

Mangu Ram

Vs

Municipal Corporation of Delhi

M/s. Ram Pershad Gondamal Through Ram Pershad and Jaidayal

Vs

Municipal Corporation of Delhi

Petitions for Special Leave to Appeal (Crl) Nos. 918 and 919 of 1975

(P. N. Bhagwati R. S. Sarkaria JJ)

10.10.1975

JUDGMENT

BHAGWATI, J. -

1. These are two special leave petitions which are being disposed of by us by judgment after hearing both sides. There is only one question of law which arises for determination and since it lies in a very narrow compass and is concluded against the petitioner by the language of the new statutory enactment in Section 29(2) of the Limitation act, 1963, we thought that it would be a futile exercise to grant special leave and then hear the appeals and hence we decided to hear these two special leave petitions after issuing notice to the respondent so that the question of law arising for consideration can be finally determined by a pronouncement of this Court.

2. The petitioner in Special Leave Petition No. 918 of 1975, hereinafter referred to as Mangu Ram, was at all material times a partner in the firm of M/s. Ram Pershad Gondamal, which is the petitioner in Special Leave Petition No. 919 of 1975. The firm of M/s. Ram Pershad Gondamal owned a shop in Kharibaoli, Delhi where it sold inter alia Phool Gulab. On August 8, 1969, the Food Inspector of the Municipal Corporation of Delhi purchased two samples of Phool Gulab from the shop of the firm of M/s. Ram Pershad Gondamal for analysis after complying with the procedure prescribed by law and each sample was divided into three parts, out of which one part was sent to the Public Analyst for analysis, the other was retained by the Food Inspector and the third was handed over to Mangu Ram who sold the samples on behalf of the firm of M/s. Ram Pershad Gondamal. The first sample was marked O.P.K. 169 and the second was marked O.P.K. 170. It was found from the report of the analysis made by the Public Analyst that both samples O.P.K. 169 and O.P.K. 170 were adulterated and hence the Municipal Corporation of Delhi filed two complaints, one in respect of each sample, against Mangu Ram and the firm of M/s. Ram Pershad Gondamal in the Court of the Judicial Magistrate, First Class, Delhi for an offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954. These two complaints were consolidated and tried together by the learned Judicial Magistrate. During the course of the trial, on an application made by Mangu Ram and the firm of M/s. Ram Pershad Gondamal, one part of each of the two samples lying with them was sent by the learned Judicial Magistrate to the Director, Central Food Laboratory for analysis as required by Section 13, sub-section (2) of the Act. The

Director, Central Food Laboratory analysed the two samples sent to him and issued a certificate in respect of each of them showing the result of the analysis. The certificate in respect of sample O.P.K. 169 showed the presence of Tartrazine Indigo Carmine which was then a non-permitted coal tar dye, but subsequently permitted by reason of amendment of Rule 29 of the Prevention of Food Adulteration Rules, 1955, while the certificate in respect of sample O.P.K. 170 revealed the presence of Rhodamine B, which was at all times a non-permitted coal tar dye. The learned Judicial Magistrate, in view of these certificates of the Director, Central Food Laboratory, came to the conclusion that both the samples sold by Mangu Ram on behalf of the firm of M/s. Ram Pershad Gondamal were adulterated, but since Phool Gulab of these two samples was purchased by the firm of M/s. Ram Pershad Gondamal from M/s. Venkateshwara & Co., which was a large manufacturing concern and hence presumably a licensed manufacturer, the learned Judicial Magistrate held that Mangu Ram and the firm of M/s. Ram Pershad Gondamal were entitled to the benefit of Section 10, sub-section (2) of the Act and accordingly acquitted them by an order dated March 18, 1971.

3. The Municipal Corporation of Delhi, being aggrieved by the order of acquittal, made an application to the High Court of Delhi under Section 417, sub-section (3) of the Code of Criminal Procedure, 1898 for special leave to appeal from the order of acquittal. Sub-section (4) of Section 417 required that the application for special leave should be made before the expiry of sixty days from the date of the order of acquittal and, therefore, after excluding the time taken in obtaining certified copy of the order of acquittal, the application for special leave should have been filed on August 25, 1971, but it came to be filed two days later, namely on August 27, 1971. The Municipal Corporation of Delhi, therefore, made an application for condonation of delay by invoking Section 5 of the Limitation Act, 1963 and pleaded that there was sufficient cause which prevented it from making the application for special leave within time. The High Court, by an order dated November 3, 1971, condoned the delay, as there was in its opinion sufficient cause for not making the application for special leave within the prescribed by sub-section (4) of Section 417 and, taking the view that this was a fit case which deserved the exercise of discretion under sub-section (3) of Section 417, the High Court granted special leave to the Municipal Corporation of Delhi to appeal against the order of acquittal.

