

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

I.C.A. No.119 of 2014.

Director of Intelligence & Investigation.
Versus
Aslam Hashim Butt.

JUDGMENT

Date of hearing: 11.02.2016.

Appellant by: Mr. Salman Faisal and Ms. Farah Malik,
Advocates.

Respondent by: Mr. Anwaar Hussain, Assistant Advocate
General assisted by Rutaaba Gull, Advocate.

Mr. Ahmad Yar Khan Advocate assisted by
Mr. Abdul Sami Qureshi and Mr. Ahmad
Hafeez Opal, Advocate with the respondent.
Assisted by Mr. Mohsin Mumtaz, Research
Officer.

Shujaat Ali Khan, J: - The appellant has assailed judgment dated 16.01.2014, passed by the learned Single Judge, whereby Writ Petition No.16001 of 2013, filed by the respondent, was allowed.

2. The facts of the instant appeal are that during a drive against fraudulent tax adjustments availed by different registered persons, the staff of the Directorate of Intelligence and Investigation, Inland Revenue, Lahore unveiled that M/s Pearl Enterprises, Lahore (hereinafter to be referred as “the Registered Person”) was involved in illegal tax refund. As a result, a notice was issued to the Registered Person for showing

cause as to why its registration may not be suspended. In response to the Show Cause Notice, the Registered Person submitted its reply through the respondent before the Commissioner, Inland Revenue, Lahore. On 01.06.2013, the Assistant Director, Directorate of Intelligence and Investigation, Inland Revenue, Lahore/Investigating Officer (hereinafter to be referred as the Investigating Officer) issued letter to the respondent with the averment to furnish duly executed power of attorney/authorization to represent the Registered Person before the Commissioner, Inland Revenue. The respondent replied to the said letter contending that as he was only engaged to represent the Registered Person before the Commissioner, Inland Revenue, therefore, he could not plead its case before the Investigating Officer. As a replication to the reply submitted by the respondent, the Investigating Officer addressed another letter, dated 07.06.2013, to the respondent with the request to share the particulars of the person (hereinafter to be referred as the Client) who engaged him to defend the Registered Person before the Commissioner, Inland Revenue, Lahore. As the respondent did not respond to communication, dated 07.06.2013, summons were issued to him in terms of Section 37 of the Sales Tax Act 1990 ("Act") requiring him to appear before the Investigating Officer in connection with case FIR No.03/2013, dated 16.05.2013. The respondent assailed the vires of the summons before this court through aforementioned Constitutional Petition which came up for final hearing on 04.12.2013 when the same was accepted by the Learned Single Judge, hence this appeal.

3. Leaned counsel for the appellant submits that the learned Single Judge did not appreciate that proceedings against the

Registered Person could not be finalized for the reason that exact antecedents of the owner of the Registered Person were not traceable and the appellant could only reach the Client through the courtesy of the respondent; that the Writ Petition filed by the respondent was accepted by the learned Single Judge mainly on the ground that the Registered Person was owned by one Munir Ahmad but during the course of investigation it surfaced to the scene that said Munir Ahmad belongs to District Bahawalnagar and is a Tailor by profession; that as the respondent filed reply to the Show Cause Notice, issued in the name of the Registered Person, before the Commissioner, Inland Revenue, Lahore he was well aware about the bio-data of the Client who engaged him as counsel; that the jurisdiction of the Investigating Officer to issue summons in the name of any person under Section 37(ii) of the Act for the purpose to furnish evidence or to produce documents, has not been considered by the learned Single Judge; that under Article 9 (2) of the Qanun-e-Shahadat Order, 1984 (“Order”) the respondent, being professional lawyer, is bound to disclose about the identity of the Client who hired his legal services to represent the Registered Person before the Commissioner, Inland Revenue, Lahore; that the learned Single Judge has not taken into consideration the fact that notice under Section 37 of the Act was issued to the respondent just requiring him to disclose identity of the Client who was acting on behalf of the Registered Person; that the learned Single Judge has mainly based her findings on Article 9 of the Order but no independent findings have been given *qua* the fate of summons issued in the name of the respondent under Section 37 of the Act; that the respondent, being responsible citizen, is bound to facilitate the investigation of the case being conducted

in a scam of billions of rupees; that the learned Single Judge has accepted the writ petition mainly for the reason that the communication between the respondent and the Client being privileged one the respondent was not bound to disclose him before the Investigating Officer but as a matter of fact, the respondent was not being asked about any communication undertaken by him with his Client rather he was only being asked to unveil the identity of his Client; that the case-law relied upon by learned Single Judge, while accepting the writ petition, being quite distinguishable was not applicable in the facts and circumstances of the present case and that in case the respondent does not facilitate the department to unearth the Client/person, who played havoc with the National Exchequer, perhaps the department would not be able to hold investigation of the case in an efficient manner.

