

Luka Vs. State of Kerala

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Court : Kerala

Decided On : May-21-1958

Reported in : AIR1958Ker338

Judge : K.T. Koshi, C.J. and; G. Kumara Pillai, J.

Acts : Court-fees Act, 1870 - Article 11; Travancore-Cochin Court-fees Act, 1125 - Article 6; [Constitution of India](#) - Article 226

Appeal No. : Court-fee Ref. in A.S. 130 of 1958

Appellant : Luka

Respondent : State of Kerala

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : M.T. Paikaday, Adv.

Judgement :

G. Kumara Pillai, J.

1. In this case two matters come up for consideration. According to the appellant's counsel, the court fee payable on a memorandum of appeal filed against an order on an application under Article 226 of the Constitution is only Rs. 2/- under Schedule 2 of Article 6 of the Court Fees Act According to the office, it is Rs. 25/-

under the rules framed by the High Court governing applications under Article 226. The Government Pleader appearing on behalf of the Advocate General to whom notice was issued by us supports the appellant's counsel.

The provision investing the High Court with rule making power in the matter does not authorise it to make rules for the levy of court-fee which has to be done under the provisions of the Court Fees Act. We therefore hold that the rule relied upon by the office is ultra vires and that the proper court fee payable for the appeal is only Rs. 2/-.

The next matter is whether the appellant's counsel requires a fresh vakalath from the client for filing the appeal or whether he can make use of the original vakalath given to him before filing the writ application itself for filing the appeal also. According to the office, a fresh vakalath is necessary.

In as much as the original vakalath contains an authorisation for filing the appeal also if the decision in the writ application went against the client, we are of the view that no fresh vakalath is necessary for filing the appeal.

2. Order accordingly.

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