(2009) 11 P&H CK 0158

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 10525 of 2008

Karamjit Singh		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: Nov. 26, 2009

Acts Referred:

- Advocates Act, 1961 - Section 49, 49(1)(C)
- Atomic Energy Act, 1962 - Section 14, 18
- Companies Act, 1956 - Section 529A
- Constitution of India, 1950 - Article 136, 14, 19(1)(a), 19(1)(a), 20
- Criminal Procedure Code, 1973 (CrPC) - Section 303, 304
- Evidence Act, 1872 - Section 126
- Penal Code, 1860 (IPC) - Section 302, 307, 34
- Right to Information Act, 2005 - Section 22, 3, 8, 8(e)

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Permod Kohli, J.

The petitioner is a doctor posted in Central Jail, Patiala. He has questioned the legality and validity of suspension order dated 5.5.2008 (Annexure P-23) placing him under suspension allegedly pursuant to a communication of respondent No 3 a law Officer working as Senior Deputy Advocate General Punjab in the office of Advocate General, Punjab. He has also assailed the opinion of the Board of Doctors of the PGIMER, Chandigarh dated 15.3.2008 in respect of one Narinder Kumar son of Dharam Kumar, as accused lodged in the Central Jail as an under trail for commission of offences under Sections 302/307 read with Section 34 IPC. While alleging motives to respondent No. 3. a Law Officer has placed on record copies of

certain communications addressed by respondent No 3 to functionaries of the State in this professional capacity as he was engaged to represent the State in a case Crl. Mis. No. 3746 of 2008 filed by Jai Kishan for cancellation of bail of the petitioner-Doctor, Copies of these communications from respondent No. 3 to S.K. Asthana. SSP, Patiala, Mohammad fzhar Alan IPS. Additional Director General of Police. Punjab, Chandigarh are Annexures P-19/1. P-19/2 & P-19/3 respectively. During the course of the hearing of this writ petition, a Hon''ble Division Bench of this Court, while noticing the aforesaid communications between the counsel and the functionaries of the State (Client) was of the opinion that such communications are privileged under the provisions of the Indian Evidence Act. 1872 and accordingly vide order dated 8.12.2008 invited a debate on the question of privilege Vide aforesaid order dated 8.12.2008 the Hon''ble Division Bench issued notice to the Advocate Generals for the States of Punjab and Haryana Assistant Solicitor General, Union Of India, Senior Standing Counsel, UT Chandigarh. Chairman Bar Council of Punjab and Haryana and President High Court Bar Association. Order dated 8.12.2008 is reproduced as under:-

It appears from the rival submissions that Senior Deputy Advocate General, Punjab, Shri Anil Sharma addressed a letter to inform his client State of Punjab about the Court proceedings of a case pending in this Court. That communication appears to be in the nature of a privileged one, winch would be protected under the provisions of Evidence Act. Notwithstanding the aforesaid provisions, petitioner herein has impleaded Mr. Sharma as a party and also placed on record the aforesaid communication to attribute mala fide to him and to earn an order for revocation of his suspension. Learned counsel for petitioner submitted that a copy of said letter was received under the provisions of Right to Information Act.

Let a notice issue to learned Advocate Generals for the States of Punjab and Haryana, Assistant Solicitor General, Union of India, Senior Standing Counsel. UT, Chandigarh, Chairman, Bar Council of Punjab and Haryana, and President High Court Bar Association, for 23.12.2008. to answer as to whether in view of the provisions of Right to Information Act, protection granted in regards to communication between counsel and client under Evidence Act has stood superseded.

Pursuant to the aforesaid order of Hon''ble Division Bench, the matter being transferred to Single Bench on amendment of the Rules of the Punjab and Haryana High Court was heard by me. There are three communications on record from respondent No. 3. Shri Anil Kumar Sharma. Advocate/Sr. Deputy Advocate General, State of Punjab addressed to Sr. Superintendent of Police and Additional Director General of Police, respectively. The petitioner has particularly taken exception to letter dated 28.4.2008 whereby the Law Officer referred to the Court proceedings of the Crl. Misc. No. 3746 of 2008 held on 24.4.2008. The relevant part of the letter dated 28.4.2008 (Annexure P-19/3) which has invited the objection of the petitioner

reads as under:-

... The Hon''ble Court during the course of proceedings of the case took serious view of the matter and observed that the State should ensure that these type of lapses are not repeated and appropriate action be taken on the administrative side....

