Superintendent & Remembrancer Of Legal ... vs Satyen Bhowmick And Ors on 15 January, 1981

Equivalent citations: 1981 AIR 917, 1981 SCR (2) 661, AIR 1981 SUPREME COURT 917, 1981 (2) SCC 109, 1981 CRIAPPR(SC) 104, 1981 SCC(CRI) 342, 1981 BBCJ 46, 1981 (2) SCR 661, 1981 CRI. L. J. 341, (1981) 2 SCR 661 (SC) 1981 CRILR(SC MAH GUJ) 136, 1981 CRILR(SC MAH GUJ) 136

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, A. Varadarajan

PETITIONER:
SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS, WEST BENGAL

Vs.

RESPONDENT:
SATYEN BHOWMICK AND ORS.

DATE OF JUDGMENT15/01/1981

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)

CITATION:
1981 AIR 917 1981 SCR (2) 661
1981 SCC (2) 109 1981 SCALE (1)179

ACT:
Official Secrets Act -Section 14-Scope of-Advocate taking notes on evidence of witnesses in respect of proceedings held in camera-Court, if could prohibit taking notes-Court if could compel the advocate to produce his notes for inspection-Advocate if could claim privilege under section 126 of Evidence Act.

HEADNOTE:
Section 14 of the Official Secrets Act provides that in addition to and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act, the

prosecution makes an application that publication of any evidence to be given would be prejudicial to the safety of the State. The Court may make an order prohibiting the publication of evidence to be given or of any statement to be made in the course of proceedings if it is of opinion that the proceedings would be prejudicial to the safety of the State.

On the allegation that the accused had passed on some military secrets to the enemy resulting in serious detriment to the safety and security of the country the accused were charge-sheeted under sections 3, 9 and 10 of the Act.

During the commitment inquiry the prosecution prayed that the accused should not be allowed to have access to or be given copies of statements of witnesses recorded by the Magistrate. The defence lawyers were allowed to take notes of the statements of witnesses. When the Magistrate asked the defence lawyers to produce their note-books for perusal, they claimed privilege under section 126 of the Evidence Act on the ground that they contained certain instructions given to them by the accused which amounted to privileged communication and that for this reason they could not be looked into by the Court. The Magistrate upheld the objection.

Purporting to follow one of its earlier decisions the High Court in a revision filed by the State held that the Magistrate should have taken legal action against the lawyer for flouting its order by not producing the note-books on the ground of privilege. It also held that in view of the provisions of section 14 of the Act not only could the public be excluded from the hearing but even the statements of witnesses recorded by the Court could not be made available to the accused or his counsel.

In appeal to this Court it was contended that the opening words of section 14 really amounted to a non-obstante clause overriding the provisions of all Acts including the Code of Criminal Procedure and the mode of trial contemplated by section 14 would take precedence over the mode of trial provided by s. 251-A
662
or s. 252 of the Code and (2) the Magistrate could not only hold the proceedings in camera but could exclude publication of any evidence, including the right of accused to get notes of the statements recorded during the police investigation or during inquiry or trial.
^

HELD: The opening words of section 14 "in addition and without prejudice to any powers which a Court may possess" clearly reveal that the intention of the legislature was to give only an enabling additional power to the Court regarding holding of the proceedings in camera. The legislature never intended that the inherent powers possessed by the Court to hold the proceedings in camera in suitable cases should in any way be affected by section 14.

The intention was merely to give an additional power to strengthen the hands of the Court for holding the proceedings in camera where the necessities of the situation demanded. [669F-H]

It is well settled that a non-obstante clause has the effect of overriding the provisions of a law or of the law in which the said clause is inserted. The non-obstante clause cannot reasonably be read as overriding anything contained in any relevant existing law which is inconsistent with the new enactment. Normally a non-obstante clause is always expressed in a negative form i.e. by using the words "notwithstanding anything contained" or "anything contained in previous law shall not affect the provisions of a particular Act" and so on.

[670B-E]

In the instant case the words "in addition and without prejudice to any powers" cannot be construed to be a non-obstante clause at all so as to override other provisions of the Act or those of the Code of Criminal Procedure.

