

Prasanna Gogoi Vs State

None

Court: Gauhati High Court (Kohima Bench)

Date of Decision: Sept. 11, 1970

Acts Referred:

Evidence Act, 1872 & Section 76#Penal Code, 1860 (IPC) & Section 392

Citation: AIR 1971 Guw 55 : (1971) CriLJ 591

Hon'ble Judges: P.K. Goswami, C.J; M.C. Pathak, J; D.M. Sen, J

Bench: Full Bench

Judgement

P.K. Goswami, C.J.

The appellant has been sentenced to life imprisonment u/s 392, Indian Penal Code, and has lodged an appeal before

this Court through Counsel. The memorandum of appeal is accompanied by a certified copy of judgment which he had earlier obtained free of

cost. The Stamp Reporter has refused to register the appeal unless the required court-fee is affixed on the certified copy of the judgment amounting

to Rs. 15/- under Article 9 of Schedule I of the Court Fees Act. The stamp Reporter has quoted an administrative circular of the High Court dated

2-5-1961 whereby it was ordered that "no copy of order or judgment of a criminal proceeding shall be filed, exhibited or recorded in any Court of

Justice unless the same is stamped as required under Article 9 of Schedule I of the Court Fees Act and this must be invariably followed by all

concerned".

2. Mr. B. C. Barua, the learned Counsel for the appellant, submits that although the amount is small, he craves for a decision of the Court on the

point as, according to him, the insistence of court-fee in such a matter is not warranted by law.

3. We issued notice to the State which is represented before us by the learned Advocate-General, Assam, assisted by the learned Senior

Government Advocate.

4. The question raised before us may be stated as follows:

Whether the accused having legally obtained a certified copy of the judgment free of cost in a warrant case u/s 371, Criminal P.C., can file a

memorandum of appeal under Section 419, Criminal P.C. without payment of court-fees on the free copy?

5. The learned Advocate-General contends that this question is governed by a decision of the Supreme Court in *Bibhuti Bhusan Chatterjee Vs.*

The State of Bihar, Bibhuti Bhusan v. State of Bihar. We have, therefore, to first consider this submission. The question raised before the Supreme

Court, so far we can see, was this:

Whether Article 9 of Schedule I of the Court Fees Act is at all attracted to criminal proceeding in general ?

The matter arose out of an order of the High Court of Patna refusing to allow exemption of court-fees in certified copies of judgments obtained by

the appellant in a proceeding u/s 107, Criminal Procedure Code. The argument before the Supreme Court was that in view of the policy which the

Legislature had in mind in enacting the various provisions of the Code of Criminal Procedure, namely Section 173, Sub-section (4), Section 207-

A, Sub-section (3), Section 210, Sub-section (2), Section 251-A, Sub-section (1), Section 371, Sub-section (1) and Section 548, insistence of

court-fees in the certified copy of the judgment in a criminal proceeding is inconsistent and unwarranted. The Supreme Court repelled this

contention and held as follows:

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 Section 4 must bear the court fee prescribed by the relevant provision; and so

the question as to whether a particular document falls within Section 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.

The Supreme Court further observed:

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 Article 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 Article 9;

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The words used in Article 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 Article 9." In paragraph 7, the Supreme

Court concluded by observing as follows:

We may add that there is some force in the contention raised by the appellant that the court-fee prescribed by Article 9 may sometimes work

hardship on accused person: but that is a matter of policy with which we are not concerned.

6. It is apparent that the certified copies of the judgment in the case before the Supreme Court were obtained in a proceeding u/s 107, Cr.PC

somehow free of cost. Since a proceeding u/s 107, Cr.PC has to comply with the summons procedure and the parties in such a proceeding

cannot be equated with an accused in a criminal trial, Section 371 of the Code of Criminal Procedure could not be pressed into service. The

argument was made in a wider perspective of policy disclosed under the various provisions of the Code of Criminal Procedure noted above, and

the Supreme Court repelled the same by holding that "it would be impossible to accept the argument that proceedings in criminal courts are wholly

outside the purview of the relevant articles of Schedule I". The Supreme Court in that case was therefore not required to consider the case of an

accused person who obtained a certified copy of the judgment free of cost u/s 371 (1), Cr.PC and filed the same along with a memorandum of

appeal before the High Court u/s 419, Cr.PC. When, therefore, the Supreme Court was referring to the hardship caused on an accused person,

the Court could not have referred to an accused person tried under a warrant case. The benefit which such an accused obtains u/s 371 (1),

Criminal P.C. is not available to an accused person prosecuted under a summons case or to any other person in any other criminal proceeding.

