

(1960) 07 MAD CK 0003

In the Madras High Court

Case No : Un-Stamped Register No. 4535 of 1960

Loganatha Naicker

APPELLANT

Vs

Kuppammal

RESPONDENT

Date of Decision : 27-07-1960

Acts Referred:

Citation : (1960) 07 MAD CK 0003

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : G. Ramanujam for The Govt. Pleader, K.N. Subramaniam, for the Appellant;

Judgement

Somasundaram, J.—The Office has put up the papers for orders as to whether the accused who has been sentenced only to a fine and in

default to imprisonment should affix court-fee stamps when he files a revision against the conviction and sentence. The learned Advocate who has

preferred this petition on behalf of the accused contends that his case falls under S. 72 (xiii) of the Court-Fees Act, under the clause, "" other

persons in duress."" His contention seems to be that when he is not able to pay a fine he will have to go to jail as ordered by the Court. He

considers this as duress and therefore he claims ""exemption under this clause. But the order" passed is in accordance with the law of the land.

There can be no duress when the Court observes the provisions of the law as laid down by the Legislature. The duress contemplated in the section

as pointed out by Mr. Ramanujam appearing for the Government Pleader, must be considered ejusdem generis with the other phrase used in the

section. It must be construed as under a disability to pay the court-fee. The clause refers to a petition by a prisoner or other person in duress or

under any restraint of any Court or officer. When the person is a prisoner he will not be able to buy the stamps himself. Similarly when a person is under restraint of any Court he will not be able to buy the stamps himself. Under these circumstances, therefore, the law has exempted him from buying the Court-fee stamps himself and affixing the same to the petition. Similarly the section exempted a person who may be under duress by other person. Duress contemplated in this section is therefore duress not which results in his being sent to jail in default of payment of fine but duress by some other person, which act will be contrary to law. The petitioner in the circumstances therefore has to pay the court-fee stamps and if the court-fee stamps are not affixed the petition will not be entertained by the office.

Office note

2. U. S. R. No. 4535 of 1960 on the file of the High Court is a petition filed to revise the order in C. C. No. 1772 of 1960, Special Honorary

Presidency Magistrate, G.T., Madras in which the accused was fined Rs. 50 (in default) R. I. for one month.

3. The petition was returned for payment of necessary court-fees. The Advocate on record did not comply with the requirement but has requested

the matter be posted for orders of Court on the ground that the petitioner is under duress and therefore exempt from payment of court-fee in view

of S. 72 (xiii) of the Court-Fees Act.

4. Section 72 (xiii) exempts from Court fees "" petition by prisoner or other person in duress or under restraint of any Court or its officer.

5. This has been all along interpreted as exempting only petitions by prisoners in jail or other persons in actual custody for the purposes of levying

Court fees.

6. Duress has not been defined in the Indian Penal Code or in the Criminal Procedure Code. It is defined as follows in the Oxford Dictionary:

forcible restraint; imprisonment; compulsion especially imprisonment, threats or violence illegally used to force person to do something (for

avoiding contracts so made).

7. For the meaning of the word the Advocate relies on the Ancient authority of Coke on Littleton 2536 and states that it means "threat of bodily

harm which is present in the sentence of the Court."

8. Invariably in all cases in which fine sentences are imposed on the accused, time for payment of fine is also granted as such no question of the free will being curbed arises. In the present case it appears the accused has paid the fine and there is no question of any default sentence of imprisonment being imposed on him. Therefore the present petitioner (accused) it seems must be deemed to be not in duress and therefore liable to pay the necessary court-fee. Submitted for orders.