[670E]

Aswini Kumar Ghosh & Anr. v. Arabinda Bose & Anr. [1953] S.C.R. 1 referred to.

Interpretation of Statutes, Vepa P. Sarathi, 2nd Edn. referred to.

Section 14 not only confers powers on a Court for holding the proceedings in camera but also to exclude publication of any evidence which includes the right of the accused to get copies of the statements recorded during police investigation or during the inquiry or during trial. [670G]

The right to obtain copies of statements of witnesses recorded by the police is a very valuable right because without having those statements in his possession, it would be difficult for the accused to defend himself effectively. If an accused is not supplied either the statements recorded by the police or the statements of witnesses recorded at the inquiry or the trial he cannot defend himself and instruct his lawyer to cross-examine the witnesses successfully and effectively so as to disprove the prosecution case. [671D-E]

Section 14, therefore. could never have intended to take away or deprive an accused of this valuable right which has been conferred on him by the Criminal Law of the land. The first part of the section does not prohibit or exclude giving to an accused person copies of the statements of witnesses either during police investigation or in court but is mentioned merely as a motive or reason for holding proceedings in camera. The entire sentence starting from "application is made by the prosecution on the ground that the publication of any evidence to be given or of any statement to be made in the course of the
663
proceedings would be prejudicial to the safety of the State" that all or any portion of the public should be excluded

during any part of the hearing has to be read conjunctively as one composite sentence and there is no warrant for truncating it into two separate parts dealing with different subject matters. The words 'publication of any evidence' do not indicate that the accused should not be allowed access to the evidence recorded by the Court: they are merely made to highlight the ground for holding the proceedings in camera because if public are allowed to be present during the hearing the evidence which is recorded in their presence will amount to publication and it is in that sense alone that the word publication has been used in section 14. [671F-H]

If it is held that section 14, by using the word 'publication' deprives an accused of getting any copies of the statement of witnesses or of the judgment under section 548 of the Code of Criminal Procedure or Criminal Rules of Practice framed by the High Court then it would be difficult to uphold the constitutional validity of section 14 because in that event the procedure would become extremely unreasonable, harsh and prejudicial to the accused as a result of which the case would have been tried according to a procedure which was not in consonance with the provisions of article 21 of the Constitution. [672G-H]

The apprehension that if the accused was allowed access to copies of statements recorded by the police or the Magistrate it would amount to publication, is not well founded. Under the provisions of section 5 of the Act, any person who is found in possession or control of any document or information and makes it public would also be deemed to have committed an offence under that section and would be prosecuted and liable to a heavy penalty. This prohibits even the lawyers from disclosing the evidence outside the Court.

[673B-C]

In the instant case the Magistrate was fully justified in not compelling the lawyer to surrender his register which contained a part of the privileged communication and even if the lawyer had taken down the evidence in extenso for the limited purpose of using it to defend the accused or cross-examine the witnesses, he could not be prevented from doing so, nor does section 14 contemplate or envisage such a course of action. [673E-F]

The Superintendent and Remembrancer of Legal Affairs, West Bengal v. Satyen Bhowmik & Ors., A.I.R. 1970 Calcutta 535, overruled.

Anthony Allen Fletcher v. State 78 Calcutta Weekly Notes 313 approved.

Naresh Shridhar Mirajkar & Ors. v. State of Maharashtra

JUDGMENT:

& CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 368 of 1975 Appeal by special leave from the Judgment and Order dated 5-4-1974 of the Calcutta High Court in Crl. Revn. No. 193

of 1971.

D. N. Mukherjee, M. M. Kshtriya, A. K. Ganguli and G. S. Chatterjee for the appellant.

T. S. Arora for RR 1,3 to 17.

Uma Dutta for Respondent No. 2.

The Judgment of the Court was delivered by FAZAL ALI, J. This appeal by special leave is directed against a judgment dated April 5, 1974 of the Calcutta High Court by which the order of the trial court was set aside and the case was remitted for fresh hearing in the light of the directions given by the High Court. The High Court further directed that the Commitment Inquiry held by Mr. R. P. Roy Chowdhury who was the Trial Magistrate, should be held by some other Magistrate.

