INDIALAW



CIVIL

Client Confidence On Trial: Advocate-Client Privilege And The Limits Of Judicial Compelled Disclosure

AUTHOR Aaushi Doshi, Ishika Soni

PUBLISHED 17 January 2026

Introduction

The sanctity of advocate-client privilege lies at the heart of the adversarial justice system. Without the assurance of confidentiality, the right to effective legal representation would be reduced to a hollow procedural formality. In *McDonald's India Pvt. Ltd. v. State (NCT of Delhi) & Anr.*[1], the Delhi High Court was called upon to examine whether a court, in the exercise of its supervisory or revisional jurisdiction, can compel advocates to disclose the source of documents filed on behalf of their clients.

The judgment reaffirms the foundational principle embedded in Section 126 of the Indian Evidence Act, 1872, that professional communication between a lawyer and client are protected from disclosure, save in narrowly defined exceptional circumstances. The ruling draws a clear constitutional and statutory boundary between judicial inquiry and professional confidentiality, cautioning courts against transforming advocates into witnesses against their own clients.

The decision is significant for criminal procedure and for the broader architecture of legal ethics, constitutional safeguards under Article 20(3), and the integrity of adversarial litigation.

Table of contents

- Introduction
- Factual Background
- Legal Framework Governing Advocate-Client Privilege
  - Indian Evidence Act, 1872
  - Constitutional Safeguards
- Issues Before the Court
- Judicial Analysis and Reasoning
- Decision of the Court
- Conclusion

Factual Background

The controversy arose from a long-standing corporate dispute involving McDonald's India Pvt. Ltd., against whom a criminal complaint was filed by the Respondent No. 2, Deepak Khosla in this case, alleging offences under multiple provisions of the Indian Penal Code, including cheating, criminal conspiracy, breach of trust, forgery etc. In the course of the proceedings, the complainant moved an application under Sections 91 and 94 of the Code of Criminal Procedure, seeking search and seizure of documents from the premises of the petitioner company. The application was allowed by the Additional Chief Metropolitan Magistrate on 20th February 2017.

Aggrieved, McDonald's India preferred a criminal revision petition before the Court of the Additional Sessions Judge (ASJ). During the revisional proceedings, the petitioner placed on record copies of two applications originally filed by the complainant in 2011 before another forum. These documents were relied upon to demonstrate the absence of urgency and to challenge the justification for coercive search and seizure. On 4th March 2017, the ASJ granted an ex parte stay on the execution of the search order.

Subsequently, the complainant alleges that the documents relied upon by the petitioner were never part of the trial court record and had been illegally procured or surreptitiously placed on file. An application under Section 340 Cr.P.C. was filed, accusing the petitioner and its legal representatives of fraud, perjury, and abuse of process.

By an order dated 20th May 2017, the ASJ directed the advocates of McDonald's India to file personal affidavits disclosing the date, time, and source from which the impugned documents were obtained. This direction was followed by a further order dated 22nd July 2017, issuing notices to the advocates for the non-compliance with the earlier order.

Challenging these direction and orders, McDonald's India approached Delhi High Court under Articles 226 and 227 of the Constitution read with Section 482 of Cr.P.C.

Legal Framework Governing Advocate-Client Privilege

Indian Evidence Act, 1872

Section 126 establishes an absolute bar on the disclosure by legal professional including Barrister, Vakil, and Advocate of:

- Communications made in the course of their employment;
- Contents or conditions of documents acquired during the professional engagement;
- Legal advice rendered to a client during the course of employment.

The privilege belongs to the client, not the advocate, and continues even after the termination of professional engagement.

Exceptions to it includes: disclosure is permitted only where-

- The communication is made in furtherance of an illegal purpose; or
- The advocate observes facts showing that a crime or fraud has been committed after the commencement of employment.

Constitutional Safeguards

- Article 20(3) protects individuals from being compelled to incriminate themselves, a protection that extends indirectly where disclosure through counsel would effectively compel self-incrimination.
- Article 21 guarantees fair procedure and effective legal representation.

Issues Before the Court

1. Whether a revisional court can compel advocates to disclose the source of documents filed on behalf of their client?
2. Whether such compulsion violates Section 126 of the Indian Evidence Act, 1872?
3. Whether advocates can be subjected to affidavits and contempt proceedings for asserting statutory privilege?

Judicial Analysis and Reasoning

The court undertook a detailed exposition of Section 126, emphasising that the act of a client handing over the documents to counsel for the purpose of defence is itself a protected professional communication.

The Court observed:

"To compel an advocate to disclose that 'Client X gave me this document' is to compel disclosure of the source of the document, which squarely falls within the protection of Section 126."

Rejecting the arguments that there is "no privilege against the court," the Court clarified that judicial authority cannot override an express statutory prohibition unless the conditions for exception are clearly satisfied.

On the fraud exception, the Court held:

"For the proviso to apply, there must be prima facie material to show that the communication itself was in furtherance of an illegal purpose."

Mere allegations, unsupported by evidence, were held insufficient to dismantle privilege. The Court noted that the petitioner had provided a plausible explanation for lawful possession of the documents, which the revisional court failed to consider.

"Such compulsion, the Court held, would erode the independence of the Bar and undermine the administration of justice."

Decision of the Court

The Delhi High Court allowed the writ petition and set aside the impugned order dated 20th May 2017 passed by the learned Additional Sessions Judge, insofar as it directed the advocates for the Petitioner to file personal affidavits disclosing the source of documents placed on record. The Court held that such a direction amounted to a clear violation of Section 126 of the Indian Evidence Act, 1872, which protects professional communications between a client and an advocate.

The court observed that compelling an advocate to disclose that a document was provided by the client would directly breach advocate-client privilege, as the act of handling over documents and information relating to their origin forms part of protected professional confidence.

It reaffirmed that the primary responsibility for documents filed before the court lies with the litigating party and not with the counsel acting on instructions.

The High Court further held that the exceptions of Section 126, relating to communications made in furtherance of an illegal purpose or indicating frauds, were not attracted in the absence of any prima facie material establishing such illegality. Mere allegation regarding the manner in which the documents were obtained were held to be insufficient to pierce statutory privilege.

Accordingly, the Court also quashed all consequential proceedings, including the order dated 22nd July 2017 issuing notices to the advocates for alleged non-compliance. The Court reiterated that while courts may inquire into matters affecting the administration of justice, such inquiries must respect statutory confidentiality unless fraud is prima facie established.

Conclusion

The McDonald's India judgment is a decisive reaffirmation of advocate-client privilege as a structural pillar of the legal system. By drawing a firm boundary against judicial overreach, the Delhi High Court has protected professional ethics, and the constitutional promise of fair representation also.

The ruling sends a clear message, *courts may inquire into truth, but they cannot compel disclosure where the law commands silence.* Advocate- client confidentiality is not an inconvenience to justice, it is its indispensable condition.

For more details, write to us at: contact@indialaw.in

1. W.P.(CRL) 2294/2017, CRL.M.A. 12975/2017, CRL.M.A. 13878/2017 ??

Related Practice Areas

Criminal Litigation **Litigation**