

(1954) 07 CAL CK 0030

Calcutta High Court

Case No: Civil Rule No. 272 of 1954

Jatish Ghosh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: July 15, 1954

Acts Referred:

- Evidence Act, 1872 - Section 123, 124

Citation: (1956) 1 ILR (Cal) 370

Hon'ble Judges: Renupada Mukherjee, J

Bench: Single Bench

Advocate: Anil Kumar Sen and Arun Kumar Dutta, for the Appellant; Hemendra Kumar Das, Government Pleader and Smriti Kumar Roy Choudhury, for the Respondent

Judgement

Renufada Mukherjee, J.

This Rule was issued at the instance of the Plaintiff of a money suit who brought it against the State of West Bengal claiming Rs. 200 as damages against the State on the ground of some alleged illegal confinement. The suit was contested by the State and while the suit was in progress in the trial court, the Plaintiff served some interrogatories upon the State and prayed for a direction from the trial court that the Defendant State might be ordered to answer the interrogatories. The interrogatories were answered in part, but not in full by the State on December 10, 1953, on whose behalf one Shri B.N. Sen, a Deputy Magistrate and Deputy Collector of Ghatal, swore an affidavit. It is stated as follows in "the concluding portion of the affidavit:

I object to answer the other points of interrogatories on the ground that they are confidential.

2. These "other points" relate to the source or sources from which the District Magistrate of Midnapore was satisfied about the alleged subversive activities of the Plaintiff of this suit and some other persons who were associated with the alleged

subversive activities. An objection was taken by the Plaintiff to the answers furnished by the affidavit of Shri B.N. Sen as being vague and insufficient. "When the matter came up for consideration before the trial court on January 4, 1954, that court recorded an order that the answers were sufficient for disposing of the relevant questions involved in the suit and in that view of the matter, the objection of the Plaintiff was rejected. The Plaintiff has come up to this Court in revision, being aggrieved by the said order.

3. After hearing Mr. Sen, at some length on behalf of the Petitioner and after hearing Mr. Das on behalf of the State. I am of opinion that the order of the learned Munsif cannot be sustained.

4. It would appear from the affidavit filed by Shri B.N. Sen on behalf of the State in the trial court that the State was objecting to answer some of the points raised by Plaintiff's interrogatories on the ground that they were "confidential". Substantially, however, the State was claiming privilege under Sections 123 and 124 of the Indian Evidence Act. Documents or pieces of information in the possession of the Government may be confidential but they may not be privileged under Sections 123 and 124 of the Indian Evidence Act. If it was the intention of the State to claim privilege it should have been stated in so many words in the affidavit and it should also have been stated that public interests would suffer by the disclosure of the alleged Information. As this was not done, the affidavit was incomplete and the State was not in a position to claim privilege on the basis of such an affidavit.

5. The second ground on which the affidavit should have been rejected by the learned Munsif was that the affidavit was not sworn by a competent person. The Plaintiff was claiming damages in the trial court against the State and his claim was founded upon an order of detention or confinement served upon him by the District Magistrate of Midnapore. The order of the District Magistrate which has been quoted in the application for devision would show that it was the District Magistrate who himself was satisfied about the alleged subversive activities of the Plaintiff. That being the case, a Deputy Magistrate and Deputy Collector of Ghatal was not competent to swear the affidavit in question.

6. It has been brought to my attention that the District Magistrate who served the order of detention or confinement has since been transferred. Still, the affidavit could have been sworn either by his successor-in-office or by some other competent officer who had some familiarity with the matters in controversy.

7. The last ground on which I am not prepared to uphold the order of the learned Munsif is that he considered the answers of the State to be sufficient for the purposes of disposing of the suit fairly without going into the question of privilege at all which was the real question at issue between the parties at the present moment. In my judgment there was an error in the exercise of the jurisdiction of the learned Munsif by accepting the answers of the State and by rejecting the objections

of the Plaintiff. The order must, therefore, be set aside.

8. The Rule is, accordingly, made absolute and the order of the learned Munsif passed on January 4, 1954, is set aside. The affidavit previously sworn on behalf of the State on December 10, 1953, in answer to the interrogatories served by the Plaintiff is rejected and it is directed that within one month of the arrival of the records in the trial court or such further time as may be allowed by that court, an affidavit in proper form must be sworn either by the present District Magistrate of Midnapore or by some other competent person in answer to the interrogatories served upon the State by the Plaintiff. If any question of privilege or protection is claimed in such affidavit, that matter must be disposed of by the learned Munsif in accordance with law along with such objection as may be taken by the Plaintiff Petitioner.

9. Let the records be sent down to the trial court at a very early date.

10. In the circumstances of the case, I do not make any order a to costs.