4. The learned Law Officer, who has entered appearance on Court's call, submits that the respondent is not bound to disclose facts which may adversely affect his Client and if such a practice is allowed to continue the very foundation of the legal profession which hinges upon confidentiality and privileged communication *inter-se* the counsel and client will stand severely undermined; that if the department is conducting investigation of a criminal case it can utilize all the available resources but, in no manner, it can compel the respondent to disclose any fact which may prejudice the case of his Client; that according to Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution), fair trial is a vested right of every accused and in case the respondent is compelled to disclose the identity of his Client, the same would adversely affect his case and his right guaranteed under Article

10-A would be infringed; that even in the United State of America, the communication and discussion *inter-se* the counsel and the client is privileged and no one can compel a counsel to disclose the same. To fortify his last noted contention, the learned Law Officer has referred the cases of Swindler & Berlin ET AL. v. United State, (524 U.S 399 (1998)), Muhammad Maqsood Sabir Ansari v. District Returning Officer, Kasur and others (PLD 2009 SC 28) and Syed Ali Nawaz Gardezi v. Lt. Col. Muhammad Yusuf (PLD 1963 SC 51); that the lawyers are under bounden duty to maintain confidentiality relating to a matter in which he represents his client in view of the law laid down in Municipal Corporation of Greater Bombay and another, Petitioners v. Vijay Metal Works, Bombay, Respondent (AIR 1982 Bom 6); that according to Article 12 of the Order even a person, other than an advocate, who comes across any communication *inter-se* the counsel and client cannot be compelled to disclose the same before any authority; that according to the Pakistan Legal Practitioners and Bar Council Act, 1973 and the Rules made thereunder all the members of the Bar are under obligation to maintain high standard of professional integrity and dignity specially with reference to their duties towards the clients; that Canon 4 of the Model Code of Professional Responsibility (American Bar Association) governs the privilege which often is clarified by the committees of the Association in informal and formal opinions and in Formal Opinion 23, the Committee concerned on Ethics and Professional Responsibility, Formal Op.23 (1980) opined that information regarding whereabouts of a client also falls within the category of privileged communication; that a counsel cannot be compelled even to appear before any Authority, in any matter, relating to his client; that as per

Section 126 of the Evidence Act, 1872, no barrister or pleader shall disclose any communication undertaken with his client.

5. Learned counsel appearing on behalf of the respondent instead of addressing the Court has toed the line of learned Law Officer.

6. We have heard learned counsel for the parties at considerable length and have also gone through the documents annexed with this appeal in addition to the case-law cited at the bar.

7. The crux of the arguments advanced by learned counsel for the appellant is that section 37 *ibid* empowers an investigating officer to summon any person in relation to investigation of a matter irrespective of the fact as to whether he has an active role in commission of the offence, under investigation, or not. In our view, to appreciate the said contention, section 37 of the Act, for convenience, is reproduced herein below:-

“37. Power to summon persons to give evidence and produce documents in inquiries under the Act.-

(1) Any officer of Inland Revenue shall have powers to summon any person whose attendance he considers necessary either to tender evidence or to produce documents or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

(2) Any person summoned under sub-section (1) shall be bound to attend either in person or by an authorised agent, as the officer of sales tax may direct;

Provided that a person who is exempted from personal appearance in a court under section 132 and 133 of the Code of Civil Procedure (V of 1908), shall not be required to appear in person.

(3) Any inquiry before an officer of sales tax shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Pakistan Penal Code (Act XLV of 1860)."

The afore-quoted provision shows that an officer of Sales Tax/Inland Revenue conducting an investigation/inquiry into a matter is empowered to summon any person to give evidence or to produce documents or to perform any other act relating to the inquiry. In our view, as the respondent was not equipped with any material relating to the criminal case, under investigation before the Investigating Officer, he could neither be summoned to tender evidence nor could he be required to produce any document. Now the question which boils down for determination by this Court is as to whether an officer of the Sales Tax/Inland Revenue can summon an advocate while dealing with an investigation of a criminal case under the Act. In this regard, we are of the view that unless the advocate is personally involved in the commission of an offence cognizable under the Act, he enjoys immunity from appearance before the said officer. There is no denying the fact that counsel-client relationship being fiduciary in nature cannot be allowed to be betrayed at any cost. If the learned Members of the Bar are compelled to disclose about any fact, which otherwise form part of privileged communication, the entire legal system will collapse. Even otherwise, Article 12 of the Order provides a shield to a counsel against disclosure of confidential communication which takes place *inter-se* counsel and client during the course of the agency. The said principle enjoys universal acknowledgement. The Supreme Court of United Kingdom in the case of Prudential PLC and another v. Special Commissioner of Income Tax and another (2013 SCMR 403 (U.K)) while dealing with the importance of the privileged

communication *inter-se* the counsel and client has *inter-alia* ruled as under: -

“39. There is no doubt that the argument for allowing this appeal is a strong one, at least in terms of principle, as anyone reading Lord Sumption’s judgment can appreciate. LAP is based on the need to ensure that a person can seek and obtain legal advice with candour and full disclosure, secure in the knowledge that the communications involved can never be used against that person. And LAP is conferred for the benefit of the client, and may only be waived by the client; it does not serve to protect the legal profession. In light of this, it is hard to see why, as a matter of pure logic, that privilege should be restricted to communications with legal advisers who happen to be qualified lawyers, as opposed to communications with other professional people with a qualification or experience which enables them to give expert legal advice in a particular field.”

