

## Prasanna Gogoi vs State on 11 September, 1970

**Equivalent citations: 1971CRILJ591, AIR 1971 ASSAM AND NAGALAND 55**

**Author: P.K. Goswami**

**Bench: P.K. Goswami**

### JUDGMENT

P.K. Goswami, C.J.

1. The appellant has been sentenced to life imprisonment Under Section 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 Under Section 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 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 Under Section 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 state- ment 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;

X X X X 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 con- eluded 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 Under Section 107, Cr.PC somehow free of cost. Since a proceeding Under Section 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 Under Section 371 (1), Cr.PC and filed the same along with a memorandum of appeal before the High Court Under Section 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 Under Section 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 Bar 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 18 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 (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 Under Section 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 Under Section 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 Under Section 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 Under Section

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 Under Section 371, Cr.PC. In A.I.R. 1958 SC 414 (supra), 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 Under Section 419, Cr.PC the accused 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 Under Section 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 Under Section 371, Cr.PC and has filed an appeal Under Section 419 accompanied by that certified copy. It is strenuously submitted that he has got to pay court-fees Under Section 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 Under Section 371, Cr.PC, and with which the accused is lodging his appeal Under Section 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 Under Section 371, Cr.PC and presented in the Court of Appeal Under Section 419, Cr.PC The legislative exemption Under Section 371, Cr.PC of legal fees required Under Section 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 Under Section 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 Under Section 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.