The Supreme Court, therefore repelled the contention based on policy and hardship which were the foundation for the submission to exempt

court-fees under Article 9 in the case of certified copy of judgment in any criminal proceeding-The precise question which we have set out above

and which is raised before us did not come up for decision in the above Supreme Court case. We have therefore to decide this particular question

raised before us on its merit and the learned Advocate-General was unable to cite at the Ear any authority directly dealing with this question.

7. The Court Fees Act was enacted in 1870. The first Criminal Procedure Code was enacted in 1861, but Section 371 was not in the original Act.

This provision (then Section 464) was introduced in the Criminal Procedure Code by Act X of 1872 and it was converted to Section 371 in the

Criminal Procedure Code of 1882 and was continued in the Criminal Procedure Code of 1898. The Evidence Act (Act 1 of 1872) was enacted in

1872. The provisions of these three Acts will have to be considered in dealing with the point raised before us.

8. The object of the Court Fees Act is to realise court-fees for the purpose of revenue. Section 4 provides that all documents when filed in court

must bear court-fees as chargeable under the Schedules annexed to the Act. Section 1& exempts certain documents from court-fees and Section

35 empowers the Government to exempt other documents. The learned Counsel however did not base his argument on any exemption clause.

Section 76 of the Evidence Act provides for furnishing of certified copies on an application by any person to the officer who has custody of the

records on payment of legal fees. The expression ""legal fees"" at once takes us to the provisions of the Court Fees Act with the Schedules

prescribing various court-fees and Article 9 of the First Schedule will then apply. When the accused applies for a copy of the judgment free of

cost, he has to be furnished with a certified copy of judgment, as copy in Section 371, Cr.PC is a certified copy The State of Uttar Pradesh Vs. C.

Tobit and Others, State of U. P. v. C. Tobit). Ordinarily the public officer concerned will not supply the certified copy on the application of any

person unless the legal fees are paid. It is at this stage that the applicant has to comply with the provisions of the Court Fees Act and affix the

necessary stamps to his application as well as for the copy and also. pay such other costs as demanded in accordance with the relevant provisions

under any other rules.

The learned Advocate-General very strenuously contended that no court-fee is leviable at the time of obtaining of the certified copy. According to

him, certified copy when used in court is only leviable with court-fees under Article 9 of the First Schedule. We have drawn his attention to Rule

13 of the High Court Rules in Chapter XIII, Part IV at page 120, which may be set out:

In the case of certified copies, the court-fee chargeable under the Court-fees Act shall be paid by affixing the necessary stamp to the first folio of

the copy.

This identical rule has been borrowed from the Calcutta High Court Rules which were in force in this High Court prior to the promulgation of our

Rules. We have also drawn the attention of the learned Advocate-General to Rule 561 of the Civil Rules and Orders for the Guidance of the Civil

Courts and Officers subordinate to the High Court of Assam and Nagaland, at page 188, which may also be set out.

The proper officer of the Court issuing copies, certificates or other similar documents, shall before issue cancel the label and punch the court-fee

stamps affixed to them together with the court-fee stamps required for such copy by law (see Articles 6, 7, 8, 9 of Schedule I of the Court-fees

Act, VII of 1870, as amended by the Assam Court-fee (Amendment Act).)

x x x.

We have also drawn his attention to Rules 486, 506 and 508. The above provisions to which we have referred, read with Section 76 of the

Evidence Act, run counter to the submission of the learned Advocate-General that court-fees are not leviable at the stage of supplying the certified

copy. We are clearly of opinion that the submission of the learned Advocate-General is devoid of substance. We therefore find that necessary

court-fee have to be ordinarily paid when applying for certified copies of a judgment u/s 76 of the Evidence Act read with the relevant provisions

of the Court Fees Act. When, therefore, Section 371, Cr.PC provides that a certified copy has to be furnished to the accused free of cost, it is

clearly intended that no court-fees are chargeable at the time of furnishing the certified copy of the judgment u/s 371 (1). Cr.PC The learned

Advocate-General contended that free of cost excludes court-fees. The argument has to be mentioned only to be rejected. We are clearly of

opinion that free of cost means free of all costs including payment of court-fees.