2. Mr. S.K. Sharma, learned counsel for the petitioner has alleged in paragraphs 20 and (sic) of the writ petition that the letters do not represent the true court proceedings and has been procured by Jai Krishan, complainant in the case who belongs to the Ruling Party, Shiromani Akali Dal whereas the petitioner''s brother-in-law has been closed to the Congress Government during Congress Rule in Punjab. However, without going to the merit of the controversy, for the purpose of the consideration of the issue raised by the Hon''ble Division Bench vide order dated 8.12.2008, I examine the question of the -- -- Privilege-- of the communication between the counsel and the client.

3. Section 126 of the Indian Evidence Act which falls under Chapter IX of Witnesses deals with the professional communication which is reproduced here 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 thee purpose of his employment as such barrister plender, 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 communication made in furtherance of any illegal purpose.

2. Any fact observed by any banister, 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 in such fact by or on behalf of his client.

Explanation - The obligation stated hi 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 defense 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, and attorney (sic) "I wish to obtain possession of property by the use of forged deed on which I request you to sue.----

The communication being made in furtherance of 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.

4. Mr. Anupam Gupta learned counsel for U.T. Chandigarh addressed the Court on the question of--privilege -- at length tracing the history of privilege under English Law and the object, purport and it --s necessity and observance part of the access to justice. It is contended that the privilege contemplated u/s 126 of the Evidence Act is for the larger public interest to project the client as also the profession. While tracing the history of privilege, a reference is made to A Treatise on the Anglo-American System of Evidence in Trials at Common Law John Henry Wigmore, Professor of the Law of Evidence in the Law School of Northwestern University. Third Edition Vol. 8 as under.-

History of the Privilege. The history of this privilege goes back to the reign of Elizabeth, where the privilege already appears as unquestioned. It is therefore the oldest of the privileges for confidential communications.,

5. The doctrine however underwent change and diluted under certain situations as observed in the A Treatise on the Anglo-American System of Evidence in Trials at Common Law (supra) as under:-

That doctrine, however finally lost ground, and by the last quarter of the 1700s, as already noticed, was entire repudiated. The judicial search for truth I could not endure to be obstructed by a voluntary pledge of secrecy; nor was there any moral delinquency or public odium in breaking one''s pledge under force of the law.

6. With the passage of time -- privilege - privilege-- as conceptualized in its inception, however, underwent further evolution and by the latter part of the 1700s, the nature of privilege was like this:-

Policy of the Privilege". The policy of the privilege has been plainly grounded, since the latter part of the 1700s on subjective considerations. In order to promote freedom of consultation of legal adviser by clients, the apprehension of compelled disclosure by the legal advisers must be removed and hence the law must prohibit such disclosure except on the client''s consent such is the modern theory....

7. The object and purport of this -- Privilege -- came to be considered by some decisions of those days:-

1833, (sic) Brougham, Greenough v. Gaskell, 1 Myl. & K. 98, 103; --- The foundation of this rule is not difficult to discover. It is not (as has sometimes been said) on account of any particular importance which the law attributes to the business of legal professors or any particular disposition to afford them protection (though certainly it may not be very easy to discover why a like privilege has been refused to others, and especially to medical advisers). But it is out of regard to the interests of justice, which cannot be upholded, and to the administration of justice, which cannot go on without the aid of men skilled in jurisprudence in the practice of the courts, and in those matters affecting rights and obligations which form the subject of all judicial proceedings. If the privilege did not exist at all, every one would be thrown upon his own legal resources. Deprived of all professional assistance a man would not venture to consult any skillful person, or would only dare to tell his counsellor half his case.

1876 Jessel, M.R., in Anderson v. Bank. L.R. 2 Ch. D. 644. 649 -- The object and meaning of the rule is this: That as, by reason of the complexity and difficulty of our law, litigation can only be property conducted by professional men, it is absolutely necessary that a man, in order to prosecute his rights or to defend himself from an improper claim, should have recourse to the assistance of professional lawyers, and it being so absolutely necessary it is equally necessary, to use a vulgar phrase, that he should be above to make a clean breast of it to the gentleman whom he consults with a view to the prosecution of his claim, on the substantiating his defence against the claim of others; that he should be able to place unrestricted and unbounded confidence in the professional agent, and that the communications be so makes to him should be kept secret, unless with his consent (for it is his privilege, and not the privilege of the confidential agent), that he should be enabled properly to conduct his litigation. That is the meaning of the rule.

