



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 2nd December, 2025*

+ *Pronounced on: 12th January, 2026*

W.P.(CRL) 2294/2017, CRL.M.A. 12975/2017,

CRL.M.A. 13878/2017

MCDONALDS INDIA LTD

Office at: 202-206, Tolstoy House

No. 15, Tolstoy Marg,

New Delhi, 110001

Through Mr. Vivek Kumar

Authorized Representative

.....Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Adv., Ms. Stuti Gujral, Adv., Mr. Vishwajeet Singh Bhati, Adv., Mr. Tasnimul Hassan, Adv., Ms. Priti Verma, Mr. Vipin Kumar, Advocates.

Versus

1. STATE OF NCT OF DELHI

Through PS Economic Offences Wing

Lodhi Colony/Qutub Instt. Area

New Delhi

.....Respondent No. 1

2. DEEPAK KHOSLA

S/o R.P. Khosla

R/o D-367 Defence Colony

New Delhi 110024

.....Respondent No. 2

Through: Mr. Amol Sinha, ASC for State along with Adv. Kshitiz Garg, Adv. Ashvini Kumar, Adv. Nitish Dhawan, Adv. Chavi Lazarus, Adv. Manan Wadhwa, Adv. Luv Mahajan.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. The present Petition has been preferred under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C), by the Petitioner Company, McDonalds India Pvt. Ltd. to quash and set aside the Impugned Order dated 20.05.2017 directing the Advocate for Petitioner to disclose the source of documents filed in the proceedings before the Ld. Additional Sessions Judge, as well as all proceedings consequential thereto, including the Order dated 22.07.2017 issuing Notice to the Advocates in the proceedings.

2. The central issue arising for consideration in this Petition is whether a Revisional Court, while exercising jurisdiction, can compel the Advocates representing a party, to file personal affidavits disclosing the “source” of documents placed on the judicial record.

3. *The brief facts* of the case are that a *Criminal Complaint, C.C. No. 473636/2016 titled Deepak Khosla v. Connaught Plaza Restaurants (P) Ltd.*, was filed by Respondent No. 2/Complainant against the Petitioner Company and others for offences under Ss. 409, 420, 423, 463, 465, 467, 468, 471, 474, 477-A / 34 / 120-B IPC, read with Ss. 191, 192, 196, 201, 202 Indian Penal Code. Application was filed by the Complainant under Sections 91 and 94 of the Cr.P.C, directing search and seizure at the premises of the Petitioner and others, which was allowed by Ld. ACMM *vide* Order dated 20.02.2017.

4. The Petitioner Company challenged this Order by filing a *Criminal Revision Petition No. 83/2017* before the Court of the Ld. Additional Sessions Judge (ASJ). During these proceedings, the Petitioner filed copy of two Applications originally filed by the Complainant in 2011 in a different forum/proceeding, to demonstrate the lack of urgency or basis for the search



warrants. On 04.03.2017, the Ld. ASJ granted an ex-parte stay on the operation of the search and seizure directions.

5. Respondent No. 2/Complainant filed an Application under Section 340 Cr.P.C. before the Ld. ASJ, alleging that the said 2011 Applications were not part of the Trial Court record at the time of the hearing on 04.03.2017. Respondent No. 2 alleged that these documents were surreptitiously placed on record or obtained through illegal means, potentially leaked from police or Court records, amounting to fraud and perjury.

6. The Ld. ASJ, while considering the Applications under Section 340 Cr.P.C and Section 121 Indian Evidence Act, *Vide the Impugned Order dated 20.05.2017* directed the Advocates for the Petitioner Company to file their respective *personal Affidavits disclosing the date and time when the typed copies of the Applications were filed/placed on record and the “source” of the contents of the said Applications*. Aggrieved by this direction, the Petitioner Company has filed the present Court.

7. The Impugned Order is challenged by the Petitioner primarily **on the grounds that the Ld. ASJ erred in embarking upon a preliminary inquiry under Section 340 Cr.P.C against the *legal representatives* of the accused, and that a potential accused cannot be compelled to give evidence against himself in a preliminary inquiry, being violative of Article 20(3) of the Constitution.**

8. This direction also violates *Section 126 Indian Evidence Act, 1872 (IEA)*. A legal professional is statutorily barred from disclosing any communication made to him in the course of his employment or the contents/condition of any document he has become acquainted with during



such employment. The privilege belongs to the client and cannot be waived without the client's express consent. Further, the exceptions to Section 126 IEA are not attracted. The documents in question were shared with counsel for the legitimate purpose of legal defense in anticipation of litigation.

9. The Petitioner alleges that the conduct of Respondent No. 2 is motivated to target the opposing counsels, thereby intimidating them and denying the Petitioner a legal representation of its choice.

10. The Petitioner asserts that the 2011 Applications were legitimately in their possession, having been served upon them in 2013 during proceedings before the Company Law Board in *CP No. 110/2013*.