9. The question then arises whether, after obtaining the certified copy of the judgment, the accused is required to pay court-fees while filing it in the

High Court along with the memorandum of appeal u/s 4 read with Article 9 of Schedule I. It is clear that but for Section 371, Cr.PC the accused-

would be liable to pay court-fees to the officer furnishing the certified copy u/s 76 of the Evidence Act. The provisions of Court Fees Act at that

stage cannot be invoked by the public officer because of Section 371 (1), Cr.PC To that extent, therefore, at that stage, Section 371 (1), Cr.PC

impliedly repeals so much of the provisions of Section 76 of the Evidence Act, with reference to a certified copy of a judgment in a warrant case

applied for by an accused. The next stage will be, whether Article 9 can be invoked by the Stamp Reporter when the accused files his appeal with

the certified copy of the judgment obtained free of cost u/s 371, Cr.PC In The State of Uttar Pradesh Vs. C. Tobit and Others, S. R. Das, C. J.,

speaking for the Court observed as follows at paragraph 4:

The copies, which are supplied to the accused under Sub-sections (1) and (2) on his application for such copies are obviously full copies of the

entire judgment or the heads of charges as the case may be and are intended to enable him to prepare his grounds of appeal should he decide to

prefer one and to file the same along with his petition of appeal as required by Section 419 of the Code of Criminal Procedure.

x x x.

Then when Section 419 requires that a copy of the judgment or of the heads of charge be filed along with the petition of appeal it is not

unreasonable to hold that it is the certified copy so obtained that must be filed.

It is therefore, clear that u/s 419, Cr.PC the accused is and he may be a condemned prisoner awaiting execution of his death sentence is

authorised to file the certified copy of the judgment "so obtained", that is to say, obtained under the provisions of Section 371, Cr.PC. along with

his memorandum of appeal. Section 421, Cr.PC provides that on receiving the petition and copy u/s 419 or Section 420, the Appellate Court shall

peruse the same and, if it considers that there is no-sufficient ground for interfering, it may dismiss the appeal summarily. In this case the accused

has obtained the certified copy of the judgment u/s 371, Cr.PC and has filed an appeal u/s 419 accompanied by that certified copy. It is

strenuously submitted that he has got to pay court- fees u/s 4 of the Court Fees Act read with Article 9 of Schedule I on the certified copy of the

judgment. Bearing in mind the provisions of Sections 371, 419 and 421, Cr.PC we are clearly of opinion that these provisions in the Code of

Criminal Procedure implicitly repeal the provisions regarding court-fees on certified copies of judgment obtained u/s 371, Cr.PC, and with which

the accused is lodging his appeal u/s 419, Cr.PC Just in the case of Section 76 of the Evidence Act, so also in the case of Section 4 read with

Article 9 of Schedule I of the Court Fees Act, the provisions regarding court-fee will stand pro tanto impliedly repealed with particular regard to

the payment of court-fees in the case of certified copy of judgment obtained by an accused under the provisions of Section 371, Cr.PC As

Maxwell observed (12th Edition) at page 193:

If, however, the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand

together, the earlier is abrogated by the later.

The provisions of Article 9 of Schedule I could not be invoked by the Public Officer at the time of furnishing certified copy relying in its entirety on

Section 76 of the Evidence Act; so also the Stamp Reporter cannot insist on the accused to pay court-fees on the certified copy of the judgment in

this case by invoking the provisions of Section 4 and Article 9 of Schedule I, in view of the later provisions of Sections 371, 419 and 421 of the

Code of Criminal Procedure. It is true that Section 4 refers to documents that are filed in court. Section 419, Cr.PC similarly provides for appeal

to be presented by the appellant or his pleader. Therefore, Section 4 cannot be pressed into service in view of the provisions of the Code of

Criminal Procedure which impliedly repeal that Section with particular reference to payment of court-fees on certified copies of judgment obtained

free of cost u/s 371, Cr.PC and presented in the Court of Appeal u/s 419, Cr.PC The legislative exemption u/s 371, Cr.PC of legal fees required

u/s 76 of the Evidence Act in the case of judgment obtainable in respect of the certified copies of the judgment under that Section is not merely for

the purpose of the Evidence Act. In view of the above quoted provisions of the Code of Criminal Procedure, the exemption will continue when the

same is presented before a Court in an appeal u/s 419, Cr.PC The document at the time of its legal creation being duty free, remains so throughout

its use for the purpose of appeal u/s 419, Criminal P.C. This exemption will enure to the benefit of the accused when after obtaining the same he

files it before an Appellate Court in order to challenge the judgment. It is not necessary in this case to consider whether such a certified copy will

be exempt from court-fees in some other proceeding, or exempt in a civil suit when the same is sought to be exhibited by a party.

10. We are therefore clearly of opinion that the administrative circular of the High Court dated 2-5-1961 is not valid in law and the Stamp

Reporter could not refuse to register the appeal on the ground of non-payment of court-fees on the certified copy of the judgment.

11. The appeal, if otherwise in form will be registered and will be placed for hearing in the usual course before a Division Bench.

M.C. Pathak, J.

12. I agree.