8. The scope of the privilege was again traced by Sir William Holdsworth in his (sic) A History of English Law Vol. IX as under:-

(ii) During the latter half of the seventeenth century no very great extension was given to the privilege-it was contrary to too many received ideas as to the conduct of criminal trails,--Until well on into the time of the English Revolution the privilege remained not much more than a base rule of law which the judges would recognize on demand. The spirit of it was wanting in them. The old habit of questioning the urging the accused died hard-did not disappear indeed till the eighteenth century had begun-- On the other hand, there was a continuous current of authority down to the nineteenth century, in favour of extending the privilege so as to excuse a witness from answering questions, not only if they might expose him to a criminal charge, but also if the answer would expose him to disgrace. This would seem to have been the view of Hudson, and it was certainly the view of Treby C.J. in 1696.

Starkie in 1824, argued against the existence of such a privilege; but the Common LaW Procedure Commissioners in 1853 treated it as still subsisting -- unless the misconduct imputed has reference to the cause itself -- They admitted, therefore, that there is no such privilege if the question is directly relevant to the issue. If it is only collateral to the issue, it would seem that the court at the present day assumes a discretion as to whether it will compel an answer. We shall not see that this, extension of the privilege, against self-incrimination, is not wholly unconnected with the ideas which originally gave use to the second of the leading exceptions to the rule of compulsion the privilege given to legal advisers with respect to communications passing between themselves and their clients.

If the privilege accorded to communication between a client and his legal advisers had (sic) merely upon -- the point of honour--, it might have disappeared along with the either suggested privileges. But, before that time, it had come to be based also on the ground that it was a privilege necessary to secure a client''s freedom of action in his dealings with his advisers. The result of this conflict, of theories was that the rules relating to the application of the privilege were confused. Thus, according to the older theory, the privilege was the adviser''s: according to the newer the client''s....

9. It is further argued that the privilege is in the nature of Trust keeping in view the fiduciary relationship between the lawyer and the client and any tampering with the privilege: is bound to destroy the forth and the trust which a client reposes in his lawyer. The privilege contemplated u/s 126 of the Evidence Act also finds its statutory protection in various other statutes. With the enactment of the Advocates Act, 1961 to regulate the members of legal profession ant to lay down their duties/obligations, ethics and standard, Bar Council of India has been empowered u/s 49 to make rules. The relevant provisions of Section 49(1) (c) reads as under:-

49 General Power of the Bar council of India to makes rules - (1) The Bar Council of India may make rules, to discharging its functions under this Act, and in particular, such rules may prescribe-

XX XXX XXX

(c) the standard of professional conduct and etiquette to be observed by advocates:--

10. in exercise of the aforesaid power, the Bar Council of India has framed the Bar Council of India Rules. Chapter II under Part VI Section II deals with the standard of professional conduct and etiquette Rule 17 of these Rules deals with the duty towards client as one of the solemn duties as under:-

17 An Advocate shall not, directly or indirectly, commit a breach of the obligations imposed by Section 126 of the Indian Evidence Act.

11. From the historical perspective and scheme of above laws, it emerges right of a litigant, be a party in Civil matters or an accused in criminal case to seek the legal advice is to be construed as one of the fundamental Right guaranteed under Part III of the Constitution of India. Its traces are found under Articles 14, 20, 21 and 22 of the Constitution of India. Even Section 303 of the Code of Criminal Procedure confers a right upon a person accused of an offence before a Criminal Court to be defended by a pleader of his choice. Section 304 of the Cr.P.C. further impose a duty upon the State to provide the services of a legal practitioner when accused is unable to secure such services by reasons of his economic or other deficiencies or infirmities. This provision has also been considered as a sequel to acknowledge the right of a person to be defended against civil and criminal action. As a, matter of fact to seek legal advice is one of the Fundamental Right for access to justice.-- --Access to justice-- is an inseparable and indomitable component of administration of justice. The mutual relationship between a client and a counsel is to be viewed in this context. Thus the secrecy is the privilege of the communications between the client and the lawyer which is an obligation both moral and legal.