4. The appeal was thereafter heard by a Division Bench of the High Court. The High Court took the view that there was no evidence on record to show that M/s. Venkateshwara & Co. from whom Phool Gulab was purchased by the firm of M/s. Ram Pershad Gondamal was a licensed manufacturer, nor was there any written warranty in the prescribed form obtained by the firm of M/s. Ram Pershad Gondamal from M/s. Venkateshwara & Co. and hence the defence under Section 19, sub-section (2) was not available to Mangu Ram and the firm of M/s. Ram Pershad Gondamal. Since the certificates issued by the Director, Central Laboratory showed unmistakably the presence of non-permitted coal tar dye in both the samples, there was no doubt, said the High Court, that the two samples were adulterated and in this view, the High Court set aside the acquittal of Mangu Ram and the firm of M/s. Ram Pershad Gondamal and convicted them of the offence under Section 7 read with Section 16 of the Act for selling adulterated samples of Phool Gulab to the Food Inspector. The sentence imposed for the offence in respect of sample O.P.K. 169 was only a sentence of fine since coal tar dye found in that sample subsequently came to be permitted by the amendment of Rule 29, but so far as the offence in respect of sample O.P.K. 170 was concerned, Mangu Ram was sentenced to suffer six months' rigorous imprisonment and to pay a fine of Rs. 1000 or in default to suffer rigorous imprisonment for a further period of three months, while the firm of M/s. Ram Pershad Gondamal was sentenced to pay a fine of Rs. 1000. Mangu Ram and the firm of M/s. Ram Pershad Gondamal thereupon filed the present petitions for special leave to appeal against the order of conviction and sentence passed against them.

5. There was nothing that could be said on behalf of Mangu Ram and the firm of M/s. Ram Pershad Gondamal on the merits of the conviction and sentence, since the certificates of the Director, Central Food Laboratory clearly showed the presence of non-permitted coal tar dye in both the samples and it was impossible to contend that the two samples were not adulterated. The only argument which could be advanced on their behalf was - and that was the only argument pressed before us - that the time limit of sixty days prescribed in sub-section (4) of Section 417 for the making of an application for special leave under sub-section (3) of that section was a mandatory and inexorable time limit which could not be received against or relaxed and it excluded the applicability of Section 5 of the Limitation Act, 1963. It was urged that having regard to the clear and specific language of sub-section (4) of Section 417 which left no scope for doubt or ambiguity, the High Court was statutorily obliged to reject an application for special leave made after the expiry of sixty days from the date of the order of acquittal and it had no jurisdiction to extend this time limit of sixty days by resort to Section 5 of the Limitation Act, 1963. This contention was sought to be supported by reference to a decision of this Court in *Kaushalya Rani v. Gopal Singh* (AIR 1964 SC 260 : (1964) 4 SCR 982 : (1964) 1 Cri LJ 152). Now, prima facie, it might seem at first blush that the decision in *Kaushalya Rani's* case (supra) is directly applicable in the present case and clinches the decision of the issue in favour of Mangu Ram and the firm of M/s. Ram Pershad Gondamal. But a closer scrutiny will reveal that it is not so. The decision in *Kaushalya Rani's* case is clearly distinguishable from the present case.

6. The question which arose for consideration in *Kaushalya Rani's* case (supra) was apparently the same as in the present case, namely, whether the time limit of sixty days prescribed in sub-section (4) of Section 417 for making an application for special leave under sub-section (3) of that section could be extended by invoking Section 5 of the Indian Limitation Act, 1908. This Court held that sub-section (4) of Section 417 laid down a special period of limitation for an application by a complainant for special leave to appeal against an order of acquittal and

in that sense, this rule of sixty days bar is a special law, that is to say, a rule of limitation which is specially provided for in the Code itself, which does not ordinarily provide for a period of limitation for appeals or applications.

This Court pointed out that since

the special rule of limitation laid down in sub-section (4) of Section 417 of the Code is a special law of limitation governing appeals by private prosecutors, there is no difficulty in coming to the conclusion that Section 5 of the Limitation Act is wholly out of the way, in view of Section 29(2)(b) of the Limitation Act.

The applicability of Section 5 of the Indian Limitation Act, 1908 was thus held to be excluded in determining the period of limitation of sixty days prescribed in sub-section (4) of Section 417 by reason of Section 29(2)(b) of that Act, with provided in so many terms that

for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the remaining provisions of this Act

that is sections other than Sections 4, 9 to 18 and 22 "Shall not apply" Now, there can be no doubt that if the present case were governed by the Indian Limitation Act, 1908, this decision would wholly apply and the Municipal Corporation of Delhi would not be entitled to invoke the aid of Section 5 of that Act for the purpose of extending the period of limitation of sixty days prescribed in

sub-section (4) of Section 417 for an application by a complainant for special leave to appeal against an order of acquittal. But the Indian Limitation Act, 1908 has clearly no application in the present case, since that Act is repealed by the Limitation Act, 1963 which came into force with effect from January 1, 1964 and the present case must, therefore, be decided by reference to the provisions of the Limitation Act, 1963.

7. There is an important departure made by the Limitation Act, 1963 in so far as the provision contained in Section 29, sub-section (2), is concerned. Whereas, under the Indian Limitation Act, 1908, Section 29, sub-section (2), clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special local law, the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded, Section 29, sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal for application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. Section 29, sub-section (2), clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, sub-section (2) of the Limitation Act, 1963, in clear and unambiguous terms, provides for the applicability of Section 5 and the ratio of the decision in Kaushalya Rani's case (supra) can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law, if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani's case, the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it. The High Court, in the present case, did not, therefore, act without jurisdiction in holding that application preferred by the Municipal Corporation of Delhi was not barred by the time limit of sixty days laid down in sub-section (4) of Section 417 since the Municipal Corporation of Delhi had sufficient cause for not preferring the application within such time limit. The order granting special leave was in the circumstances not an order outside the power of the High Court.

8. We do not, therefore, see any reason to grant special leave to Mangu Ram and the firm of M/s. Ram Pershad Gondamal to appeal against the order of the High Court and we accordingly dismiss the petitions for special leave filed by them.

</html