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Harbans Sahai and Others Vs Emperor

None

Court: Calcutta High Court

Date of Decision: Jan. 4, 1912

Acts Referred:
Evidence Act, 1872 â€" Section 123, 125

Citation: 15 Ind. Cas. 77

Hon'ble Judges: Sharfuddin, J; Holmwood, J

Bench: Division Bench

Judgement

1. The question that arises upon this Rule is whether the statements made by witnesses in the course of a departmental inquiry into the conduct of

Police officers are privileged under Sections 123, 124 or 125 of the Evidence Act, when those witnesses ate subsequently examined in a Criminal

Court on a charge against the said Police officers of taking illegal gratification, or whether they do not fall within the ordinary rules of evidence as

laid down in Sections 155 and 162 of the Evidence Act. It appears to us clear that they are not so privileged, and we are supported in that finding

by the decision of the Bombay Court in the case of Empress v. Ramadhan Maharum 2 Bom.L.R. 329. The reasons which are given by the Judges

in that case apply exactly to the present case. In that case, the Sessions Judge refused to allow the question to be put to the departmental superior

of the accused as to where he got his information, because he was of opinion that the Superintendent was protected by Sections 124 and 125 of

the Indian Evidence Act, because he had evidently regarded the communication as made to him in official confidence, more especially as at the

time the case was being investigated as an attempted fraud on the public revenue, and the learned Judges of the Bombay Court held that the

Sessions Judge was wrong in disallowing the question. Now the reasons which the Sessions Judge erroneously held precluded him from allowing

this question are precisely the reasons which have been held by the lower Court in this case to preclude it from sending for the documents in

question and putting questions to the witnesses upon them. Because there was a departmental inquiry in the District Superintendent of Police"s

office, therefore, the Magistrate thinks that these are either unpublished official records relating to affairs of State, or that they are communications

made to the District Superintendent in official confidence, or that they are sources of information which the Police officer cannot be compelled to

disclose. Now, it cannot be said that any of these sections applies to the statements of these witnesses. Clearly, they are not unpublished records

relating to any affairs of State. Section 123 has been held to apply to the deliberations of the Parliament, proceedings of the Privy Council,

communication between public officials in the discharge of public duty and the like, and not even Government remarks with regard to the conduct

of public officials have been considered to be strictly privileged, so that the statements made by witnesses before the departmental superior of the

accused cannot possibly be considered to be unpublished records relating to any affairs of State. The permission of the District Superintendent was

not, therefore, in any way necessary for the production of these papers; and if any permission had been necessary, that permission would have

been that of the Inspector-Genaral of Police of the Province and not of any local superior.

2. Then, as regards Sections 124, it cannot be said that when witnesses come before a Police officer and make accusations against one of his

subordinates that those communications are made in official confidence so that when the accused is on his trial, he cannot ask to know what his

accusers say. It seems to us that the public interest would suffer much more by the concealment of these statements than by their disclosure.

3. Section 125 obviously has no application. It is not pretended that those statements were the source from which the District Superintendent

obtained his information that any offence had been committed.

4. The statements not being privileged the Magistrate was bound to call for them u/s 162 of the Evidence Act, and to have allowed the accused to

cross-examine the witnesses u/s 155 on the statements made whether they were in favour of the accused or against him. As the provisions of

Section 163 clearly entitle the prosecution to make use of them if they turn out to be not in favour of the defence, the danger which the Magistrate

appears to apprehend in his explanation does not really exist.

5. The Rule must be made absolute and the lower Court must take steps to have the documents referred to in para. 7 of the petition produced, and

the determination of the trial will be postponed until this is done, and the Magistrate has fully considered the effect of the answers made by the

witnesses upon cross-examination on these documents, when he should hear the parties and proceed to decide the case in accordance with law. In

the meantime, the petitioners will remain on the same bail.