

REVISIONAL CRIMINAL

*Before Harnam Singh, J.*KANSHI RAM,—Petitioner
versus

KULDIP SINGH and OTHERS,—Respondents

Criminal Revision No. 114 D/52

Court-fees Act (VII of 1870)—Section 20—Rule framed by the Punjab High Court under—Rule 5—Court-fee, whether payable by complainant for service of process on the accused in respect of complaint of cognizable offences.

Held, that no court-fee is payable by the complainant for service of process on the accused in respect of a complaint of cognisable offences under Rule 5 framed by the

1953

August 12th

Punjab High Court in exercise of the powers conferred on the High Court by section 20 of the Court-fees Act, 1870. These rules are to be found in Chapter 5-B, Rules and Orders of the High Court, Volume 4.

Petition under section 439, Criminal Procedure Code, for revision of the order of Shri Gurdev Singh, 1st Additional Sessions Judge, Delhi, dated the 5th December 1952, affirming that of Shri R. N. Shingle, Magistrate, 1st Class, Delhi, dated the 18th April 1952, declining to summon Shri Gulzari Lal.

FAQIR SINGH, for Petitioner.

M. C. GUGNANI, for Respondents.

JUDGMENT

Harnam Singh,
J. HARNAM SINGH, J. Shri Kanshi Ram filed complaint under section 406 of the Indian Penal Code on the 15th of March 1951, against Mr. Lal and Shri Gulzari Lal. In the preliminary inquiry that followed under section 202 of the Code of Criminal Procedure, evidence was examined. On the 17th of March 1951, processes were ordered to be issued under sections 420 and 406 of the Indian Penal Code for compelling the attendance of the accused.

From the order passed on the 17th of March 1951, it would appear thatailable warrants in a sum of rupees one thousand were ordered to be issued for compelling the attendance of Shri Gulzari Lal. On the 28th of March 1951, information was supplied to the Court that the proprietor of Messrs. Commercial Services, Fort Botawala Building, 17/72 Appollo Street, Bombay, was Shri Kuldip Singh and not Mr. Lal. That being the position of matters process was issued for compelling the attendance of Shri Kuldip Singh and Shri Gulzari Lal.

For the purposes of deciding the point that arises in Criminal Revision No. 114-D of 1952, it is not necessary to trace the history of the proceedings between the 28th of March 1951, and the 24th

of March 1952. On the last-mentioned date, the **Kanshi Ram**
Court passed the following order:—

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“This is an old complaint filed as far back as 17th March 1951, and during this period of one year the accused *Narula* has appeared only once. There is a medical certificate that accused *Kuldip Singh Narula* is ill with amaeabic collites. The doctor has recommended a rest for one month, but I do not agree with him. The accused must present himself on 18th April, 1952, when the prosecution would be required to produce the whole evidence. The other accused should also be served for the next date, otherwise he will be given up. Bailable warrants of rupees one thousand may issue.”

Harnam Singh
J.

On the 18th of April 1952, the Court passed the following order:—

“The accused *Kuldip Singh* is again absent. His counsel has filed a certificate to show that he is an indoor patient. The complainant is present, but for the last two dates he has not filed any *talbana* for summoning the other accused *Gulzari Lal* whom I now order to be given up.”

In my judgment, the Court was in error in discharging *Shri Gulzari Lal* for the reason that the complainant had failed to pay process-fee.

Section 20 of the Court-fees Act provides, *inter alia*, that the High Court shall make rules as to the fees chargeable for serving and executing pocesesses issued by the criminal Courts in the case of offences other than offences for which police officers may arrest without a warrant. In exercise of the powers conferred on the High Court by section 20 of the Court-fees Act, the High Court has made

Kanshi Ram v. Kuldip Singh and others — Harnam Singh, provides, *inter alia*:—

rules to be found in Chapter 5-B, Rules and Orders of the High Court of Judicature at Lahore, Volume IV. Rule 5, as substituted by correction slips No. 12/XIX-E. 2, dated the 17th of January 1945, and No. 14/XIX-E. 2, dated the 17th of March 1950,

J.

“5. Except as otherwise directed by the provisions of law, a fee of twelve annas shall be chargeable for any process issued by criminal Court, whether such process be served through the Process-serving Establishment or through Police.

Provided that no fee shall be chargeable for any process of a criminal Court relating to a cognizable offence, as defined in section 4(1)(f) of the Code of Criminal Procedure, or for any process relating to a non-cognizable offence, if in the same case a process relating to a cognizable offence is issued.”

Schedule II appended to the Code of Criminal Procedure shows that offences under sections 406 and 420 of the Indian Penal Code are cognizable. If so, no process-fee was to be paid by Shri Kanshi Ram, complainant for serving and executing processes issued for compelling the attendance of the accused.

From what I have said above, it is plain that the order passed by the Magistrate on the 18th of April, 1952, is not sustainable.

In the result, I set aside the order passed by the Magistrate on the 18th of April 1952, and direct that proceedings shall be taken to compel the attendance of Shri Gulzari Lal and the trial proceeded with in accordance with law.