

Bibhuti Bhusan Chatterjee

Vs

The State of Bihar

Criminal Appeal No. 199 of 1957

(P. B. Gajendragadkar, K. Subha Rao JJ)

06-10-1959

JUDGMENT

GAJENDRAGADKAR J. –

This appeal by certificate granted by the High Court at Patna, raises a short question about the construction of Art. 9 in Sch. I of Court Fees Act VII of 1870 (hereinafter called the Act). A proceeding was instituted against the appellant, Bibhuti Bhusan Chatterjee, under s. 107 of the Code of Criminal Procedure in the Court of the Magistrate of First Class at Bhagalpur; in this proceeding the learned magistrate directed the appellant to execute a bond of Rs. 5,000 with two sureties of the like amount each to keep the peace for a period of one year. The appellant challenged this order by his appeal before the Additional Session Judge at Bhagalpur. The appellate judge agreed with the decision of the learned magistrate and the appeal preferred by the appellant was dismissed. The appellant then took this matter before the High Court at Patna by his Criminal Revision Application No. 924 of 1957. It appears that the certified copies of the orders passed by the two courts below in the present proceedings had been filed by the appellant along with his revisional application without any court fees. The appellant was then called upon to pay court fee of the value of Rs. 52.75 and Rs. 50.75 nP. on the two order respectively. The appellant questioned the validity of this order, and so his revisional application was placed before the High Court for the decision of the question as to whether the two certified copies were chargeable with the payment of court fees as directed by the stamp reporter. The High Court took the view that the report made by the stamp reporter was consistent with the practice which the High Court had followed in this matter and the said practice was fully justified by the provisions of Art 9. In the result the contention raised by the appellant that no stamp need be affixed to the two orders was rejected and he was directed to affix the necessary stamps within two weeks from the date of the order. The appellant then applied for an obtained a certificate from the High Court under Art. 134(1)(c) of the Constitution that the appellant's case was fit for appeal to this Court. It is with this certificate that the appellant has come to this Court; and on his behalf it has been urged by Mr. P. K. Chatterjee that the view taken by the Patna High Court is inconsistent with the true construction of Art. 9. We have been told that this appeal is being fought as a test case in order to test the validity of the relevant practice prevailing in the Patna High Court.

Mr. Chatterjee contends that in construing Art. 9 it would be relevant to bear in mind the policy which Legislature has deliberately adopted in enacting the material provisions of the Code of Criminal Procedure dealing with the question of supplying to the accused persons requisite copies under the Code, Section 173(4) of the Code requires that before the commencement of the enquiry or trial the officer in charge of the police station furnish or cause to be furnished to the accused free of cost any copy of the report forwarded under sub-s. (1) and of the First Information Report recorded under s. 154 and all other documents or relevant extracts thereof on which the prosecution

proposes to rely. Section 207A, sub-s. (3) requires that the magistrate shall satisfy himself when the accused appears or is brought before him that the requirements of s. 173(4) have been duly complied with. Under s. 210, sub-s. (2), as soon as the charge is framed against the accused it shall be read and explained to him and a copy thereof shall, if he so requires, be given to him free of cost. Section 251A, sub-s. (1), requires that if s. 173(4) has not been complied with, the magistrate shall require that the documents in question shall be furnished to the accused free of charge. Similarly s. 317(1) provides that on an application of the accused a copy of the judgment shall in any case, other than a summons case, be given free of cost; and the proviso to s. 548 authorises the court to furnish to the accused a copy of the judge's charge to the jury or of any order or deposition or other part of the record free of cost if the court is satisfied that there is some special reason to do so. The argument is that the policy of Legislature is to supply to the accused person relevant documents free of charge and it would be inconsistent with this policy to require him to pay court fees on the certified copies of criminal orders and judgments under Art. 9.

It is also urged that the provisions of the Court Fees Act should be strictly construed in favour of the litigant and no document should be held chargeable with court fees unless it is clearly proved that it falls within the mischief of the relevant provisions of the Act. In other words, the appellant's case is that we should adopt a liberal construction of Art. 9 in dealing with his present contention. We are not impressed by either of the two arguments.

