

**Daya Ram Vs. State**

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**Court :** Allahabad

**Decided On :** Feb-07-1964

**Reported in :** AIR1967All81; 1967CriLJ151

**Judge :** D.S. Mathur, J.

**Acts :** Court-fees Act, 1870 - Sections 19; Indian Penal Code (IPC) - Sections 379

**Appeal No. :** Criminal Revn. No. 1648 of 1963

**Appellant :** Daya Ram

**Respondent :** State

**Advocate for Def. :** D.G.A.

**Advocate for Pet/Ap. :** Santi Swarup Bhatnagar, Adv.

**Disposition :** Application dismissed

**Judgement :**

ORDER

**D.S. Mathur, J.**

1. Daya Ram has moved this revision application to challenge the order of the Additional Sessions Judge of Meerut dismissing his appeal and thereby maintaining his conviction under Section 379 I. P. C. and also the magistrate's

order releasing him (applicant) on probation on his guardian executing a bond of Rs. 500 for a period of 2 years on terms and conditions given in Form C of the Probation Rules. At the same time the applicant was to remain under the supervision of the Probation Officer.

2. The revision application was unstamped and the question that arises for consideration is whether a revision application challenging an order of the above nature required court fee stamp, or in view of Clause (xvii) of Section 19 of the Court Fees Act no court fee was chargeable.

3. Notice of the application was given to the Standing Counsel but under instructions of the State the Deputy Government Advocate put in appearance to oppose the contention of the applicant that the application was exempt from court fee.

4. Under Clause (xvii) of Section 19 of the Court Fees Act no court fee is chargeable on a petition by a prisoner or other person in duress or under restraint of any court or its officers. Daya Ram, applicant, has not been sentenced to imprisonment and is not a prisoner. He cannot be said to be in duress. The only point for consideration is whether the applicant is a person under restraint of a court or its officers.

5. The word 'restraint' cannot be given the same meaning as 'confinement'. A person is 'confined' to one place if he cannot move out of that place. But 'restraint' can be of many kinds. If a person is confined in a building or a place, he is restrained from moving out of that building or place. In other words, whenever a person is wrongfully confined he is at the same; time wrongfully restrained but there can be restraint without confinement. This shall be where limitations have been imposed on the exercise of fundamental right given to a citizen of India to move about freely throughout the country. Whenever any limitation is imposed on the exercise of such right, there is, in the eye of law, a restraint and where the restraint is 'of the court or of its officers' the case would fall within the above clause of Section 19 of the Court Fees Act.

6. In the instant case the applicant, Daya Ram, was ordered to be released on probation on his guardian executing a bond on the terms and conditions given in Form C. Bond in Form C was, in fact, executed by the guardian, namely, the father of Daya Ram. The bond has been wrongly filled in but we cannot be unduly guided by this factor. We have to understand the scope of the magistrate's order and not how that order was complied with. Condition 4 of Form C is that the person released on probation shall not quit the district or area specified in the supervision order without written permission of the Probation Officer or of any other officer appointed in his place. In other words, the magistrate had directed that during the two years' period of probation the applicant, Daya Ram, shall not leave the district of Meerut without the written permission of the Probation Officer and this was clearly a restriction on the movement of the applicant which would amount to a restraint.

7. The words 'under restraint of a court' mean nothing else than under a court's order placing restriction on the liberty of a person. In the instant case, the restriction was imposed by the court, it was a restraint under order of the court and hence of the court, and the person so restrained could move the court without payment of court fee on applications made by him or on his behalf.

8. The revision application was thus not chargeable with court fee and can be entertained.

9. The finding of fact recorded by the lower courts cannot be said to be improper. A person convicted of theft could be released after admonition under Section 3 or on probation under Section 4 of the U. P. First Offenders' Probation Act. The offence was not of a trivial nature and the lower courts cannot be said to have acted illegally by not releasing the applicant after admonition.

10. The revision has no force and it is hereby dismissed summarily.

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