

MISCELLANEOUS CIVIL.

Before Mr. Justice King.

IN THE MATTER OF BALKISHUN.*

1932

April, 10.

Court Fees Act (VII of 1870), sections 13, 19 (xx)—Refund of court fee on remand—Application for the refund—No court fee payable on such application.

Where court fee is refundable, on remand by the appellate court, in accordance with section 13 of the Court Fees Act, the money claimed is money due by Government to the applicant, and the application for the payment of such money is exempt from the payment of any court fee by section 19 (xx) of the Act. The case of return of deposits made by parties in suits is quite different.

Mr. A. P. Bagchi, for the applicant.

KING, J. :—This is a reference under section 5 of the Court Fees Act, 1870, and the question raised is whether an application under section 13 of the Act for refund of court fees is chargeable with a court fee.

The application in question was made to the High Court which passed the remand order in consequence of which the refund is claimed. Under schedule II, article 1 (d), a court fee of Rs. 2 is chargeable upon every application (not otherwise specially provided for) when presented to a High Court, unless some ground for exemption is established.

The applicant claims exemption under section 19, clause xx. This lays down that no fee is chargeable upon an "application for the payment of money due by Government to the applicant". *Prima facie* this clause is applicable to the facts of this case. The court fee was credited to Government. If the court fee is refundable under section 13 (which is mandatory and not discretionary in its terms), then I think it must be held that the money claimed is due by Government to the applicant, and an application for the payment of such money is covered by section 19 (xx).

*Stamp. Reference in application in Second Appeal No. 1647 of 1928.

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It is admitted that the practice of this Court before 1927 was to charge no court fee on applications for the refund of court fees. The Taxing Officer relies upon a Local Government Notification No. C.276/X—530-1927 for holding that the previous practice was wrong. That notification modified the court fee prescribed in schedule II, article 1 (d), in respect of applications to the High Court for payment of deposits. Instead of a fixed fee of Rs. 2 being payable on every such application, the notification laid down a graduated scale of fees, starting with 2 annas, according to the amount of the deposit. This notification does no doubt show that court fees are chargeable on applications for payment of deposits made by parties to civil suits. It has also been expressly held in *Haridasi Debi v. Gopeshwar Pyne* (1) that an application for the refund of a deposit for costs of the preparation of a paper book of a Privy Council appeal is chargeable with a court fee. In my opinion neither the notification nor the ruling are in point. The payment of a deposit is very different from the refund of a court fee. The money paid for a court fee is paid to Government outright. If the money is refundable under section 13, the money is due by Government. The incidents of deposits made by parties in civil suits are quite different. I think it is only through a misunderstanding that the notification has been taken to mean that court fees are chargeable on applications for the refund of court fees and the previous practice has accordingly been changed. The language of section 13 supports the view that no court fees are chargeable on applications for refund under that section. It is laid down that "the full amount of fee" is to be paid. In the present case the applicant claims a refund of Rs. 3-12-0. If he has to pay a fee of Rs. 2 in order to claim Rs. 3-12-0, I do not think he can properly be said to recover "the full amount of fee". If the sum claimed is less than Rs. 2, as it might be, it seems absurd to

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require the applicant to pay a further court fee exceeding the amount claimed. If the Act required such applications to be charged with court fees, I think Government would certainly have introduced a graduated scale of fees (as it has done in the case of deposits) in order to avoid the absurdity of charging Rs. 2 on an application for the refund of sums less than Rs. 2.

In my opinion section 19, clause (xx), covers the case and no fee is chargeable on the application.

APPELLATE CRIMINAL.

Before Mr. Justice Kendall.

EMPEROR *v.* SOHAN AND OTHERS.*

1932
April, 13.

Penal Code, section 201—Whether persons charged with murder can also be charged with and convicted of concealing evidence of the murder—Crowd committing a massacre and throwing the corpses in a river.

It is a matter of grave doubt whether the ruling given in certain decisions that a person who is concerned as a principal cannot be convicted of the secondary offence of concealing evidence of the crime can apply to a case where a number of people are charged with carrying out a massacre in the course of a riot and not with any individual act, or with throwing the assaulted persons, living or dead, into a river in the course of a transaction which otherwise amounted to an offence under section 201 of the Indian Penal Code.

Where it is not established by the evidence on the record that a person is the murderer or one of the murderers, although there are circumstances of grave suspicion that he is such and he was charged as being such, his conviction under section 201, Indian Penal Code, of the offence of causing evidence of the murder to disappear is not vitiated by the existence of such circumstances.

Messrs. *A. Hoon, Saila Nath Mukerji and Basudeva Mukerji*, for the appellants.

*Criminal Appeal No. 908 of 1931, from an order of H. J. Collister, Sessions Judge of Cawnpore, dated the 14th of September, 1931.