
(1978) 02 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition S.R. No"s. 11111 and 11112 of 1978

C. Bollayya and Another

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 13-02-1978

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Article 11, 67

Citation : AIR 1978 AP 297

Hon'ble Judges : Madhava Rao, J; Jayachandra Reddy, J

Bench : Division Bench

Advocate : T.V. Sarma, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Madhava Rao, J.—This S. R. is posted for orders on the Office Note. The petition is filed for the issued of a writ of Habeas Corpus for production and release of the two accused in P. R. C. No. 14/77 on the file of the Court of Judicial Magistrate of Second Class, Narasaraopet. The petition is supported by an affidavit given by the uncle of the petitioners (accused). The petition is filed without paying Court-fee of Rs. 2/- and without Rs. 5/- on vakalat. Therefore, the office raised the objection.

"Though the petitioners are in jail, the writ petition is filed by the Advocate. Hence, it should be stated as to how the petition is maintainable without the court-fee of Rs. 2/-."

The advocate while representing the S. R. gave the following endorsement:

"Prior to 1-4-1974, the Code of Criminal Procedure provided for Habeas Corpus under S. 491 . The same is now deleted. It is immaterial whether a prisoner seeks the remedy of Habeas Corpus through jail or through Advocate. Hence, where a party is in jail under the Code of Criminal Procedure bail is sought without stamp by an Advocate. There can be no discrimination is respect of a petition seeking redress of Habeas Corpus of bail whether the petitioner is in jail or not. Hence, no stamp of Rs. 2/- is necessary. Neither process nor vakalat need

be filed. Only memo of appearance."

Office pointed out Art. 11(s) and (u) of Sch. II of the Andhra Court-fees and Suits Valuation Act of 1956, hereafter called the Court-fees Act and also referred to S. 67 sub-s. (x) of the Court-fees Act under which exemption for certain documents is provided for the petitions filed by the prisoner or other persons in duress or under restraint of any Court or its Officers. The office has pointed out that since the writ of Habeas Corpus is filed by the Advocate and the petition out that since the writ of Habeas Corpus is filed by the Advocate and the petition is not filed by the prisoners by post, the provisions of S. 67 of the Court-fees Act are not attracted for exemption from payment of Court Fee of Rs. 2/- as held in 1967 1 AWR 263. Further, since the petitioners have engaged an advocate and the petition is not filed under the provision of the Code of Criminal Procedure, Vakalat with the signatures of the petitioners affixing court-fee of Rs. 5/- should also be filed. In these circumstances, the matter is put up as to whether court fee of Rs. 2/- on the petition and court-fee of Rs. 5/- on the vakalat are to be paid.

2. The learned Counsel for the petitioner submitted that the petitioners are accused in P. R. C. 14/1977 on the file of the Judicial Magistrate of Second Class, Narasaraopet. When the petitioners are accused and a criminal case is proceeding against them, under S. 67 Clause (i) of the Court Fees Act, memorandum of appearance filed by Advocates is not chargeable with Court-Fee.

2A. Section 67 Clause (i) reads as follows :----

"67. Exemption of certain documents. Nothing contained in this Act shall render the following documents chargeable with any fee:----

(i) Memorandum of appearance filed by Advocates or Pleaders when appearing for persons proceeded against in Criminal cases."

3. In this it is not in dispute that the petitioners are accused, that is the petitioners are persons proceeded against in criminal case. Therefore, the accused are entitled to appear through the counsel and it is sufficient if memorandum of appearance is filed by the advocate for accused without the payment of any court-fee i.e., such appearance is not chargeable with any fee. Therefore, in our view when the accused have filed this petition before the High Court irrespective of the nature of the petition, and appear through advocate, the memorandum of appearance is not chargeable with any court-fees. Therefore vakalat need not be filed with court-fee of Rs. 5/- and a memorandum of appearance filed by the advocate without court-fee of Rs. 5/- is sufficient.

4. The other point raised is with regard to the affixture of Rs. 2/- court-fee on the petition. The relevant provision of the Court-fees Act that is attracted is S. 67.

"67. Exemption of certain documents: Nothing contained in this Act shall render the following documents chargeable with any fee:

x x x

(x) Petition by a prisoner or other person in duress or under restraint of any Court or its Officers."

5. This provision makes it abundantly clear that it exempts the application to be filed by a prisoner or other person in duress or under restraint of any Court or its Officers from payment of court-fee. As the petitioners are in prison, the application filed by them in the Court need not be affixed with any court-fee stamp. Whether the petition is presented to Court through jail or it is presented through an advocate is not material for the reason that exemption is given from the payment of court-fee for filing a petition by the prisoner. Therefore, in our view, the accused who are in jail need not pay any court- fees.

6. Office has referred to the decision reported in 1967 1 AWR 263 and stated that since the Writ of Habeas Corpus is filed by the Advocate and that petition is not filed by prisoners by post, the provisions of Sec. 67 of the Court Fees Act are not attracted for exemption from paying Court Fee of Rs. 2/-. Rs. 2/-. In our view this is not a correct interpretation of the authority. Even in the said decision it was laid down that nothing contained in the Court-fees Act shall render the documents chargeable with any fees such as a petition by a prisoner or other person in duress or under restraint of any Court or its Officers. That was a writ petition under Art. 226 of the Constitution to direct the Government by an appropriate order to provide the petitioner's radio with all its original wave bands including short wave and compensate the damage caused to the radio of the petitioners, but not a Habeas Corpus petition. The learned judge was pleased to hold that as the petitioners were detenues, they were entitled to the benefit of S. 67 of the Court-fees and Suits Valuation Act and that no court-fee need to be paid. Therefore, this does not support the objection taken by the office.

7. That apart a reference is made to Art. 11 (s) and (u) of the Second Schedule of the Andhra Court-Fees and Suit Valuation Act, Art. 11 (s) and (u) are as follows :--

8. Art. 11 (s) makes it clear that on a petition filed under Art. 226 of the Constitution court-fee of Rs. 100/- has to be paid but exemption is given to a writ of Habeas Corpus. In other words If a Habeas Corpus petition is filed, no court-fee need be paid. Provisions of Art. 11 (u) make it clear that on an application or petition presented to the High Court and not otherwise specifically provided for, court-fee of Rs. 2/- has to be paid. In the instant case Habeas Corpus petition is filed. An exemption is given under Art. 11 (s) from the payment of court-fee on such a petition. Therefore, the provisions of Art. 11 (u) are not attracted. Consequently, even Rs. 2/- need not be paid on such a petition. Looking the matter from any angle, the payment of Rs. 2/- on the petition is not necessary.

9. Office objections are answered accordingly. The petition may be numbered.

10. Order accordingly.