(25) On the merits of the point, however, we find no force in the contention of Mr. Surinder Sarup. After a scheme is published under sub-section (1) of section 30-B and objections against the same are considered, the Divisional Canal Officer is authorised by sub-section (2) of that section to either "approve the scheme as it was originally prepared or in such modified form as he may consider fit" so that a proposed scheme approved subject to certain modifications would be as good an approved scheme within the meaning of sub-section (3) of section 30-B as a scheme approved without any modification. In the cases on which the learned counsel for the petitioner relied, the scheme had been rejected *in toto*. In the case in hand, the situation is different. The scheme was approved by the Divisional Canal Officer in a modified form. We would hold that though no application against the rejection of a scheme *in toto* would lie under sub-section (3) of section 30-B a party aggrieved by an order approving a scheme subject to any modification has a right to move the appropriate canal authority under that provision. No other point produced in the Court but the learned Sub-Judge held that the question having been argued in this case, the third writ petition must also fail.

(26) For the foregoing reasons we dismiss all these three writ petitions though without making any order for costs in either of them.

R.N.M.

REVISIONAL CIVIL

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

UNION OF INDIA AND ANOTHER,—*Petitioners*

versus

OM PARKASH GUPTA, *Respondent*

Civil Revision No. 426 of 1968

August 26, 1968

Evidence Act (I of 1872)—Ss. 121 to 131—Contents of a privileged document—Whether can be proved by any mode of primary or secondary evidence—S. 129—Expression "no one"—Interpretation of—A client showing a letter of his legal

adviser to the other party—Such other party—Whether can lead evidence with regard thereto.

Held, that the privilege that is claimed and is allowed under the provisions of secitons 121 to 131 of the Evidence Act is not with regard to the sheet of paper called the document but the contents thereof. It is, therefore, apparent that the contents of a document about which privilege has been upheld cannot be brought on the record of the Court in any case by any mode of primary or secondary evidence whatsover. The prohibition is absolute. The contents of a privileged document cannot be proved by any secondary evidence.

(Para 6)

Held, that the correct interpretation of the expression "no one" in section 129 of the Evidence Act is that no client shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser unless the client offers himself as a witness in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given. (Para 10)

Held, that if a client himself shows the letter of his legal adviser to the other party, the said other party cannot give evidence with regard thereto on the ground that the client did not keep it secret. Section 129 would have been applicable if the client himself had entered the witness box and deposed to it. The other party cannot be permitted to depose to the contents of a privileged document.

(Para 10)

Petition under Section 115 of Civil Procedure Code for revision of the order of Shri O. P. Gupta Sub-Judge, 1st Class, Gurgaon, dated 10th April, 1968, holding that the U.O. dated 14th March, 1965, is not privileged document and as it has been properly proved so is entitled to be exhibited.

C. D. Dewan, Deputy Advocate-General, Haryana, for the Petitioners.

R. N. Mittal, Advocate, for the Respondent.

JUDGMENT

Tuli, J.—This revision petition is directed against the order of Sub-Judge, Gurgaon, dated 10th April, 1968, and was admitted to a Division Bench by my Lord the Chief Justice on 23rd May, 1968 presuambly because the point of law involved in the revision petition is of general importance and there is no judgment of this Court directly on the point.

(2) The facts are that Om Parkash Gupta filed a suit against the Union of India and another and in that suit called upon the Union of India to produce four documents detailed as under:—

(i) U. O. No. 204/SR/65, dated March 8, 1965, by the Secretary Rehabilitation to Shri B. N. Lokur, Secretary, Ministry of Law ;

(ii) U. O. dated March 14, 1965, from Shri B. N. Lokur, Secretary, Ministry of Law, to Secretary, Department of Rehabilitation ;

(iii) Letter by the defendants to the D.G.E.T. for employment of plaintiff ; and

(iv) Letter sent by Joint Secretary, Law Department, Shri H. C. Dagga, dated October 13, 1965, to the Chief Settlement Commissioner, New Delhi, regarding fixation of pay.

(3) The Union of India claimed privilege and refused to produce these documents. In spite of that objection, the learned trial Court passed an order for the production of these documents on 30th of January, 1967. Against that order, the Union of India filed a revision in this Court (Civil Revision No. 151 of 1967) which was allowed by Mahajan, J., on 26th of April, 1967, as the learned Judge held that all the documents were entitled to privilege and their production could not be compelled.

