

ALLAHABAD HIGH COURT

Mohammad Ibrahim

Vs.

Gopi Lal

Criminal Misc. Appln. No. 161 of 1957

(B.R. James and J.N. Takru, JJ.)

10.02.1958

JUDGMENT

B. R. James, J.

1. On a complaint by one Mohammad Ibrahim, a resident of the town of Khurja, certain persons were tried for an offence under Section 297, Indian Penal Code before a Magistrate and convicted, while their appeal before the Sessions Judge was allowed on 22-6-1957 and their acquittal ordered. Thereupon, Mohammad Ibrahim on 30-8-1957 made an application under clause (3) of Section 417 of the Code of Criminal Procedure for grant of special leave to appeal from the order of acquittal. This application was obviously beyond the period of sixty days prescribed by clause (4) of Section 417. Subsequently on 26-9-1957, Mohammad Ibrahim made an application under Section 5 of the Limitation Act praying for extension of the period of limitation. When Section 5 application came up for hearing before our brother Desai it was argued before him that Section 5 of the Limitation Act could not apply to an application under Section 417(3) of the Code. He considered the matter and held that the contention was well-founded, but finding that there was a conflict in judicial opinion on the point, referred the case to a division Bench. It has now been listed before us for hearing, and we have heard learned counsel for the parties.

2. After hearing we find nothing which we can usefully add to the reasoning of our brother Desai in his Order of Reference, and we wish to lay emphasis on the special wording of clause (4), namely, that

"no application under sub-section (3) for the 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."

In our opinion these words clearly show that the intention of the Legislature was that such applications must be made within sixty days of the order of acquittal and that the High Court had no power to extend the period of limitation.

Accordingly we find ourselves wholly in agreement with our brother Desai that the bar of the High Court's entertaining an application under sub-section (3) after the expiry of sixty days is absolute. Since Mohammad Ibrahim's Section 5 application comes within the mischief of this rule, it is liable to be dismissed as barred by time.

3. But even if we were inclined to hold- which we do not - that Section 5 of the Limitation Act did apply, we are not satisfied that Mohammad Ibrahim had sufficient cause for not making his leave application within the prescribed period. Although this application was filed by him eight days beyond time, it was not accompanied by any application under Section 5 of the Limitation Act. Such application was made for the first time on the 26th September, putting forward the excuse that he had been ill with influenza. Even then it was not accompanied by any medical certificate. Such a certificate was obtained for the first time as late as the 11th October, and in it a medical practitioner of Khurja possessing the qualification of an L. M. P., stated that Mohammad Ibrahim "was suffering from severe influenza and was under my treatment since 8-7-57 to 24-8-57." We are unable to understand the nature of the supposed influenza which lasted so long, nor are we disposed to accepting the authenticity of the certificate obtained in the circumstances indicated. We are not satisfied with regard to the genuineness of the allegation that Mohammad Ibrahim had been ill. Besides, for the purpose of filing a leave application his presence with his lawyer at the High Court was not at all necessary, and it would have been quite sufficient for his sending some friend or relative with the appropriate papers to his lawyer. Failing friends or relatives - which does not appear probable - the ubiquitous post-office was at hand to do the needful. For these reasons we are not at all satisfied that he had sufficient cause for not making his leave application within the prescribed time, so that he is disentitled to the relief of Section 5 of the Limitation Act.

4. In these circumstances we have no hesitation in rejecting this application for extending the period of limitation.

5. In view of this order the leave application under Section 417(3) of the Code fails and is hereby dismissed.

Application dismissed.