

**REVISIONAL CRIMINAL.***Before Fazl Ali and Manohar Lall, JJ.*

RADHAKRISHNA DAS

v.

HARI NAIK.\*

1939.

April, 27.  
May, 11.

*Patna High Court Rules, 1916—rules as to verification of applications—Criminal Revisional application to High Court—no affidavit filed—court-fee on affidavit not paid—petitioner merely signing declaration—petitioner not appearing before Commissioner for Oaths—legality—Code of Civil Procedure, 1908 (Act V of 1908), Order VI, rule 15, whether applicable to petitions filed in the High Court.*

There is nothing in Chapter III or any other Chapter of the Patna High Court Rules to show that Order VI, rule 15, of the Code of Civil Procedure, 1908, has been made applicable to applications filed in the High Court. These applications are governed by a different set of rules and must conform to them.

There is, therefore, no jurisdiction for holding that the verification by solemn affirmation referred to in rule 3, Chapter III, of the Patna High Court Rules should be made in the same manner as the verification of pleadings in a Civil suit.

There is, however, no rule expressly requiring a petitioner to appear before the Commissioner for Oaths for the purpose of verifying his petition or swearing an affidavit.

Where in a Criminal Revisional application the petitioner did not file any affidavit in support of his petition, did not appear before the Commissioner for Oaths and did not pay the court-fee leviable on affidavits, but merely signed a declaration at the end of his petition saying that the facts stated were true to the best of his knowledge and that his declaration was true;

*Held*, (i) that the petition was not properly verified, but, as the rules as to verification of applications were defective,

\*Criminal Revision no. 75 of 1938 and Criminal Revision no. 7 of 1939, from an order of R. C. Mitra, Esq., Sessions Judge of Ganjam-Puri Division, Berhampore, dated the 30th August, 1938, affirming that of M. S. Rao, Esq., District Magistrate of Puri, dated the 12th July, 1938.

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the petition could not be rejected on the ground that it did not conform to rule 3, Chapter III, Patna High Court Rules;

(ii) that it could not be rejected even on the ground that it was insufficiently stamped, the rule on the point not being clear;

(iii) that the rules as to verification of petitions should be recast.

The facts of the case material to this report are set out in the judgment of Fazl Ali, J.

*M. S. Rao*, for the petitioners.

*C. M. Acharya*, for the opposite party.

FAZL ALI, J.—These two revisions may be conveniently dealt with together, but before dealing with their merit I wish to refer to two preliminary questions of some importance which arise in Criminal Revision no. 7 of 1939. These questions are (1) whether the application presented by the petitioner Gaji Das in this Court has been properly verified as required by rule 3, Chapter III, of the Rules of the Patna High Court and (2) whether a court-fee of Rs. 2 is chargeable when the verification is made by the petitioner himself and not by a person other than the petitioner.

Gaji Das has not filed any affidavit in support of the statements made in his petition nor did he appear before the Commissioner for Oaths at Cuttack to verify them by his solemn affirmation. He has merely signed a declaration at the end of the petition which runs as follows:—

“ I, Gaji Das, the abovenamed petitioner do solemnly affirm and declare that the above facts are true to the best of my knowledge, that this my declaration is true, that it conceals nothing and that no part of it is false.”

Mr. Subba Rao, who appears on behalf of Gaji Das, asks us to hold that such a verification is in order and has been made in compliance with rule 3 of Chapter III. His contention is that when a petition

is verified by the petitioner himself, all that he is required to do is to verify it in the manner in which pleadings are verified in a civil suit and it is not necessary for him to verify it in the presence of a Commissioner for Oaths or any other officer. In my opinion, this contention is not borne out either by rule 3 or any of the other rules of Chapter III. Rule 3 runs as follows:—

“The fact stated in every petition shall be verified either by the solemn affirmation of the petitioner or by an affidavit to be annexed to the petition.”

No doubt this rule draws a distinction between verification by the solemn affirmation of the petitioner and verification by an affidavit, but there are several rules in Chapter III which show that where the facts stated in a petition are verified by the solemn affirmation of the petitioner the procedure should be the same as when they are verified by an affidavit. Rule 13 provides that

“Every Commissioner before whom a petition is verified or an affidavit is made shall, at the end of the petition or affidavit, certify the verification of the petition or making of the affidavit in the prescribed form.”

Again, rule 16 states that

“Every person verifying a petition or making an affidavit, if not personally known to the Commissioner before whom petition is verified, or the affidavit is made, shall be identified to such Commissioner by some one known to him; and the Commissioner shall state at the foot of the petition or affidavit, as the case may be, the name, address and description of the person by whom the identification was made.”