(4) The plaintiff filed a document in the trial Court which was marked 'A' and which he stated to be a copy of the U.O. dated March 14, 1965, from Shri B. N. Lokur, Secretary, Ministry of Law, to Secretary, Department of Rehabilitation. He further stated that Shri Mathani, Secretary, Rehabilitation Department, showed the original letter of Mr. Lokur to him and he made a copy therefrom in pencil. He produced a fair copy made from the pencil copy and the learned trial Court allowed him to produce the same and to prove it by his own statement. An objection was taken by the learned counsel for the Union of India that the document marked 'A' could not be produced in the Court but the learned Sub Judge held that the question of privilege did not arise as the Government had not been called upon to produce the same. According to the learned Sub Judge, the document marked 'A' had been proved by the statement of the plaintiff and was entitled to be exhibited and he put the exhibit mark 'P.A.' on it. The Union of India, feeling aggrieved from this order, has filed this revision petiton.

(5) The copy marked 'P.A.' could not be allowed to be produced in Court nor could it be proved or exhibited because admittedly according to the plaintiff himself it was a copy of a copy, i.e., the fair copy that was produced in the Court had been made from the pencil copy which the plaintiff alleges to have made from the original letter of Mr. Lokur which Mr. Mathani had shown to him. The learned trial Court, on this ground, should have refused to take the said document on the record and should not have allowed it to be proved.

(6) The privilege that is claimed and is allowed is not with regard to the sheet of paper called the document but the contents thereof. It is, therefore, apparent that the contents of a document about which privilege has been upheld cannot be brought on the record of the Court in any case by any mode of primary or secondary evidence whatsoever. The prohibition is absolute. The contents of a privileged document cannot be proved by any secondary evidence. The learned counsel for the Union of India has relied upon the decision of the Court of Appeal in *Chatteron* v. *Secretary of State for India in Council* (1) for his submissions. In that case the plaintiff had brought an action of libel against the Secretary of State for India in Council on the ground that a communication in writing made by him as Secretary of State to an Under Secretary of State in the course of the performance of his official duty contained untrue statements affecting the professional reputation of the plaintiff, a captain in Her Majesty's Indian Staff Corps, which amounted to libel. In that action, privilege was claimed with regard to that communication which was upheld. In that case, Kay, L.J., reproduced the dictum of Lord Ellenborough to the following effect:—

> "Then it is said that the fact that there has been a complaint made against the defendant by the plaintiff to Lord Liverpool is the only fact sought to be put in evidence on this occasion; but it is not competent to the plaintiff to get at that fact, if it be embodied in an official letter. Neither can an extract of such a letter be admitted, for the plaintiff must be entitled to the whole or none ; and I think that the whole of this letter is not admissible on account of the objections taken."

Kay, L.J., then added :—

> "It is quite true that the question actually decided in that case was merely as to the admissibility in evidence of the letter,

(1) (1895) 2 Q.B. 189.

the decision being that neither could the letter be produced nor could secondary evidence of its contents be given.... In the case of *Home* v. *Bentinck* (2), it was decided that a report made by the president of a court of inquiry directed to be held by the Commander-in-Chief to inquire into the conduct of an officer in the Army was a privileged communication, and that it was properly rejected as evidence at the trial of an action for libel, and that an office copy of it was also properly rejected. The decision also seems to me to involve the conclusion that, even if such a document could be put in, it would be absolutely privileged and no action could be founded upon it."

A. L. Smith, L.J., in that case observed :—

"The cases have gone the length of holding that, even if no objection were taken to the production of such a document by the person in whose custody it was, it would be the duty of the judge at the trial to intervene, and to refuse to allow it to be produced: and it has further been held that, if an attempt were made to get round that difficulty by giving secondary evidence of its contents, the judge ought also to prevent that from being done. Therefore, if this action were allowed to go on to trial, the plaintiff could not possibly succeed without proving the libel complained of, and the judge would be bound to prevent its being proved."