11. The ***Respondent No. 2 has vehemently opposed the Petition*** on the grounds that Section 126 IEA is not an unconditional bar. It is submitted that in view of the Proviso (1) and (2) to Section 126, the privilege does not protect communications made in furtherance of an illegal purpose or facts showing that a crime/fraud has been committed since the employment began.

12. Respondent No. 2 has alleged that the documents were obtained illegally and were placed on the judicial record surreptitiously, to mislead the Court. This constitutes a "***fact observed***" by the advocate showing a crime/fraud committed *after* their engagement, which falls within the exception to privilege.

13. Reliance is placed on *Donald Weston v. Pearey Mohan Dass*, 13 IND CAS 335 to contend that there is no privilege against the Court. The Court is entitled to ask an advocate whether a charge is made on instructions and the source of such instructions/documents to maintain the purity of judicial proceedings.



14. It is submitted that advocates, being officers of the Court, owe a primary duty to the Court. If they place a document on record, they must be accountable for its source, especially when the authenticity or the manner of its filing, is questioned.

15. Respondent No. 2 has further submitted that the direction to file affidavits is an interlocutory step to determine whether the claim of privilege is sustainable or if the fraud exception applies.

16. It is asserted that the privilege belongs to the client, but the client did not claim it before the Ld. ASJ; rather, the advocates unilaterally refused to comply. There is no merit in the Petition which is liable to be set aside.

Submissions Heard and Record Perused.

17. The **core question before this Court** is whether the Ld. Revisional Court was justified in directing the Advocates for the Petitioner to file Affidavits disclosing the source of the documents filed by them in Court.

18. Section 126 of the Indian Evidence Act enacts a prohibition against the disclosure of professional communications. It states:

“126 - Professional communications:

No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure –



(1)any such communication made in furtherance of any illegal purpose ;

(2)any fact observed by barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation - The obligation stated in this section continues after the employment has ceased.”

19. The rationale, as observed by the House of Lords in *Three Rivers DC v. Bank of England* and accepted by Indian Courts, is that a man must be able to consult his lawyer in confidence, and this confidence must be inviolable to ensure the proper administration of justice.

20. In *Superintendent and Remembrancer of Legal Affairs v. Satyen Bhowmick* (1981) 2 SCC 109, the Supreme Court held that where contents of a document are privileged, no action can be taken against counsel for refusing to disclose the same.

21. However, this privilege is not absolute. The *Proviso to Section 126* carves an exception to the communications made in furtherance of any **illegal purpose** in respect of any fact showing that any **crime or fraud** has been committed since the commencement of employment.

22. When a client hands over a document to their Advocate for the purpose of legal defense, the act of handing over and the information regarding the origin of that document, is part of the professional confidentiality. The primary responsibility for the documents filed in Court lies with the Party i.e. the Client. To compel an advocate to disclose that “*Client X gave me this document*”, is to compel the disclosure of the



“source” of the documents is protected by Section 126 IEA. Such documents filed by the Counsel are at the behest of the client and for and on his behalf. By directing disclosure by the Advocate of the Petitioner to file the Affidavit regarding the proceedings in the Court, the Ld. ASJ has compelled the advocates to breach their professional duty, which falls squarely within the ambit of *“communication made to him in the course and for the purpose of his employment” and is protected by the Client-Advocate privilege under S.126 IEA.*

23. The Respondent No. 2’s contention that there is *“no privilege against the Court”* is a misapplication of the principle. While the Court can ask for the truth, it cannot compel a lawyer to disclose what the law expressly protects, absent a clear finding that the lawyer is conspiring in a fraud committed *during* the employment.

24. Respondent No. 2 relies heavily on the *Proviso*, alleging that the possession of the documents serves an illegal purpose or is evidence of a crime like theft of court records. However, for the *Proviso* to apply, there must be *prima facie* material to suggest that the communication itself was for an illegal purpose, which is not so. These documents were filed to demonstrate that there was no urgency to stay the impugned Order of Search and Seizure.

25. While a Court has the power to inquire into offences affecting the administration of justice, such an inquiry must be conducted within judicial contours. In the present case, the Petitioner has explained that the copies of 2011 Applications were served upon them in 2013, during proceedings before the Company Law Board in *CP No. 110/2013*, thereby demolishing the allegation of *theft or illegal procurement, made by the* Respondent No. 2.



26. In view of the aforesaid discussion, it is held that the Impugned Order dated 20.05.2017 fails to appreciate that the information sought is covered by the privilege between the client and the advocate. The exception of fraud was not *prima facie* established to warrant piercing this privilege, especially when a plausible explanation of service in CLB proceedings was available on record.

Conclusion:

27. The **Impugned Order** dated 20.05.2017, insofar as it directs the Advocates for the Petitioner to file personal affidavits disclosing the source of the documents, and all consequential proceedings arising therefrom including the Order dated 22.07.2017 issuing notice for contempt/non-compliance against the counsels, is **quashed**.

28. **The Petition is allowed** accordingly and the pending Applications, if any, are disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

JANUARY 12, 2026/R