12. Mr. S.K. Sharma learned counsel for the petitioner is, however, of the view that the privilege if am u/s 126 of the Evidence Act stands obliterated and ceased to exist in view of the later enactment i.e. Right to Information Act. 2005 (hereinafter referred to -- RTI Act--). Reference is made to Sections 3 and 22 of the Right to Information Act which read as under:-

3. Subject to the provisions of this Act all citizens shall have the right to information.

22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923. and am other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

13. Based upon the aforesaid provision, Mr. Sharma argued that all citizens of India have the right to information and thus nothing remains secret or kept to he secret after the enactment of the Right to Information Act. 2005, particularly, when u/s 22 of the Act, the provisions of this Act have overriding effect on all other laws for the time being in force, even on the Official Secret Act. 1923. It is thus argued that Section 126 of the Evidence Act is part of a general statute dealing with the mode and manner of giving evidence in a court of law and its admissibility etc. whereas the Right to Information Act is a special statute enacted by the Parliament for a specified purpose of providing access to every kind of information to a citizen. It is further contended, that on account of non-obstante clause contained u/s 22 of the Right to Information Act, this Act has been given a dominant position on all other laws including any instrument as also the Official Secret Act which hither-to was considered to be the most sacrosanct and confidential in the interest of security of the State In sum and substance, the contention is that in view of Right to Information Act, nothing remains confidential or privilege including the

communications between the lawyer and the client.

14. The aforesaid argument of Mr. Sharma has been countenanced by reference to Section 8 of the Right to Information Act The relevant extract from Section 8 of the Act reads as under:-

Exemption from disclosure of information

8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,__

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence:

(b) information which has been expressly forbidden to be published by any court of (sic) or tribunal or the disclosure of which may constitute contempt of court:

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) in formation including commercial confidence, trade secrets or intellectual property the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

15. From the reading of Section 8, it appears that this Section also starts with the non-obstante clause and even tends to over-ride Section 22 of the Right to Information act. It is interesting to note that Section 22 of the Right to Information Act gives over-riding effect to the provisions of this Act over the Official Secret Act. 1923 and any other law for the time being in force or even an enforceable instrument by virtue of any other law other than this Act. This Section in fact tends to give to all sweeping effect to the provisions of this Act over all other laws to the extent they are in consistent with this Act. Whereas Section 8 of the Right to Information Act again starts with non-obstante clause giving overriding effect to certain kind of information and protects the same from the purview of all other provisions of this Act. The information enumerated under this Section include one of the information which may be available to a person on account of fiduciary relationship as is clearly provided under Clause (e) of Section 8 of the Act. It goes without saying that the relationship of a lawyer and a client is in the nature of fiduciary relationship. The -- fiduciary relationship -- has been defined in the Black-- s Law Dictionary, 5th Edition to mean -- a trust or confidence--. Thus by virtue of Clause (c) of Section 8 of the Right to Information Act, no person is under obligation

to disclose an information available to a person in his fiduciary relationship unless the competent authority in larger public interest decides to disclose such information.

16. What is -- Public Interest -- is another question which needs to be examined. Public interest has not been defined under the Right to Information Act. However, from the leading of the Evidence Act if appears that Section 126 itself permits disclosure of information under certain situations which seems to, be within the realm of -- public interest -- Proviso to Section 126 of the Evidence Act itself takes away the protection from disclosure of the communications between a practitioner and a client under the conditions specified therein. The explanation attached to the proviso further provides that the obligations under this Section not to disclose the information and to protect the confidentiality of the communications between the lawyer and the client even after the contract of employment cease to exist continues. This means the veil of protection is permanent in nature unless permitted to be removed the client by express consent u/s 126 of the Evidence Act.

17. It is strenuously argued by Mr. Anupam Gupta that the privilege contained u/s 126 of the Evidence Act is even protected under Clause (c) of Section 8 of the Right to Information Act and also under the provisions of the Bar Council of India Rules i.e., Rule 17 under Chapter II under Part VI Section II. It is also argued that even though Section 126 of the Evidence Act is part of a general statute but the provisions is in the nature of special statute. Whereas Right to Information Act, though special statute, but Section 3 of the Act is a general provision contained therein, According to him, if there is a conflict or contradiction between the special provision in a general statute and a general provision in a special statute, the special provision in a General Statute must have precedence over the general provision in special law and not vice versa. He has further referred to sub-section (2) of Section 8 of the Right to Information Act which speaks of Official Secret Act alone. Similarly, Section 22 of the Right to Information Act also makes reference to Official Secrets Act. It is contended that the dominant purpose of Right to Information Act was/is to overcome the rigour of the Official Secrets Act where under passing of information from the government records was a punishable offence it is further argued that the object and purport of Right to Information Act is not to do away all privileges including such information which is protected for over centuries in public interest. Referring to the historical background of the privilege contained u/s 126 of the Evidence Act, it is stated that this privilege is known since time immemorial and at least its history is available for the last 400 years or so and is part of the administration of justice and is inherent in the administration of justice. In this context, certain other provisions of the Constitution of India can also be referred to. Article 74 of the Constitution of India reads as under:-