The facts of the case lie within a very narrow compass and the central controversy turns upon the interpretation of s. 14 of the Official Secrets Act., 1923 (hereinafter referred to as the 'Act'). It appears that a complaint was filed on the 20th March 1969 against 38 accused persons under s. 120B of the Indian Penal Code read with sections 3 9, and 10 of the Act. The charges against the accused were no doubt very serious and concerned the security of the State, as the accused persons are alleged to have passed on some military secrets to the enemy resulting in serious detriment to the safety and security of our country. Of the 38 accused persons named in the chargesheet, only 17 were in custody and a commitment inquiry into the charges was held against them by the trial Magistrate.

During the commitment inquiry the State filed an application under s. 14 of the Act praying that the proceedings be held in camera and public should be excluded from attending the hearings of the case because the statements made in the course of the proceedings would be prejudicial to the safety of the State. It was also prayed that apart from excluding the public from the hearings of the proceeding, the accused should not be allowed to have access to, or be given copies of, the statements of the witnesses recorded by the Magistrate or those recorded earlier during police investigation. The Magistrate partly allowed the application but permitted the defence lawyer to take copious notes of the statements of witnesses in order to be in a position to cross-examine the witnesses. Subsequently, the Magistrate directed the lawyer to produce his notebook so that the Magistrate may examine if only a summary of the evidence had been taken by the lawyer or the statements had been taken in extenso in which case it would amount to publication and, therefore, would be barred by s. 14 of the Act. The lawyer of the defence appearing before the Magistrate first agreed to show his note-book but later claimed privilege under s. 126 of the Evidence Act on the ground that the register in which he had taken down the notes of the evidence also contained certain instructions given to him which amounted to a privileged communication and could not be looked into by the Court. In this view of the matter the Magistrate found himself helpless and proceeded with the inquiry. As the prosecution was not satisfied with the procedure adopted by the Magistrate, the State filed a revision before the High Court for quashing of the order of the Magistrate in allowing the lawyer to cross-examine the witnesses without impounding the notes comprising the statements of the witnesses taken down in extenso by the lawyer.

The High Court after hearing the counsel for the parties thoroughly examined the entire position and ultimately came to a finding that the Magistrate should have taken legal action against the lawyer for flouting the orders of the Court by not producing the notebook on the plea of privilege which did not hold any water. The High Court was further of the opinion that in view of the provisions of s. 14 of the Act not only could the public be excluded from taking part at the hearing but even the statements of witnesses recorded by the court or other documents could not be made available to the accused or his counsel nor could copies of the said documents be given to the accused. In this view of the matter the High Court quashed the order of the Magistrate and remitted the case to the trial court to be heard by some other Magistrate in view of the directions given by it. Hence, this appeal to this Court.

We have been taken through the entire judgment of the High Court by the learned counsel for the parties. The two Judges who decided the case agreed in the conclusion but have given separate reasons for coming to the conclusion arrived at by them.

The only question that is to be determined in the present appeal is as to the scope and ambit of s. 14 of the Act. Mr. Mukherjee, appearing for the State, however, submitted that on a close scrutiny of the language employed in s. 14, it would appear that the statute contains a two- fold bar-(1) that publication of any evidence cannot be given, and (2) that public should be excluded from attending the hearing of the proceedings. The learned counsel appearing for the respondent submitted that s. 14 does not in any way deprive the valuable right of the accused to get copies of the statements of witnesses recorded during the commitment inquiry or the documents or statements recorded by the police which is a statutory right conferred on the accused under the Code of Criminal Procedure and the Criminal rules framed thereunder by various High Courts. All that s. 14 prohibits is that the public be excluded from attending the hearings of the inquiry. Since the Magistrate had already acceded to this prayer of the accused, there was nothing more that could be done by him.

