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PUNJAB NATIONAL BANK

v.

R.L. VAID AND ORS.

AUGUST 20, 2004

B

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

*Precedent :*

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*Application by accused before trial court for summoning certain documents—CBI and Bank contending that documents were privileged communication—Trial court allowing application—High Court dismissing bank's petition merely by citing a decision—Held, disposal of cases by merely placing reliance on a decision is not proper—High Court should have indicated the reasons and also spelt out as to the applicability of the decision to facts of instant case—Evidence Act, 1872—s.124.*

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The respondents, who were facing trial for offences punishable under s. 120-B IPC read with s. 5(1)(d) of the Prevention of Corruption Act, 1947, filed an application before the trial court for summoning certain documents. The CBI and the appellant Bank resisted the prayer contending that the documents were privileged communication in terms of s.124 of the Evidence Act, 1872. The trial court allowed the application. The Bank approached the High Court which held that in the light of the decision in *R.K. Jain\**, the Bank had no case.

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In the appeal filed by the Bank it was contended that the High Court without discussing applicability of the decision in *R.K. Jain* to the facts of the instant case should not have dismissed Bank's application.

Disposing of the appeal, the Court

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**HELD :** 1. Disposal of cases by merely placing reliance on a decision is not proper. It is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a difference between conclusions in two cases. The High Court has merely referred to the decision in *R.K. Jain\** without even indicating as to applicability

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of the said decision and as to how it has any relevance to the facts of the case. It would have been proper for the High Court to indicate the reasons and also to spell out clearly as to the applicability of the decision to the facts of the case. [695-A-C]

*\*R.K. Jain v. Union of India*, AIR (1993) SC 1769, referred to.

2. The order of the High Court is set aside and the matter is remitted to it for fresh consideration in accordance with law. The view expressed by this Court in *Kishan Narain's* case\*\* shall also be considered as it elaborately deals with the question of privilege. It would be proper to deal with the applicability of the view expressed in the said case to the facts of the instant case. [695-D-E]

*\*\*Kishan Narain v. State of Maharashtra*, [1974] 3 SCC 368, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 917 of 2004.

From the Judgment and Order dated 11.7.2003 of the Punjab and Haryana High Court in C.R. No. 1413 of 2003.

Dhruv Mehta and Mohit Choudhary for the Appellant.

Gaurav Aggarwal for Prashant Kumar, Vishnu Sharma for P. Parmeswaran for the Respondents.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** : Leave granted.

Respondent Nos. 1 to 3 are facing trial for alleged commission of offences punishable under Section 120-B of the Indian Penal Code, 1860 (in short 'the I.P.C.'). read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 ( in short 'the Act'). The case was registered by the Central Bureau of Investigation (in short 'the CBI'), which is respondent No. 4 in the present appeal. An application was filed by the accused persons

A before the Special Judge conducting trial for summoning eight documents, as were indicated in the application. The learned Special Judge directed production thereof overruling the objection to the production thereof. It was the stand of the CBI and the appellant-Bank that the documents were privileged communication in terms of Section 124 of the Indian Evidence Act, 1972 (in short 'the Act') . Originally, CBI had resisted the prayer and subsequently the appellant-Bank raised similar objection. The Special Judge was of the view that the production of the letters would not cause any injury to public interest and it would rather facilitate the court to arrive at an appropriate decision. It was noted that in such type of action proceedings, the court cannot be kept in dark, and in the administration of justice, the court should have fullest possible access to all relevant materials. The order was challenged before the Punjab and Haryana High Court by filing an application for revision under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Cr. P.C.'). The application was dismissed with the following observations :

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 "Though the affidavit of A.G.M. who was head of the Department, is stated to have been filed for claiming privilege of documents, yet in the light of the decision in *R.K. Jain v. Union of India*, AIR (1993) SC 1769, the petitioner has no case.

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 Dismissed."

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 The stand of the appellant as well as the CBI is that when privilege was claimed and that too of documents which were confidential in nature, the learned Special Judge should not have directed production thereof. In any event, the High Court was not justified in dismissing the application filed by the appellant-Bank merely observing that in view of the decision in *R.K. Jain v. Union of India*, AIR (1993) SC 1769, the appellant has no case. The applicability of the said decision to the facts of the case has not been discussed.

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 Learned counsel for respondent Nos. 1 to 3 – accused on the other hand submitted that merely referring to Section 124 of the Evidence Act without indicating as to how public interest would have been affected, disentitle the CBI and the appellant-Bank, to claim privilege of Section 124 of the Evidence Act.

We find that the High Court has merely referred to the decision in *R.K. Jain's* case (supra) without even indicating as to applicability of the said decision and as to how it has any relevance to the facts of the case. It would have been proper for the High Court to indicate the reasons and also to spell out clearly as to the applicability of the decision to the facts of the case. There is always peril in treating the words of a judgment as though they are words in a Legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a difference between conclusions in two cases. Disposal of cases by merely placing reliance on a decision is not proper. Precedent should be followed only so far as it marks the path of justice, but you must cut out the dead wood and trim off the side branches else you will find yourself lost in thickets and branches, said Lord Denning, while speaking in the matter of applying precedents. The impugned order is certainly vague.

In the circumstances, without expressing any opinion on the merits of the case, we set aside the impugned order of the High Court and remit the matter for fresh consideration in accordance with law. The view expressed by this Court in *Kishan Narain v. State of Maharashtra*, [1974] 3 SCC 368 shall also be considered as it elaborately deals with the question of privilege. It would be proper to deal with the applicability of the view expressed in the said case to the facts of the present case. The Criminal revision Petition No. 1413 of 2003 read with Criminal Miscellaneous Case No. 29708 of 2003 be restored to their original position.

Learned counsel for respondent Nos. 1 to 3 submitted that the trial may proceed pending disposal of the matter by the High Court so far it relates to production of the documents. The learned Special Judge shall consider the desirability and feasibility of adopting such a course, particularly when CBI and appellant-Bank have no objection the stand.

R.P.

Appeal disposed of.