Whatever may be the policy on which the relevant provisions of the Code of Criminal Procedure are based any consideration based on the said policy would not be of any assistance in construing the provisions of the Act. Section 4 of the Act provides that no document of any of the kinds specified in the First or Second Schedule to the Act annexed, as chargeable with fees, shall be filed, exhibited or recorded, or shall be received or furnished, in any court unless in respect of such document there be paid a fee of an amount prescribed by the relevant provisions of the Act. It is thus obvious that every document which falls within the purview of s. 4 must bear the court fee prescribed by the relevant provision; and so the question as to whether a particular document falls within s. 4 and as such must pay the court fees prescribed for it must be decided solely by reference to the relevant provisions of the Act. In the construction of the said provisions any hypothetical considerations about the policy of the provisions of the Code of Criminal Procedure would hardly be of any assistance.

Similarly it would be idle to rely on the principle of liberal construction of Art. 9 unless it is shown that the said article is capable of two construction. If the words used in Art. 9 are reasonably capable of the construction for which the appellant contends it may be open to him to urge that the alternative construction which makes the document subject to the charge of the court fees should not be accepted; but, if the words used in the article are reasonably capable of only one construction, the doctrine of liberal construction would be wholly out of place. Whether or not the effect of Art. 9 is equitable, fair or just would be irrelevant if the meaning of the article is plain and clear. As Lord Blackburn observed in *Coltness Iron Company v. Black* [(1880-81) 6 A.C. 315, 330] in dealing with the question of construing a taxing provision "when the intention is sufficiently shown it is, I think, vain to speculate on what would be the fairest and most equitable mode of levying the tax." It is, therefore, necessary to turn to Art. 9 and decide what it means on a fair and reasonable construction.

Article 6 of Sch. I deals with the payment of court fees for a copy or translation of a judgment or order not being or having the force of a decree whereas Art. 7 deals with the copy of a decree. It is obvious that the orders with which we are concerned in the present appeal do not fall under either Art. 6 or Art. 7. Art. 9 reads thus :-

#----- Number Proper Fee.-----
-----9. Copy of any revenue or For every three hundred Eight annas.
judicial proceeding or and sixty words or order not otherwise fraction of three provided for by this
Act, hundred and sixty words. or copy of any account, statement, report or the like, taken out of any
Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with
the executive administration of a Division.-----
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It is clear that a copy of a statement or report or the like taken out of a criminal court is expressly provided for by the latter part of Art. 9; and so it would be impossible to accept the argument that proceedings in criminal courts are wholly outside the purview of the relevant articles of Sch. I. If a copy of a statement made in a criminal court is filed it must bear the court fees prescribed by Art. 9; this position is not disputed. It cannot also be disputed that the proceeding in a criminal court is a judicial proceeding. Section 4, sub-s. (m), of the Code of Criminal Procedure defines a judicial proceeding as including any proceeding in the course of which evidence is, or may be, legally taken on oath. Thus there can be no doubt that an order passed in a criminal proceeding is an order passed in a judicial proceeding, and it is common ground that orders like those in the present appeal are not otherwise provided for by the Act. It is not contended before us that the judgments delivered by the courts below in proceedings taken under s. 107 of the Code are not orders, or do not constitute a part of the judicial proceeding. So, if a copy of an order or judgment delivered in a criminal proceeding is intended to be filed before the High Court it clearly attracts the provisions of Art. 9. The words used in Art. 9 are clear and unambiguous, and in our opinion, on a fair and reasonable construction, they lead only to one conclusion and that is that the copies of the criminal judgments or orders must bear the court fee stamp prescribed by Art. 9. That is the view taken by the High Court consistently with the practice prevailing in the High Court for several years. We are satisfied that the view of the High Court and the practice prevailing there are wholly justified by the provisions of Art. 9. This question was raised before the Travancore-Cochin High Court in *James Paul Alexander v. James Arthur Edwards* [I.L.R. 1953 T.C. 69] where the same view has been taken about the construction of the corresponding article, Art. 10, of the Court Fees Act.

We may add that there is some force in the contention raised by the appellant that the court fee prescribed by Art. 9 may sometimes work hardship on accused persons; but that is a matter of policy with which we are not concerned. The Legislature may, however, consider whether it would not be appropriate to enact a suitable provision dealing with copies of criminal orders and judgments as has been done in Madras. The Madras Legislature has inserted Art. 6-A in Sch. I of the Act by Act V of 1922, prescribing a uniform court fee of 8 as. for the copy or translation of a judgment or order of a criminal court.

In the result the appeal fails and is dismissed.

Appeal dismissed.

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