74.2 Extent of executive power of the Union. [(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who

shall, in the exercise of his functions, act in accordance with such advice:]

[Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court. Extent of executive power of the Union:

18. Article 74 (2) of the Constitution of India prohibits the disclosure of advice tendered by Council of Ministers to the President of India to be enquired into even by a court of law. If the arguments of Mr. Sharma are to be accepted that Right to Information Act makes no exception in so far as the disclosure of information is concerned, it even makes the provisions of Article 74 of the Constitution of India as otiose and nothing is safe in the teeth of section 3 of the Act.

19. No doubt it is the duty of the constitutional court to interpret statutes to give its true and purposive meaning and even to find out its true import and purport including so (sic) any provision, if so needed. The question -- whether the privilege envisaged u/s 126 of the Evidence Act continues to be a protective one or its safety-lock stands removed with enforcement of Right to Information Act.

20. Right to information emanating from Article 19 (1)(a) of the Constitution of India tailing under Part III has been declared to be a fundamental Right. Reference can be made to People''s Union for Civil Liberties and Another Vs. Union of India (UOI) and Others, with the following observations:-

45. Right of information is a facet of the freedom of -- speech and expression-- as contained in Article 19 (1) (a) of the Constitution of India. Right of information, thus, indisputably is a fundamental right.

48. In keeping with the spirit of the Universal Declaration of 1948, the preamble of the Constitution of India embodies a solemn resolve of its people to secure inter alia to its citizens, liberty of thought and expression. In pursuance of this supreme objective Article 19 (1) (a) guarantees to the citizens, the right to -- freedom of speech and expression-- as one of the fundamental rights listed in Part III of the Constitution These lights have been advisedly set out in broad terms leaving scope for their expansion and adaptation, through interpretation, to the changing needs and evolving notions of a free society.

21. However, in the aforesaid case, while considering the restrictions on disclosure of information contained u/s 18 of the Atomic Energy Act, 1962, the Hon''ble Supreme Court declined to interfere with the judgment of the High Court refusing to issue directions for the disclosure of the information in public interest The relevant observations of the Hon''ble Supreme Court are contained, in paragraph 81 which reads as under:--

81. Keeping in view the purport and object for which the disclosure of the Report of the Board has been withheld, we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India. We may record that the learned Attorney General had made an offer to place the Report before as in a scaled cover. We do not think that in this case, perusal of the report by the Court is necessary. We are also satisfied that the order issued by the Central Government u/s 18 of the Act and its claim of privilege do not suffer from any legal infirmity warranting interference with the High Court judgment by us.--

22. The principle that the Right to Know is a Fundamental Right -- has again-been considered by the Hon''ble Supreme Court in M. Nagaraj and Others Vs. Union of India (UOI) and Others, wherein it has been observed as under-

20.... This Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part III on the principle that certain unarticulated rights are implicit in the enumerated guarantees. For example, freedom of information has been held to be implicit in the guarantee of freedom of speech and expression In India, till recently, there was no legislation securing the freedom of information However, this Court by a liberal interpretation deduced he right to know and right to access information on the reasoning that the concept of an open Government is the direct result from the right to know which is implicit in the right of free speech and expression guaranteed under Article 19(1)(a).--

