

RIVISIONAL CRIMINAL

Before Mr. Justice Bisheshar Nath Srivastava and Mr. Justice
B. S. Kisch.

1932
September,
9.

KING-EMPEROR (APPLICANT) *v.* MAHIPAL SINGH,
THAKUR (OPPOSITE PARTY)*

*Indian Stamp Act (II of 1899), sections 2(23) and 62—
“Receipt”, meaning of—Acknowledgment of payment to
third party and not to payee, whether a receipt and liable
to stamp duty as such—Conviction under section 62, Stamp
Act, legality of.*

Held, that the definition of “receipt” in section 2(23) of
the Indian Stamp Act is applicable only to instruments exe-
cuted by the payee in favour of the payer and not to acknow-
ledgments of payment made to a third person. *In the matter
of Act XVIII of 1869 and of the Uncovenanted Bank (Limit-
ed) (1)*, relied on.

Where, therefore, a person who was summoned as a witness
in a case, was paid a sum of money exceeding Rs.20 as diet
money and filed in court a document acknowledging payment
of that amount which was not stamped, it was nothing more
than an intimation to the court of his having received the
payment to which he was entitled under the rules and was not
an acknowledgment of payment made in favour of the party
who made the payment and so was not liable to stamp duty
and his conviction under section 62 of the Stamp Act was
illegal.

The Assistant Government Advocate (Mr. H. K.
Ghose), for the applicant.

Mr. S. N. Roy, for the opposite party.

SRIVASTAVA and KISCH, JJ. :—The opposite party
Thakur Mahipal Singh was summoned as a witness in
a criminal case. He was paid Rs.21 for diet money
and filed in court a document, exhibit 1, acknowledging
payment of this amount. This document was not
stamped. Subsequently he was prosecuted under sec-
tion 62(1)(a) of the Stamp Act, for issuing a receipt
without the same being duly stamped. He was convict-
ed by the Sub-Divisional Magistrate of Bahraich and

*Criminal Reference No. 22 of 1932, made by Pandit Shyam Manohar
Nath Shargha, Additional Sessions Judge of Bahraich by his order, dated the
9th of May, 1932.

sentenced to pay a fine of Rs.10. Mahipal Singh made an application for revision against his conviction and sentence to the Additional Sessions Judge of Bahraich. The learned Judge was of opinion that the conviction was illegal. He has therefore referred the case to this Court for necessary orders.

The decision of this case rests on the interpretation to be placed upon the definition of "receipt" as given in section 2 clause (23) of the Indian Stamp Act (II of 1899). This definition is as follows:—

"Receipt" includes any note, memorandum or writing—

(a) whereby any money, or any bill of exchange cheque or promissory note is acknowledged to have been received, or

(b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or

(c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(d) which signifies or imports any such acknowledgment.

and whether the same is or is not signed with the name of any person.

Section 30 of the Stamp Act imposes on every person receiving any payment, an obligation to give a receipt on a demand being made by the person making the payment. Section 65 of the Act provides the penalty for refusal to give a receipt on being required to give it under section 30, or in other words on a demand for it being made by the person making the payment. Taking these provisions into consideration, we are of opinion that the intention of the Legislature was to make the definition in section 2(23) applicable only to instruments executed by the payee in favour of the payer and not to acknowledgments of payment made to a third person.

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In the matter of Act XVIII of 1869 and of the Uncovered Bank (Limited) (1), a sum of money was paid by one person to a Bank to be placed to the credit of another person. The Bank sent a memorandum to the person concerned informing him that money had been paid to his account by the person who had made the payment and that it had been credited to his account. It was held that the Bank memorandum did not require to be stamped under article 7, schedule II of Act XVIII of 1869. This article related to the "receipt or discharge given for or upon the payment of money or delivery of goods in satisfaction of a debt, the amount or value of which money or goods exceeds twenty rupees." The learned Judges of the Calcutta High Court in the course of their judgment observed as follows :

"But even assuming that it was so paid, we consider that the document in question was not a receipt or discharge within the meaning of the Act because it was not given to the party who paid the money."

In Donogh's Stamp Act, 8th edition, page 157, there is a note which runs as follows :—

The meaning of the terms "acknowledged" and "acknowledgment" used in section 2 clause (23) must be limited to documents given to or issued for the benefit of the debtor, acknowledging to him the payment of money, etc., or delivery of goods, in discharge or satisfaction of his debt or the demand upon him. Accordingly, a certificate to the effect that a premium on an insurance policy has been paid, issued for the purpose of supporting a claim to exemption from income-tax on the amount paid and not primarily intended for use as evidence of payment between the policy-holder and the Insurance Company, is not a receipt, and is therefore exempt from stamp duty: Chief Court of Lower

Burma Rulings, Volume II, 1903-04, page 307
(Burma Stamp Manual, page 113).

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The principal deducible from the cases cited above also seems to be that the provisions of the Stamp Act requiring receipts being stamped are intended to apply only to documents executed by the payee in favour of the payer.

*Srivastava
and Kisch,*
JJ.

In the present case it is clear that exhibit 1 is not an acknowledgment of payment made by Mahipal Singh in favour of the party who made the payment. It is nothing more than an intimation to the court of his having received the payment to which he was entitled under the rules. The document, as stated before, was filed in court and was made part of the record. If the definition of "receipt" as given in the Stamp Act is to be extended to memoranda of this nature, it will be difficult to exclude from it many documents which we know from experience are accepted in courts without their being stamped. We might mention the case of certificates filed by counsel for fees received by them from their clients. In substance the document, exhibit 1 is nothing more than a certificate given by the witness to the court certifying receipt of a particular sum from one of the parties. We are therefore of opinion that the document exhibit 1 not being an acknowledgment made to the payee, was not liable to stamp duty. It follows that the conviction of Mahipal Singh under section 62 is illegal and cannot be upheld.

We accordingly accept the reference, set aside the conviction and sentence and direct that the fine if paid be refunded.

Reference accepted.