It is obvious that these provisions would have been unnecessary in so far as they relate to the verification of a petition by solemn affirmation, if it was intended that the person verifying the petition need not appear before the Commissioner for Oaths to verify it. There is also no justification for holding that the verification by solemn affirmation referred to in rule 3 should be made in the same manner as the verification of pleadings in a civil suit. So far as

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verification of pleadings is concerned, it is governed by a specific rule of the Code of Civil Procedure, that rule being Order VI, rule 15. There is, however, nothing in Chapter III or any other Chapter of the Rules of this Court to show that Order VI, rule 15, has been made applicable to applications filed in the High Court. These applications are governed by a different set of rules and must conform to them. Besides, the use of the words "solemn affirmation" suggests that it is to be made before a Court or some person authorised to administer oaths and affirmations.

I am, therefore, unable to hold that the petition of Gaji Das has been properly verified. At the same time it must be conceded that the points raised in this case have brought to light certain defects in the rules relating to the verification of applications. The word "Affidavit" is defined in Bouvier's Law Dictionary as follows:—

"A statement or declaration reduced to writing or sworn to or affirmed before some officer who has the authority to administer oath or affirmation."

Thus, this word is comprehensive enough to include both statements sworn to and affirmed. Notwithstanding this, rule 3 is so drafted as to suggest that there is some distinction between the verification of a petition by solemn affirmation and its verification by an affidavit. There are certain other rules in Chapter III which also seem to draw a distinction between the "verification of a petition" and an "affidavit": see rules 13, 16, 17, 18 and 19. Rule 11 says that

"when the petitioner in any petition or the declarant in any affidavit, speaks to any facts within his knowledge, he must do so directly and positively using the words 'I affirm (or make oath) and say.'"

The language of this rule suggests that those who framed it intended to draw a distinction between a verification by a petitioner and an affidavit by a

declarant, but it is not clear why it was necessary to make that distinction. Again, as I have already pointed out, on reading the various rules of Chapter III it would appear that those who framed them must have intended that where a petition is verified on oath or by solemn affirmation, the oath or affirmation should as a rule be administered by the Commissioner for Oaths; yet curiously enough there is no rule expressly requiring a petitioner to appear before the Commissioner for the purpose of verifying his petition or swearing an affidavit. In view of these defects it is difficult to reject this petition merely on the ground that it does not conform to rule 3.

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The second question also is not free from difficulty. It appears that according to rule 13A, Chapter XIII (Part III of the Patna High Court Rules), a fee of Rs. 2 is leviable "for swearing or affirming every affidavit intended to be used in the High Court". It is contended by the learned Advocate appearing for the petitioner that if this rule is read along with some of the rules of Chapter III where a distinction has been drawn between a verified petition and an affidavit, one must hold that the fee of Rs. 2 can be levied only when an affidavit or a declaration by a person other than the petitioner is either sworn or affirmed, and not when the petition is verified by the petitioner on solemn affirmation. It is suggested that the word "affirming" has been used in contrast with the word "swearing" in this rule because the Oaths Act permits the making of an affirmation where a party has some objection to taking an oath; and it is contended that where the application is verified by the petitioner himself it is only just that no fee should be charged because the petitioner is already required to pay a court-fee on the petition itself. Some of these arguments can be easily met, but it does appear to me that the rule is not clear, and I am therefore not disposed to reject the present

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application on the ground that it is not sufficiently stamped. In my opinion the rules ought to be recast in plainer language and if in fact it is intended that a petition which is verified by the petitioner himself does not require a court-fee under rule 13A of Chapter XIII it must be said so in clear language.

As to the merits of these two applications, there is very little indeed to be said. In both the cases the petitioners sought to prosecute one Hari Naik for making certain false statements before a Deputy Magistrate in a criminal case. In Criminal Revision no. 7 of 1939 the Magistrate refused to make a complaint under section 476 of the Code of Criminal Procedure and an appeal from his order was dismissed by the Sessions Judge. Both the Magistrate and the learned Judge were of the opinion that the contradictory statements were made by the opposite party in a state of confusion and that it was not expedient in the interest of justice that a complaint should be lodged. In Criminal Revision no. 75 of 1938 the trying Magistrate made a complaint to the District Magistrate, but the complaint was dismissed by the latter on a similar ground and the order of the District Magistrate was upheld on appeal.

In my opinion no case has been made out for setting aside the order of the learned Sessions Judge refusing to direct the prosecution of the opposite party under section 193 of the Indian Penal Code.

The result is that both the applications are dismissed.

MANOHAR LALL, J.—I agree.

K. D.

*Applications dismissed.*