23. Even when the Right to Information, particularly, from the State and its functionaries has been hold to be a fundamental and basic right of a citizen, there are certain information which are still to be protected in public interest. Thus where each and every information available to the State its functionaries can be brought within the right to know because such a right has been held to be a fundamental right. The law permits certain information to be kept back from disclosure in public interest and for various other purposes, for example the information was declined under the Atomic Energy Act 1962 in case of to People''s Union for civil Liberties did another (supra) and similar provision has been incorporated u/s 8 of the Right to information Act. There has to be a reasonable regulatory measure horn disclosure of information in all cases where the public interest so warrants. It is the duty of the Court to interpret a statute to achieve this purpose. A non-obstante clause in statute like the one u/s 22 of the Right to Information Act and Section 8 thereof has to be considered and interpreted by looking to the legislative intent of law and while interpreting the statute the Court particularly, a Constitutional Count has to find out its true import and purport The haste purpose for which any provision has been enacted and given over-riding effect on other laws is to be examined. In the case of H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, while considering the impact of non obstante clause. Hidayatullah, C. J observed that the non-obstante clause is no doubt a very

potent clause intended to exclude every consideration arising from other provisions of the sane statute or other statute but -- for that reason alone we must determine the scope of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself -- A search has, therefore, to be made with a view to determining which provision answers the description and which does not.--

24. The ratio of the aforesaid judgment is a guiding factor, Section 22 of the Right to Information Act specifically refers to the -- Official Secret Act -- and it generally speaks all other laws. It appears that the dominant purpose of the Right to Information Act was to do away with the restrictions and penal provisions contained in the Official Secret Act while recognizing and acknowledging the right to know as one of the basic rights. The other part of Section 22 generally deals with other laws. The defined purpose seems to exclude the provisions of Official Secrets Act. Despite the enforcement of the Right to Information Act, the Hon''ble Supreme Court in the case of People''s Union for Civil Liberties and another (supra) declined information under the Atomic Energy Act to be made known to the applicant. In other words, Section 18 of the aforesaid Act imposing restriction on the disclosure was held to be valid and enforceable despite Sections 3 and 22 of the Right to Information Act being in operation. Similarly, Section 8 of the Right to Information Act does protects and insulate certain information and the non-obstante clause contained in this Section even over-rides Section 22 of the Right to Information Act. Thus, the doctrine of -- purposive interpretation -- has to be applied in such an eventuality.

25. Admittedly. Section 126 of the Indian Evidence Act is a special provision concerning the lawyer-client-relationship and their inter-se communications. It is also undisputed that the Indian Evidence Act, 1972 is a general law dealing generally with the law relating to evidence on which the Courts should come to some conclusion about the facts of the case and pronounce judgments thereon. The Right to Information Act, 2005 is a law enacted for a specific purpose of setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities with a view to promote transparency and accountability in the functioning of the public authority and such other related and allied purposes This enactment has to be understood and construed as a special enactment enacted by the highest legislative body, like Parliament for a specific purpose. From the bare reading of Section 3 of the RTI Act, it appeals that this Section is a general provision empowering a citizen to seek information. Section 22 thereof is an enabling and a supplemental provision intended to override certain impediments created under the Official Secrets Act, 1923, and such other laws which may be inconsistent with the object and purpose of the RTI Act. The impact of Section 22 also seems to be to facilitate information contemplated by Section 3 of the Act Even though the RTI Act seems to be a special statue, but the provisions contained therein to seek information are generally in nature However, the same

principle cannot he applied to Section 126 of the Indian Evidence Act which appears to be a special provision in a general law. On the one hand, the Right to Information Act is aimed at and intended to abstract information from the public authorities or public functionaries whereas Section 126 of the Evidence Act deals with the client-lawyer relationship irrespective of their status while dealing with their inter-se professional relationship Thus, it can be safely opined that Section 126 of the Evidence Act is a special statute in a general law whereas Section 3 read in conjunction with Section 22 of the RT Act is a general provision in special statute The law relating to purposive interpretation has been examined by the Hon''ble Apex Court in the case of Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, the Hon''ble Supreme Court also examined the two famous Latin Maxims- (i) leges posteriores priores contrarias abrogant (later laws abrogate earlier contrary laws) and (ii) generalia (sic) non derogant (a general provision does not derogate from a special one) The principle underlying in the first maxim is that later laws abrogate earlier inconsistent laws and this is also provided u/s 22 of the RTI Act, However, second maxim is an exception to the earlier one which inter-alia, deals with the situation where a general provision is incorporated in a later or a special law. The same does not derogate a special provision in an earlier law. Sections 3 and 22 of the RTI Act generally deals with the light to information and specifically overrides the provision of the Official Secrets Act to the extent of inconsistency. Neither under Sections 3.22 nor under any other provision of the Act any reference is made to Section 126 of the Evidence Act. Without going into the question whether there is an inherent conflict between Section 126 of the Evidence Act on the one Hand and Sections 3 and 22 of the RTI Act, it appears that Section 126 is a special statute in a General law, still holds the held for the purpose for which it was enacted Reading Section 126 or the Evidence Act in the light of Section 8 (e) if the RT Act, it also appears that the mutual communications between the persons having judicial relationships are to be protected unless the public interest warrant''s otherwise. In the aforesaid judgment, Hon''ble Supreme Court was examining the provisions of Rent Control Act and the Public Premises Act, particularly, in relation to the inconsistency contained therein wherein following observations were made:-