It appears that the Calcutta High Court has been consistently taking the view as adumbrated by the learned counsel for the appellant, viz., that the court has a discretion under s. 14 of the Act not only to hold the proceedings in camera by excluding the public but also has the discretion to prohibit publication of any evidence given in the course of the proceedings.

In Ramendra Singh v. Mohit Choudhary & Ors. a Division Bench of the Calcutta High Court went to the extent of holding that the Act prescribes a special procedure and, therefore, overrides the procedure for trial under s. 251A or 252 of the Code of Criminal Procedure as amended by the Act of 1955. In this connection, the High Court observed as follows:-

> "The prosecution is under the Official Secrets Act and it is unlikely that the Legislature would provide for a camera trial and at the same time provide for giving copies of all documents under section 173 to the accused. This strikes at the root of secrecy and goes counter to the provisions of trial in camera and this is why the Legislature purposely used the word 'complaint' and provided for a special procedure regarding cognizance. This view finds support from the provisions of Section 14 of the Act providing for camera trial.

> The Official Secrets Act provides for a special procedure of complaint and if it was upon a complaint by a person authorised under the Act, cognizance was taken under Section 190(1) (a) and not under Section 190(1) (b). The procedure for trial would therefore, be under Section 252 of the Code of Criminal Procedure and not under Section 251A. In respect of prosecution under Section 252 of the Code of Criminal Procedure there is no compulsory provision for giving copies of documents referred to under Section 173 and the opposite parties are not, therefore, entitled to copies as of right."

The decision under appeal follows the aforesaid decision and has taken the same view. In a later decision in In Re Anthony Allen Fletcher v. State, the Calcutta High Court seems to have struck a slightly different note. In that case, the court was considering the question of bail and the exclusion of the public from attending the hearing of the case, where the following observations were made:

> "On a Consideration of the provisions of the Statute as also the imprimatur of the judicial decisions, we ultimately hold that in view of the specific provisions contained in Section 14 of the Official Secrets Act, 1923 when it reasonably appears to the Court that a trial eatiis apertis would have the risk of any publication of any evidence to be given or any statements to be made in course of the proceedings would be prejudicial to the safety of the State, the Court in exercise of its discretion can exclude the public from such proceedings and that this power is in addition to the inherent power exercised by the Court to do justice."

It may be noticed that the High Court did not go to the extreme of holding that even the statements or evidence recorded by the Magistrate in the course of the proceedings would have to be excluded under s. 14. All that was held by the High Court was that the Court has a discretion to exclude the public from the proceedings and that this power of exclusion was available to the court apart from the inherent power which every Court possessed in this matter. With due respect we find ourselves in agreement with the view taken by the Calcutta High Court in Fletcher's case (supra) as mentioned above. However, we find ourselves unable to agree with the view taken by the High Court in the judgment under appeal for the reasons that we shall give hereafter.

We might also mention that s. 14 was interpreted by this Court in Naresh Shridhar Mirajkar & Ors. v. State of Maharashtra & Anr., where this Court while dealing with the question of holding proceedings in camera observed as follows:-

> "Having thus enunciated the universally accepted proposition in favour of open trials, it is necessary to consider whether this rule admits of any exceptions or not. Cases may occur where the requirement of the administration of justice itself may make it necessary for the court to hold a trial in camera. While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the Judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a case is satisfied that the very purpose of finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze is it

> or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully? .....That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course..... It is the fair administration of justice which is the end of judicial process, and so, if ever a real conflict arises between fair administration of justice itself on the one hand, and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice."

While interpreting the scope and ambit of s. 14 this Court in Naresh Shridhar Mirajkars case (supra) observed as follows:-

> "It would be noticed that while making a specific provision authorising the court to exclude all or any portion of the public from a trial, s. 14 in terms recognises the existence of such inherent powers by its opening clause."

It may be pertinent to note that while this Court was fully alive to the contents of s. 14, it neither held that the opening part of the section amounted to a non obstante clause nor that the section in any way deprived the accused of the right of getting copies of the statements of witnesses recorded by the court or before the police. In the aforesaid case, the Supreme Court was concerned with a defamation case but the observations made by this Court fully apply to the facts of the present case also on the view that we take on the scope and ambit of s. 14 of the Act.

