
(1929) 12 AHC CK 0031
In the Allahabad High Court

Bhaya Lal	Vs	APPELLANT
Emperor		RESPONDENT

Date of Decision : 14-12-1929

Acts Referred:

Citation : AIR 1930 All 261 : (1930) ILR (All) 542

Hon'ble Judges : King, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

King, J.—This is a reference for a decision whether a certain application filed by an advocate on behalf of a prisoner in jail is chargeable with a court-fee.

2. The application in question was filed by an advocate on behalf of the prisoner on 12th November 1929, and purports to be from the prisoner himself. The application runs as follows:

That my counsel will be absent from Allahabad between 14th and 21st November 1929, both days inclusive. It is prayed that the above mentioned case be not put up on the days list between the above mentioned dates.

3. The learned advocate, who appears on behalf of the advocate who presented the petition, has argued that the application is exempted from liability to court-fee u/s 19(17), Court-fees Act, 1870. This clause runs as follows:

Petition by a prisoner or other person in duress or under restraint of any Court or its officers.

4. Undoubtedly the application in question is a petition on behalf of a prisoner, and the only question is whether it should be held to be a "petition by a prisoner" within the meaning of Section 19(L7).

5. It is conceded that certain classes of applications made to the High Court on behalf of prisoners are in practice held not to be chargeable with court-fee, for

example:

(1) Applications for bail on behalf of prisoners in jail. (2) Applications for summoning records of other cases which are required for arguing the prisoners' appeal. (3) Applications for revision on behalf of prisoners in jail.

6. Also it is conceded that appeals on behalf of prisoners in jail are admitted by this Court without payment of any court-fee although such appeals may not be signed by the prisoner in jail or come from the prisoner through the Superintendent of the jail.

7. It appears to have been tacitly conceded, therefore, in view of the practice followed in such cases, that applications which are made on behalf of prisoners in jail are considered as equivalent to applications by prisoners.

8. I have been referred to several reported cases in which this question has been considered by different High Courts. In the case of Jagannath Kahar v. Emperor AIR 1922 U.B. 14, it was held by the Upper Burma Judicial Commissioner's Court that an application for bail signed only by the advocate of a prisoner is an application made by the prisoner himself, and u/s 19(17), Court-fees Act, it is not required to be stamped. The view taken by the Court was that an application made by the advocate of a prisoner should be treated as equivalent to an application by the prisoner himself.

9. In the case of Emperor v. Maroti Teli [1918] 14 N.L.R. 77, it was held by the Nagpur Judicial Commissioner's Court that a petition of appeal presented by a prisoner not personally but through his pleader is exempted from court-fees under Clause 17, Section 19.

10. In the case reported in AIR 1924 Ran 160 it was held by the Rangoon High Court that a petition of appeal or revision signed and filed by an advocate or pleader on behalf of a prisoner under an authority signed by a prisoner need not bear a court-fee stamp. At the present day it is not necessary for the prisoner to give his advocate a written and signed authority, but the reason for the decision still holds good, namely, that it is none the less a petition by a prisoner because it is filed on his behalf by an advocate.

11. I agree to the view taken by the Courts in these cases. In interpreting a fiscal statute the Court is entitled to demand that the liability of the subject should be clearly established, and in the present case I see no reason why the maxim "qui facit per alium facit per se" should not be applicable. No cases have been shown to me in which a contrary view has been held.

12. It has been argued by the learned Government Advocate that, although the petition purports to be on behalf of the prisoner, practically it is in the interests of the advocate himself. He contends that the petition was not really in the interests of the prisoner because it meant that the hearing of his appeal would have to be adjourned and that, therefore, he would not have a chance of release from jail so soon as he would otherwise have done. I am not prepared to accept this

contention because when a prisoner appoints an advocate to conduct his appeal he presumably wishes the advocate to do so personally. If the advocate appointed is for some reason unable to appear on certain dates and desires that the appeal should not be heard during his absence I think that he would be considered to be acting in the interests of his client if he asks for an adjournment, in order to enable him personally to argue the case as desired by his client. In the present case although the advocate's personal convenience was no doubt partly responsible for the application I am not prepared to hold that the application was not made, partly at least, in the interests of the prisoner.

13. In my opinion, therefore, the application in question should be held to be made "by the prisoner" although it was actually presented through his advocate on the prisoner's behalf. It follows that u/s 19(17) the application is not chargeable with any court-fee and I decide accordingly