

Charu Chandra Kundu

Vs

Gurupada Ghosh

Civil Appeal No. 206 of 1959

(S. K. Das, M. Hidayatullah, J. C. Shah JJ)

05.05.1961

JUDGMENT

SHAH J. –

Gurupada Ghosh, respondent to this appeal, filed Suit No. 41 of 1953 in the Sixth Court of the Subordinate Judge at Alipore, District 24 Parganas' West Bengal, for a money decree against the appellant - Charu Chandra Kundu - for Rs. 32,132-12-3 claiming that he had advanced to the appellant on May II 1949, "by way of temporary accommodation loan" Rs. 30,000 by a cheque drawn upon the Comilla Union Bank, Calcutta, and that the appellant had in two installments repaid Rs. 5,500 out of the amount advanced and the balance of Rs. 24,500 with interest remained due and payable by the appellant. The appellant pleaded by his written statement that a loan of Rs. 30,000 was advanced by the respondent do him and his wife, Chapalabala, and a promissory note was in consideration thereof executed by the borrowers in favour of the respondent and, as collateral security for the loan, title deeds of certain immovable properties belonging to the said Chapalabala were deposited with the respondent and that thereafter

The appellant applied to the Subordinate Judge for the issue of a summons to the Commissioner of Income-tax directing that officer to arrange to produce "through a competent officer the original file and depositions given" by the respondent "before the Income-tax Officer, (2) Division, in the assessment of Charu Chandra Kundu." The Commissioner of Income-tax informed the court that having regard to the prohibitions imposed by section 54 of the Income-tax Act he was unable to produce any of the statements, returns, accounts, documents or records of assessment proceedings under the Income-tax Act or to give evidence in support thereof. The appellant then applied that the objection of the Commissioner of Income-tax be overruled and that the Income-tax Officer or any other competent officer be directed to produce the statement made by the respondent and recorded on February 22, 1950, in the proceedings for assessment of the income of the appellant. In that petition by paragraph 10, the appellant submitted that "o

It was the case of the appellant that in certain proceedings relating to assessment of income-tax of the appellant for the year 1949-50, the respondent had on February 22, 1950, made a statement before the Income-tax Officer, and to support his defence in the suit he desired that the statement be produced before the court. The trial court upheld the objection raised by the Commissioner of Income-tax that in view of section 54, he could not be required to produce the statement he was summoned to produce, and the High Court of Judicature at Calcutta in exercise of its jurisdiction under section 115 of the Code of Civil Procedure confirmed that view.

Section 54 of the Income-tax Act by the first sub-section declares all particulars contained in any

statement made, return furnished or accounts or documents produced under the provisions of the Income-tax Act or in documents produced under the provisions of the Income-tax Act or in any evidence given, or affidavit or deposition made, in the course of any proceedings or any assessment proceedings under Chapter VIII, or in any record of any assessment proceedings or any proceeding relating to the recovery of a demand prepared for the purposes of the Act, 1872, no court shall be treated as confidential. The sub-section then proceeds to state that notwithstanding anything contained in the In the Indian Evidence Act 1872, on court shall save as provided in the Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any record or to give evidence before it in respect thereof. By sub- section (2) a public servant disclosing any particulars co

It is manifest that disclosure of information given to public servants in the course of income-tax proceedings has by a comprehensive provision been prohibited. The Income-tax authorities are directed by the provision to treat the information disclosed, evidence given, and documents produced as confidential : the courts are prohibited from requiring any public servant to produce the documents or the records and even to give evidence in respect thereof, and the public servants disclosing the particulars of the evidence, documents or the record are penalised. The statement alleged to be made by the respondent in the assessment proceedings is not of the nature described in sub- section (3) of section 54, and is therefore not exempt from the operation of sub-sections (1) and (2) There being an express interdict against the court requiring production of the document, the Subordinate Judge was right in declining to accede to the request of the appellant.

Mr. Chatterjee appearing on behalf of the appellant contends that section 54 is enacted only for the protection of the assessee, and if the assess waives the privilege enacted for his protection, the prohibition contained therein will be inoperative. But there is no such exception, express or implied, in the language used by the Legislature. The prohibition imposed against the court by section 54 is absolute : its operation is not obliterated by any waiver by the assessee in whose assessment the evidence is tendered, document produced or record prepared.

Mr. Chatterjee relied upon *Buchibai v. Nagpur University* 1 in support of his contention that an assessee is entitled to waive the privilege which confers, protection upon him by section 54, In case, however, the only question which fell to be determined was whether certified copies of statements recorded or orders, passed by the income-tax authorities were admissible in evidence under section 65 of the Evidence Act to prove the contents of those documents. The court in that case observed.

"The direction that such document (documents described in section 54) shall be treated as confidential is a direction to officials of the Income-tax Department and in our opinion it is open to an assessee to waive that right and to give evidence, if he desires, of particulars contained in such a record, as was held in *Rama Rao v. Venkataramayya*. There is nothing in section merely directs officials of the Income-tax Department to treat such documents as confidential and prohibits the court from requiring public servants to produce such documents or to give evidence about such documents".

But the question whether a certified copy of the statement made by the respondent before the Income-tax Officer is admissible does not fall to be determined in this appeal. The Subordinate Judge expressly recorded in the proceeding dated November 18, 1955, that he did "not mean to say that certified copy of the document will not be admissible in evidence". *Bachubai's* case is a decision about the admissibility of a certified copy of the statement made by one Laxminarayan to

the Assistant Commissioner of Income-tax; it did not decide that the court could require production by summons of the original statements from the records of the Assistant Commissioner.

A similar view as to admissibility of certified copies of statements made before the income-tax authorities was also expressed in *Rama Rao v. Venkataramayya*, *Suraj Narain v. Seth Jhabhu Lal*, and *Banarsi Devi v. Janki Devi*. We may observe that we are not called upon to express any opinion the correctness or otherwise of these decisions. Suffice it to say that they have no application to the question to be determined in this appeal.

The appeal fails and is dismissed.

Appeal dismissed.

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