There can be no doubt that an open trial held in public is the general rule and seems to be the very concomitant of a fair and reasonable trial, yet the public can be excluded from the hearings of the trial and the proceedings can be held in camera only under very exceptional circumstances as pointed out by this Court in the aforesaid case. This being the position, section 14 must be interpreted so as to fall in line with the observations made and the test laid down by this Court regarding the doctrine of holding proceedings in camera. A close and careful scrutiny of s. 14 would itself clearly show that the section does not contemplate the type of exclusion that the High Court seems to think.

It is true that offences under the Act are very serious offences and maintenance of secrecy is of the very essence of the matter but that by itself will not justify the legislature to pass an Act so as to deprive an accused of the valuable right to defend or for that matter to stifle the defence itself. The importance of holding trial in camera in cases under the Official Secrets Act has been emphasised in R.V. Socialist Worker Printers and Publishers Ltd. & Anr., where Lord Widgery, C. J., observed as follows:-

> "When one has an order for trial in camera, all the public and all the press are evicted at one fell swoop and the entire supervision by the public is gone.. The actual conduct of the trial, the success or otherwise of the defendant, does not turn on this kind of thing, and very often the only value of the witness's name being given as opposed to it being withheld is that if it is published up and down the country other witnesses may

> discover that they can help in regard to the case and come forward."

With this background we shall now proceed to examine the language of section 14 of the Act itself which may be extracted thus:-

> "14. Exclusion of public from proceedings. In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public."

To begin with, the opening words of the section, namely, 'In addition and without prejudice to any powers which a Court may possess' clearly reveal that the intention of the legislature was to give only an enabling additional power to the court regarding holding the proceedings in camera. In other words, the legislature never intended that the inherent powers possessed by the court to hold the proceeding in camera in suitable cases would be in any way affected by section 14 but the intention was merely to give an additional power to strengthen the hands of the court for holding the proceedings in camera where the necessities of the situation demanded. Thus, to begin with, section 14 is merely an enabling and not a barring provision. Mr. Mukherjee argued that the opening words of section 14, referred to above, really amount to a non-obstante clause overriding the provisions of all Acts including the Code of Criminal Procedure and the mode of trial contemplated by s. 14 would take precedence over the mode of trial provided by s. 251A or 252 of the Code of Criminal Procedure. We are, however, unable to agree with this extreme argument which in fact overstates the law. It is well settled that a non-obstante clause has doubtless the effect of overriding the provisions of a law or of the law in which the said clause is inserted. Sarathi in 'Interpretation of Statutes' defines a non-obstante clause thus:-

> "A section sometimes begins with the phrase 'notwithstanding anything contained etc.'. Such a clause is called a non-obstante clause and its general purpose is to give the provision contained in the non- obstante clause an overriding effect in the event of a conflict between it and the rest of the Section."

In Aswini Kumar Ghosh & Anr. v. Arabinda Bose & Anr. Sastri, C.J., held that the non-obstante clause cannot reasonably be read as overriding anything contained in any relevant existing law which is inconsistent with the new enactment. These are the well settled rules of interpretation of a non-obstante clause. Normally, a non- obstante clause is always expressed in a negative form, that is to say, by using the words 'notwithstanding anything contained' or 'anything contained in a previous law shall not affect the provisions of a particular Act' and so on. In the instant case, the words 'in addition and without prejudice to any powers cannot be construed to be a non obstante clause at all

so as to override other provisions of the Act or those of the Code of Criminal Procedure. In these circumstances, therefore, the argument of Mr. Mukherjee that the opening words of s. 14 amount to a non-obstante clause cannot be accepted on a simple and plain interpretation of the opening part of section 14.