49... In our opinion the question as to whether the provisions of the Public Premises Act override the provisions of the Rent Control Act will have to be considered in the light of the principles of statutory interpretation applicable to laws made by the same legislature.

50. One such principle of statutory interpretation which is applied is contained, in the latin maxim: leges posteriors priores contrarias abrogant, ((sic) laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: generalia specialibus non derogant, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was

intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 413-34)

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55. There fore the Public Premises Act is also a special statute relating to eviction of unauthorised occupant from public premises. In other words, both the enactments namely, the Rent Control Act and the Public Premises Act. are special statutes in relation to the matters dealt with therein Since, the Public premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act.--

26. In the case of ICICI Bank Ltd. Vs. Sidco Leathers Ltd. and Others, . the Hon''ble Supreme Court while examining the right of the secured creditors and the workmen index the provisions of the Companies Act with non-obstante clause u/s 529-A, observed as under-

36. The non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. Only because the dues of the workmen and the debt due to the secured creditors are treated pari passu with each other, the same by itself, in our considered view, would not lead to the conclusion that the concept of inter se priorities amongst the secured creditor had thereby been intended to be given a total go-by.

37. A non-obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same.

38. Section 529-A of the Companies Act does not ex facie contain a provision (on the aspect of priority) amongst the secured creditors and, hence, it would not be proper to read thereinto things, which the Parliament did not comprehend.

39. The subject of mortgage, apart from having been dealt with under the common law, is governed by the provisions of the Transfer of Property Act. It is also governed by the terms of the contract.

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43. If the Parliament while amending the provisions of the Companies Act intended to take away such a valuable right of the first charge holder, we see no reason why it could not have stated so explicitly. Deprivation of legal right existing in favour of a person cannot be presumed in construing the statute. It is in fact the other way round and thus, a contrary presumption-shall have to be raised.

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46. The provisions of the Companies Act may he a special statute hut if the special statute does not contain any specific provision dealing with the contractual and other statutory lights between different kinds of the secured creditors, the specific provisions contained in the general statute shall prevail.--

27. Same view was expressed in the case of Maru Ram and Others Vs. Union of India (UOI) and Others,

28. In view of the law laid down by the Hon''ble Supreme Court relying to the purposive interpretation of the conflict in laws, I am of the considered opinion that Section 126 of the Evidence Act is not obliterated and has to be given effect to notwithstanding the RTI Act. I am fortified by another judgment of the Hon''ble Supreme Court passed in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Satyen Bhowmick and Others, . In this case a trial was conducted for offence under Official Secrets Act. Section 14 of the aforesaid Act empowers the Court to hold the trail in Camera. On an application of the prosecution for in camera trial, on the ground that the publication of any evidence to be given or statement to be made in the course of proceedings would be prejudicial to the security of the State, the trial court while holding the trial in camera even denied the copies of the statements of the witnesses to the accused as per the mandate of the Code of Criminal Procedure though accused was permitted to take note of the statements of the witnesses to enable him to cross-examine them. The Magistrate later even asked the lawyer to produce the note-book containing the statement recorded by him, in view of the provisions of Section 14 of the Official Secrets Act. The lawyer refused to do so claiming the privilege u/s 126. The High Court, while dealing with matter in appeal passed strictures against the lawyer who refused to hand over the notes to the Magistrate and against the Magistrate for not taking action against the lawyer. While considering this issue in appeal, the Hon''ble Supreme Court made following observations-
26. Thus on an overall consideration of the facts and circumstances of the case and a true interpretation of the language employed in s. 14 of the Act we reach the following conclusions:-

l. That s. 14 apart from providing that the proceedings of the Court may be held in camera under the circumstances mentioned in the Section, does nut in any way affect or override the provisions of the Criminal Procedure Code relating to enquiries or trials held thereunder.

