated 19th January, 1989 of the learned trial Court is set aside and the inclusion of the summoned record, in regard to which the claim of privilege made by the State has been upheld as part of evidence before the learned trial Court is ruled out. Respondent No. 1 through his learned Counsel has been directed to appear before the learned trial Court for further proceedings on 27th January, 1989. File received from learned trial Court shall be returned by the Registry to it with a copy of this order before that date.