This takes us to the substantive portion of the Act on which reliance was placed both by Mr. Mukherjee and by the High Court so as to hold that the section not only conferred powers on a court for holding the proceedings in camera but also to exclude publication of any evidence which includes the right of the accused to get copies of the statements recorded during police investigation or during the inquiry or during trial. With great respect to the learned Judges of the Calcutta High Court, we feel that the main part of the section has not been correctly interpreted by them. The High Court seems to have taken for granted that section 14 consists of two separate parts, one, providing for a trial in camera, and the other prohibiting publication of evidence. By the expression 'publication of evidence' is meant, according to the High Court, the power to deprive an accused of the right to get copies of the evidence recorded by the court or the statements recorded during the police investigation. We might mention here that as s. 13(3) of the Act clearly provides that no court shall take cognizance of any offence under the Act except upon a complaint made by or under the authority of the Government or any person empowered by it, it is manifest that s. 251A of the Code of Criminal Procedure, as amended by the Act of 1955, will not apply because the present case was not instituted on a police report but on the basis of a complaint. As the occurrence had taken place before the Code of 1973, therefore, the provisions of s. 207 of the Code of 1973 would not apply to the present case.

The question, however, is: does the first part of s. 14 empower the court to take away the valuable right of an accused of getting copies of the statements recorded by the Magistrate before the Court ? Even before the amending Act of 1955, under the criminal rules framed by various High Courts, an accused was undoubtedly entitled to have copies of the statements of witnesses recorded by the police. This is a very valuable right because without having the statements recorded by the police in his possession, it would be difficult, if not impossible, for an accused to defend himself effectively. It is well settled that fouler the crime the higher should be the proof. If an accused is not supplied either the statements recorded by the police or the statement of witnesses recorded at the inquiry or the trial, how can he possibly defend himself and instruct his lawyer to cross-examine the witnesses successfully and effectively so as to disprove the prosecution case. We, therefore, think that s. 14 could never have intended to take away or deprive an accused of this valuable right which has been conferred on him by the criminal law of the land. The legislature when it passed the Act in 1923 was aware of the provisions of the Code of Criminal Procedure which had conferred the valuable right on an accused in order to defend himself. Indeed, if any of these rights were to be taken away, we should have expected a clearer and more specific language used in section 14 to connote such an intention. Our reading of s. 14 is merely this: that the first part of the section does not prohibit or exclude giving to an accused copies of the statements of witnesses either during police investigation or in court but is mentioned merely as a motive or reason for holding the proceedings in camera. The entire sentence starting from 'application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall

be excluded during any part of the hearing' has to be read conjunctively as one composite sentence and there is no warrant for truncating it into two separate parts dealing with different subject matters. The words 'publication of any evidence' on which great stress has been laid by Mr. Mukherjee and the High Court do not indicate that the accused should not be allowed access to the evidence recorded by the court, are merely made to highlight the ground for holding the proceedings in camera because if public are allowed to be present during the hearing the evidence which is recorded in their presence it will amount to publication and it is in that sense alone that the word 'publication' has been used in section 14.

Indeed, if the interpretation put by the High Court or by Mr. Mukherjee is accepted then the provisions of section 14 will have to be struck down as being violative of Arts. 14 and 21 of the Constitution of India.

This Court has now widened the horizon of the concept of liberty, as contained in Art. 21 so as to give the word 'procedure' a very wide connotation. In Maneka Gandhi v. Union of India while detailing the attributes of a fair trial as contemplated in Art. 21 this Court observed as follows:-

> "The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the best of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

Thus, if we hold that s. 14 by using the word 'publication' deprives an accused of getting any copies of the statement of witnesses or of the judgment under s. 548 of the Code of Criminal Procedure or Criminal Rules 308 and 310 framed by the Calcutta High Court, then it would be difficult to uphold the constitutional validity of s. 14 because then the procedure would become extremely unreasonable harsh and prejudicial to the accused as a result of which the case would have been tried according to a procedure which was not in consonance with the provisions of Art. 21 of the Constitution. This aspect of the matter does not appear to have been considered by the High Court perhaps because Maneka Gandhi's case (supra) came much later.

