
(2001) 05 JH CK 0006
In the Jharkhand High Court
Case No : CWJC No. 1995 of 2001

District Bar Association Sahibganj

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 10-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 6(2), Order 46 Rule 1
Court Fees Act, 1870 — Article 6, 19(15)

Citation : (2001) 05 JH CK 0006

Hon'ble Judges : Vinod Kumar Gupta, C.J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : Rajeev Sharma, for the Appellant; M.M. Banerjee, AG, for the Respondent

Final Decision : Dismissed

Judgement

1. The District Bar Association, Sahibganj through its Secretary has filed this writ application as a Public Interest Litigation matter through which a declaration is being sought that no court-fee is payable on bail bonds submitted in criminal cases. The main grievance of the petitioner is that non- acceptance of bail bonds by the Courts without affixing court fee stamp of Rs. 5/- has aroused displeasure and inconvenience to the persons detained in the Jails. According to the petitioner, all the bail bonds filed in all criminal cases are exempted from payment of any court fee u/s 19 clause (xv) of the Court Fees Act, 1870.

2. The distinction between two provisions relating to the changeability of court-fee on bail bonds, namely. Article 6 (as adopted by the local amendment carried out through Bihar Act No. 7 of 1996 in Schedule II) and Section 19(xv) of the Court Fees Act. 1870. is quite apparent, very clear and wholly ambiguous. Whereas Section 19 does clearly say that the documents mentioned in sub-sections (i) to (xiv) of that section shall not be chargeable with any fee. notwithstanding anything to the contrary contained in the Court Fees Act and undoubtedly sub-section (xv) in the said section clearly spelling out a bail bond

in criminal cases as one of such documents not chargeable with any fee, Article 6 of Schedule II of the Court Fees Act refers to the bail bonds or other instruments of obligation given in pursuance of any order made by a Court or Magistrate under any section of the Code of Criminal Procedure etc. etc. For ready reference, we reproduce herein-below Section 19(xv) and Article 6 of Schedule 11 which read thus :--

"19(xv) Bail bonds in criminal cases, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise."

"Art. 6 of Schedule II.--Bail Bond or other instruments of obligation given in pursuance of any order made by a Rs. 5.00 Court or Magistrate under any section of Code of Criminal Procedure, 1973. or the Code of Civil Procedure, 1908. and npt otherwise provided for by this Act."

3. The submission of the learned counsel for the petitioner seems to be totally unfounded, if one looks to the aforesaid two provisions which deal with the two different types and classes of Bail Bonds. Whereas Section 19(xv) exempts from payment of court fees bail bonds simplicitor. Article 6 (supra) prescribes court fees at the rate of Rs. 5/- for every bail bonds if it is executed in pursuance of an order passed by a Court or a Magistrate. Bail bonds, are. in the normal course, executed in two different sets of circumstances: there are bail bonds which may be executed without any order passed by a Court or Magistrate such as those cases which arise out of the bailable offences and there are bail bonds which are executed only on the basis of the orders passed by a Court or Magistrate. It is only in the latter cases that the bond attracts the charge of court fee of Rs. 5/-. The distinction being clear and based on well-defined nexus cannot be either called as arbitrary or unreasonable. We are saying so because when a person approaches a Court for grant of bail, say in a non-bailable offence and the Court orders for execution of a bail bond, the person cannot be said to be under any distress unlike a case where he may be in any police station to execute a bail bond without any intervention of the Court, say in a bailable offence. The legislature has thus clearly provided the basis of such distinction and made the former type of bail bond as chargeable to court fees.

4. The words occurring in Article 6. Schedule II of the Act i.e. "Bail Bond or other instruments of obligation given in pursuance of any order made by a Court of Magistrate under any section of the Code of Criminal Procedure or the Code of Civil Procedure" came for consideration before a Full Bench of the Calcutta High Court in a reference under Order XLVI, Rule 1 of the Code of Civil Procedure. The question that arose before the Full Bench was whether security bond executed under order of Court passed under Order XXXII. Rule 6(2) or any other rule or section of the CPC should be stamped under the Court Fees Act or under the Stamp Act. Reason for reference was that one Division Bench of the Court took the view that security bonds given in pursuance of an order of the Court for stay of execution should be stamped under the same Act, while another Division Bench took a view that security bonds executed by a person for the release of

attached animals should "be stamped under Article 6. Schedule II of the Court Fees Act.

5. Answering the reference his Lordship, Walmsley. J. held that a security bond executed under order of the Court passed under Order XXXII, Rule 6(2) of the Code comes within the descriptions given under Article 6 of Schedule II of the Court Fees Act. Their Lordships observed :

"I feel no hesitation in holding that a security bond of the kind mentioned in the Munsifs letter comes within this description. With all deference to the learned Judges who decided the case of Dwarkanath Dey v. Sailaja Kanta Mul-lik. (1). I think they placed too narrow a meaning on the words "in pursuance of. Compliance with a condition imposed by a Court is, in my opinion, an act done in pursuance of the Court's order : and I think that the narrow construction proposed in the judgment mentioned would render Article 6 nugatory."

6. As discussed above, we are of the definite view that Article 6 of Schedule II of the Court Fees Act refers to the bail bonds or other instruments of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Criminal Procedure Code or Code of Civil Procedure. Therefore, bail bond furnished on behalf of the accused for his release pursuant to an order passed by a Court or Magistrate under any section of Code of Criminal Procedure will be governed by Article 6 of Schedule II of the Court Fees Act.

7. For the reasons aforesaid, we do not find any merit in this application, which is accordingly dismissed. However, there shall be no order as to costs.

8. Application dismissed.