2. That s. 14 does not in any way deprive the valuable rights of the accused to get copies of the statement recorded by the Magistrate or statement of witnesses recorded by the police the documents obtained by the Police during the investigation as envisaged by criminal Rules 308 and 310 framed under the Code of Criminal Procedure by various High Courts nor does s. 14 in any way affect the right of the accused to get copies under s. 548 of the Code of Criminal Procedure.

3. That the opening words of s. 14 do not amount to a non obstante clause but are merely in the nature of an enabling provision reserving the inherent powers of the Court to exclude the public from the proceedings if the Court is of the opinion that it is just and expedient to do so.

4. That there was absolutely no impropriety on the power of the Magistrate in not taking action against the defence lawyer for his refusal to show his register because the lawyer had rightly claimed privilege under s. 126 of the Evidence Act as the register contained instructions given by the client which being privileged could not be disclosed to the Court. On a parity of reasoning we find no impropriety on the conduct of the lawyer in refusing to show me-statement of witness recorded by the Court in extent in order to prepare himself for an effective cross-examination of the witnesses. Hence the structures passed by the High Court on the Magistrate as also on the lawyer of the defence were, in our opinion, totally unwarranted.--

29. From the above it can be safely concluded that Section 126 is not obliterated on account of non-obstante clause contained u/s 22 of the RTI Act. However, the aforesaid issue may not have any material impact in the present case. The petitioner applied to the authorities for supply of the copy of the communications written by the lawyer, a Law Officer appointed by the State in his professional capacity to the authorities as his client. The authorities without claiming any privilege supplied the copies of the communications to the petitioner. Section 126 of the Evidence Act itself permits the disclosure of the communication between lawyer and client with the express consent of the client. In the present case, the client itself has disclosed the communication without claiming am privilege and thus question of privilege in the instant case does not arise. This answers the question framed by this court vide the order dated 8.12.2008.

30. Coming to the main controversy in the petition, it may be useful to briefly notice the facts of the case.

31. The petitioner is a doctor. In the year 2005, he was posted as Medical Officer, In-charge Central Jail, Patiala w.e.f. 29.6.2005 till 21.4.2007. The petitioner is aggrieved of suspension order dated 5.5.2008 (Annexure P-23) and has also sought quashment of the opinion of Board of Doctors of PGIMER, Chandigarh dated 15.3.2008 (Annexure P-17) and the CT Scan report dated 23.2.2007 (Annexure P-24). During the pendency of this petition, the State Government has passed the order dated 2.1.2009 reinstating the petitioner pending enquiry with the stipulation that the reinstatement will have no effect on disciplinary proceedings against him. In view of the reinstatement of the petitioner the challenge to the order of suspension has been tendered redundant .The other challenge is to the report of the Board of Doctor of the PGI, Chandigarh. The petitioner has referred to various medical books to support his opinion regarding the health status of the accused who was granted bail by this Court at the instance of the petitioner. To the contrary, the medial opinion has been rendered by a team of doctors comprising of Senior Doctors of the

PGI. From the report, it appear that the doctors are of the status of Additional Professors and Assistant Professors in the disciplines of Neurology, Neurosurgery, Cardiology and Hospital Administration. The opinion of the experts cannot be brushed aside merely because the same is contrary to the opinion of the petitioner. The fact that the petitioner is MBBS and has done his post-graduation in Forensic Medicines, his opinion cannot be equivalent to that of the team of experts from the relevant disciplines. It is also necessary to mention that the accused who was granted bail was allegedly suffering from Neurological problem and heart ailment and thus, the doctors from the said disciplines are better equipped to give the opinion. I find no reason to quash the report of the expert doctors of the PGIMER, Chandigarh, In so far the reference to various medical books is concerned, this can only be examined by the experts in the field and it is not for this Court to venture into this field. Mr. Sharma, learned counsel for the petitioner insisted that this Court should decide the writ petition on merits. I am unable to accede to this request. The duty of the Court is to be adjudicate upon the rights of the parties and to grant or refuse the relief. This Court has not to decide the question merely for academic purposes or a party desires so when it has no impact upon the rights of the parties. In view of the fact that the order of suspension stands revoked, this petition is rendered infructuous. Dismissed as such.

Petition dismissed.