Mr. Mukherjee submitted that if the accused is allowed to have access to the statements recorded by the police or is given a copy of the statement recorded by the Magistrate, then it will amount to publication and will endanger the safety and security of the country because the accused or the lawyer who is defending the accused may publish the statements or disclose the same to other persons. This apprehension, in our opinion, is not well founded. The Act itself takes particular care of such a situation because under the provisions of s. 5 of the Act any person who is found in possession or control of any document or information and makes it public would also be deemed to have committed an offence under that section and would be prosecuted and entitled to a heavy penalty. This, therefore, prohibits even the lawyers from disclosing the evidence outside the court. So far as the arguments and the discussion of the evidence inside the court is concerned, so long as the proceedings are in camera the danger of publication is completely excluded.

The High Court had been rather bitter on the trial Magistrate when it observed that he could compel the lawyer to submit his register. The observations made by the High Court on the conduct of the Magistrate or on the lawyer were not at all called for because both of them were doing their duties according to law. On the view that we have taken, the Magistrate was fully justified in not compelling the lawyer to surrender his register which undoubtedly contained a part of the privileged communication and even if the lawyer had taken down the evidence in extenso for the limited purpose of using it to defend the accused or cross-examine the witnesses, he could not be prevented from doing so, nor does s. 14 contemplate or envisage such a course of action. The Magistrate also in declining to give copies of the statements concerned to the accused, took an erroneous view of s. 14 of the Act which, as we have already held, did not debar the Magistrate from giving copies to the accused for the purpose of his defence. Thus, we are satisfied that the judgment of the High Court under appeal is vitiated by an error of law and it has not correctly interpreted s. 14 of the Act. Similarly the earlier decision of the Calcutta High Court in Superintendent and Remembrancer of Legal Affairs, West Bengal v. Satyen Bhowmik & Ors. cannot be held to be good law and must be overruled.

Thus on an overall consideration of the facts and circumstances of the case and a true interpretation of the language employed in s. 14 of the Act, we reach the following conclusions:-

1. That s. 14 apart from providing that the proceedings of the Court may be held in camera under the circumstances men-

tioned in the Section, does not in any way affect or override the provisions of the Criminal Procedure Code relating to enquiries or trials held thereunder.

2. That s. 14 does not in any way deprive the valuable rights of the accused to get copies of the statement recorded by the Magistrate or statements of witnesses recorded by the police the documents obtained by the Police during the investigation as envisaged by criminal Rules 308 and 310 framed under the Code of Criminal Procedure by various High Courts nor does s. 14 in any way affect the right of the accused to get copies under s. 548 of the Code of Criminal Procedure.

3. That the opening words of s. 14 do not amount to a non obstante clause but are merely in the nature of an enabling provision reserving the inherent powers of the Court to exclude the public from the proceedings if the Court is of the opinion that it is just and expedient to do so.

4. That there was absolutely no impropriety on the power of the Magistrate in not taking action against the defence lawyer for his refusal to show his register because the lawyer had rightly claimed privilege under s. 126 of the Evidence Act as the register contained instructions given by the client which being privileged could not be disclosed to the Court. On a parity of reasoning we find no impropriety on the conduct of the lawyer in refusing to show the statement of witnesses recorded by the Court in extenso in order to prepare himself for an effective cross-examination of the witnesses. Hence the strictures passed by the High Court on the Magistrate as also on the lawyer of the defence were, in our opinion, totally unwarranted.

5. That if the lawyer of the defence or staff of the Court or any one who was not excluded from the hearing of the case made any attempt to disclose the contents of the documents or the statements of the witnesses, exposed himself to a prosecution on a charge under s. 5 of the Act.

For the reasons given above, we overrule the view of the High Court and the reasons given therefor that s. 14 of the Act prohibits the giving of copies of the statement concerned to the accused or that the lawyer is prohibited from taking the statements in extenso and had a duty to show the same to the court. We also overrule the view taken by the High Court regarding the interpretation of s. 14 of the Act.

We do not agree with the High Court that the case should be tried by some other Magistrate but as lot of time has elapsed, surely the Magistrate against whose orders revision was taken to the High Court must have been transferred by this time. Therefore, the case will now be inquired into by a Magistrate who is available in the light of the observations made by us. The appeal is disposed of accordingly.

N.K.A.