

CHARU CHANDRA KUNDU

v.

GURUPADA GHOSH

1961

May, 5.

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Production of document—Assessment proceedings—Law prohibiting income-tax authorities from disclosure Production of proceedings into court—Waiver by assessee—Indian Income-tax Act, 6122 (11 of 1922). s. 54.

In a suit instituted by the respondent for the recovery of monies which he alleged were due to him from the appellant, the latter pleaded that the liability had been discharged. In support of that plea the appellant sought to tender in evidence a statement which he said had been made by the respondent before the Income-tax Officer in certain proceedings relating to the assessment of Income-tax of the appellant for the year 1949-50. For this purpose the appellant applied to the trial court praying that the Commissioner of Income-tax might be asked to arrange for the production before the court of the record of the statement made by the respondent. On objection raised by the Commissioner of Income-tax, the court held that he could not be required to produce the statement, in view of the prohibitions imposed by s. 54 of the Indian Income-tax Act, 1922. The appellant contended that the prohibition contained in s. 54 of the Act related only to the evidence given by an assessee himself and not to that of other witnesses, and that, in any event, the provisions in that section being in the interest of and for the protection of the assessee only, if the assessee waived the privilege, the prohibition contained therein would be inoperative.

Held, that the prohibition imposed in s. 54 of the Indian Income-tax Act, 1922, is absolute and the operation of the section is not obliterated by any waiver by the assessee in whose assessment the evidence was tendered, document produced or record prepared.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 206 of 1959.

Appeal by special leave from the judgment and order dated May 28, 1956, of the Calcutta High Court, in Civil Rule No. 3317 of 1955.

N. C. Chatterjee, A. K. Dutta and P. K. Chatterjee, for the appellant.

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The respondent, did not appear.

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1961. May 5. Judgment of the Court was delivered by

SHAH, J.—Gurupada Ghosh respondent to this appeal filed suit No. 41 of 1953 in the 6th 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 appellant on May 11, 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 instalments 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 to 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 between September 7, 1949, and April 13, 1953, the appellant had repaid an aggregate amount of Rs. 37,000/- and the respondent having relinquished a sum of Rs. 235-7-0 on account of interest on such repayment the debt was discharged and in acknowledgment thereof, the promissory note and the title deeds of the immovable properties lodged with the respondent were returned. The appellant also raised other pleas which are not material for the purposes of this appeal. On the pleadings, the burden of proving repayment lay upon the appellant.

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 I (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 s. 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 over-ruled 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 "on a true construction of s. 54 of the Indian Income-tax Act, the exemption from disclosure and production relate only to the evidence or deposition etc. made by an assessee himself and not to depositions or evidence of other witnesses. In any event, the disclosure and production etc. prohibited by s. 54 of the Income-tax Act being in the interest of the assessee only, the assessee himself can waive this special protection and privilege" and that the appellant waived his right to the protection and privilege under s. 54 of the Income-tax Act.

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 s. 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

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under s. 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 any evidence given, or affidavit or deposition made, in the course of any proceedings of any assessment proceedings under Ch. 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, shall be treated as confidential. The sub-section then proceeds to state that notwithstanding anything contained in the Indian Evidence Act, 1872, no 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 such record or to give evidence before it in respect thereof. By sub-s. (2), a public servant disclosing any particular contained in any such document, return, accounts, documents, evidence, affidavit, deposition or record, is liable to be punished with imprisonment which may extend to six months and also with fine. These provisions however do not apply to certain documents specified in cls. (a) to (p) of sub-s.3.

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 record are penalised. The statement alleged to be made by the respondent in the assessment

proceedings is not of the nature described in sub-s. (3) of s. 54, and is therefore not exempt from the operation of sub-ss. (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.

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Mr. Chatterjee appearing on behalf of the appellant contends that s. 54 is enacted only for the protection of the assessee, and if the assessee 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 s. 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 s. 54. In that 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 s. 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 s. 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, or particulars contained in such a record, as was held, in *Rama Rao v. Venkat ramayya*(2). There is nothing in s. 54 which prohibits the giving

(1) (1947) 15 I.T.R. 150.

(2) I.L.R. (1940) Mad. 996.

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of such evidence; the 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 at the time of the trial of the suit if the said certified copy is otherwise found to be admissible in evidence." *Buchibai's* case⁽¹⁾ 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*⁽²⁾, *Suraj Narain v. Seth Jhabhu Lal and Others*⁽³⁾ and *Banarsi Devi v. Janki Devi*⁽⁴⁾. We may observe that we are not called upon to express any opinion on 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.

- (1) (1947) 15 I. T. R. 150. (2) I.L.R. (1940) Mad. 969.
(3) (1945) 13 I.T.R. 13. (4) A.I.R. 1959 Pat. 172.