The same principle of law is stated in *Ankin* v. *London and North Eastern Railway Company* (3) in these words at page 530 :—

"In my opinion, if it is contrary to the public interest, to produce an original document, must equally be contrary to the public interest to produce a copy which the maker of the document has kept for his own information."

(7) The matter was considered by Mr. Justice Tyabi in *Jehangir M. Cursetji* v. *The Secretary of State for India in Council* (4) in which it was held that the resolution complained of by the plaintiff being

(2) 2 B. &. B. 130.
(3) (1930) 1 K.B. 527.
(4) I.L.R. (1903) 27 Bom. 189.

an official communication was absolutely privileged. It could not be put in evidence or produced in Court and no secondary evidence of it could be given.

(8) The point was again considered by a Division Bench of the Bombay High Court (Chagla, C.J. and Bhagwati, J.) in *Lady Dinabai Dinshaw Petit & others* v. *The Dominion of India and another* (5). In that case, the plaintiff had filed an affidavit in which the contents of letter dated 20th of April, 1942, from the Collector of Bombay, had been reproduced when privilege had been claimed with regard to that letter. Mr. Desai, learned counsel for the plaintiff, submitted that the contents of the document showed that the document was not privileged and it had been held back merely because it supported the case of the plaintiff. Chagla, C.J., speaking for the Court, observed:—

> "Mr. Desai forgets that if privilege is claimed by Government with regard to the letter of 20th April, 1942, as indeed it has claimed, we are precluded from looking at the document or considering its contents. The position of the plaintiffs does not improve by reason of the fact that they have got hold of a copy of this document by, very likely, some unworthy method. If the original of the document is privileged, surely that privilege cannot be got over by litigants getting hold of copies surreptitiously of the document from the Secretariat and asking the Court to look at the secondary evidence of the document. Parties are sometimes apt to overlook the fact in their, what seems to them, justified indignation that the whole doctrine of privilege is based, as I pointed out earlier, upon public interest, and we must assume, unless contrary is shown, that privilege is claimed on that ground. The indignation of the party who may feel that his cause is being lost by the refusal to disclose the document may be understood, but there is no legal basis for it and perhaps the indignation would not be so pronounced if the party took the trouble to understand why the Courts are precluded from looking at documents with regard to which the State claims privilege."

(5) A.I.R. 1951 Bom. 72.

A Full Bench of the Punjab Chief Court in *Abdur Razak* v. *Gauri Nath* (6) held that:—

> "Where a complaint is based on some official communication, oral or in writing, falling within the scope of section 123, section 124 or section 125 of the Evidence Act, and there is no likelihood of proving the communication by primary or direct evidence, the Magistrate is justified in dismissing the complaint under section 203, Criminal Procedure Code. No secondary evidence regarding the contents of written communications, made in official confidence is admissible."

(9) These decisions make it abundantly clear that the contents of a privileged document cannot be proved by any mode of primary or secondary evidence in a Court.

(10) The learned counsel for the plaintiff-respondent submitted that section 121 to 131 of the Evidence Act relate to the matter of privilege and in some sections, the words used are "no one shall be permitted to give evidence" while in others "no one shall be compelled to disclose etc." and that the document in question fell within the ambit of section 129 of the Evidence Act. According to the learned counsel, the words "no one" with which this section starts relate to any person which is not true. The correct interpretation, according to me, is that no client shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser unless the client offers himself as a witness in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given. According to the learned counsel, Mr. Mathani was the client of Mr. Lokur and since Mr. Mathani himself showed the letter of Mr. Lokur to the plaintiff, the plaintiff could give evidence with regard thereto on the ground that Mr. Mathani did not keep it a secret document. This contention is not borne out by the language used in section 129 of the Evidence Act. Section 129 would have been applicable if Mr. Mathani himself had entered the witness-box and deposed to it. The plaintiff cannot be permitted to depose to the contents of the document about which privilege had been upheld by this Court.

(6) (1910) 11 Cr. L.J. 205.

(11) For the reasons given above, this revision petition is accepted. The order of the learned trial Court is set aside and it is ordered that the document marked as Exhibit P.A. should be excluded from the record and it should be returned to the plaintiff and not kept on the record. The petitioner is allowed costs of this petition. Counsel's fee Rs. 75.

MEHAR SINGH, C.J.—I agree.

R.N.M.

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