Further, the Supreme Court of United States in Upjohn Co. v. United State (449 U.S. 383 (1981)) while highlighting the importance of privileged communication between the counsel and client has *inter-alia* held as under: -

“The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. 8 J. Wigmore, Evidence 2290 (McNughton rev. 1961). Its purpose is to encourage full and frank communication between attorneys and their clients, and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer’s being fully informed by the client.....”

Moreover, the House of Lords in the consolidated appeals titled Regina v. Debry Magistrates Court ([1995] UKHL 18), while

rendering their opinion, highlighted the importance of confidentiality attached to the counsel-client communication in the following words:-

“48. The case is thus clear early authority for the rule that the privilege is that of the client, which he alone can waive, and that the court will not permit, let alone order, the attorney to reveal the confidential communications which have passed between him and his former client. His mouth is shut forever.”

The above jurisprudence shows that counsel-client privilege enjoys a pivotal role in the legal system with the result that no authority is permitted to enquire from an advocate about any matter which he has come across during the course of his engagement with his client.

8. Learned counsel for the appellant has repeatedly argued that the respondent is being summoned just to disclose identity of person/Client who has camouflaged himself during investigation of a criminal case. As far as identity of person/Client representing the Registered Person is concerned, suffice it to note that as Show Cause Notice was issued to the Registered Person who was being represented by the respondent before the Commissioner Inland Revenue, Lahore is under legal and ethical duty not to disclose the same to anybody else including the Investigating Officer which may prejudice his case before any authority. If the department is so curious to unearth the identity of the person/Client representing the Registered Person it can order for personal appearance of the person/Client who has filed reply to the Show Cause Notice and in the event of his default, penal action can be initiated against such person but by no stretch of imagination the departmental authorities can compel the respondent to expose the personal

bio-data of his Client. Furthermore, as per Formal Opinion 23, referred supra, even the question regarding whereabouts of a client forms part of privileged communication and counsel should not unveil the same before any authority.

9. It is of common knowledge that the affairs of the members of the legal fraternity are being governed under the Pakistan Legal Practitioners and Bar Councils Act 1973 as well as the Pakistan Legal Practitioners and Bar Councils Rules, 1976. The Chapter XII of the said Rules deals with the canons of Professional conduct and Etiquette of Advocates. Further, part B of the said Chapter provides guidelines for counsel-client relationship. According to rule 134 of the said Rules a member of a Bar is under bounden duty to maintain high standards of his profession in addition to his own dignity. In our view, if a counsel opts to share anything with somebody about which he came across during the period of his engagement by a particular party, perhaps on the one hand he would be lowering down the dignity of the profession and on the other would be guilty of misconduct. Overall reading of Chapter XII makes it clear that an Advocate is bound to maintain confidentiality about the facts which came into his knowledge as a result of engagement.

10. Learned counsel for the appellant has vehemently argued that as colossal loss has been caused by the Registered Person to the National Exchequer, the respondent, being responsible citizen, is bound to disclose the identity of the person/Client representing the Registered Person just to enable the Investigating Officer to conduct the investigation of criminal case in a transparent and fair manner. In this regard, we are of the view that the Investigating Officer can use all means available to him under the Act, but in no way, can ask the

respondent to disclose identity of his Client. If such approach is permitted to be followed perhaps nobody would depend upon his counsel while sharing information/material in respect of a particular matter. Insofar as question regarding loss of billions of rupees to the National Exchequer is concerned, suffice it to observe that this court has no sympathy for the looters, swindlers and plunderers but at the same time cannot allow a public functionary to force a counsel to disclose the antecedents of his client which otherwise falls under privileged communication.

11. It is admitted that criminal case has been registered against the Registered Person relating to fraudulent tax adjustments prior to the engagement of the respondent as a counsel by the Registered Person. There is nothing on record to establish the involvement or connivance of the respondent in the alleged default of the Registered Person. The investigation of the Registered Person has no nexus with the professional duties of the respondent. The Investigating Officer cannot require the respondent to share with him information regarding identity of his client merely due to the fact that he represented the Registered Person in the proceedings pending before the Commissioner, Inland Revenue, Lahore.

12. For the above reasons we hold that the appellant has miserably failed to make out a case for interference in the impugned judgment. Consequently, judgment of the learned Single Judge, dated 16.01.2014, is upheld and the appeal in hand is **dismissed** with no order as to costs.

13. Before parting with this order, we acknowledge the valuable assistance rendered by the learned Law Officer, his

associate and the Research Officer of the Lahore High Court Research Centre.

(Syed Mansoor Ali Shah)
Judge

(Shujaat Ali Khan)
Judge

Announced in Open Court on 22.04.2016.

(Syed Mansoor Ali Shah)
Judge

Approved for Reporting.

G.R.*