

ALLAHABAD HIGH COURT

Rajjan Lal

Vs.

State

Criminal Misc. No. 422 of 1960 in Criminal Misc. No. 203A of 1959 in Criminal Appeal No. 1517 of 1959

(O.H. Mootham, C.J., A.P. Srivastava and D.P. Uniyal, JJ.)

09.08.1960

JUDGMENT

Mootham, C.J.

1. The question which has been referred to this Bench is :

"Whether Section 5 of the Limitation Act applies to an application for special leave to appeal from an order of acquittal under Section 417(3), Criminal Procedure Code"

Sub-Sections (3) and (4) of Section 417, read thus :

"(3) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(4) 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 *Mohammad Ibrahim v. Gopi Lal*¹, the Court held that the terms of Sub-Section (4) showed clearly the intention of the Legislature that applications for leave to appeal against an order of acquittal must be made within sixty days of the order, and that the Court had no power to extend that period. The correctness of this view was doubted in the later case of *Municipal Board, Lucknow v. Bhagwan Das*², in which it was held that in computing the period of sixty days the time requisite for obtaining a copy of the order sought to be appealed from could be excluded under Section 12(2) of the Limitation Act.

2. In my opinion the answer to the question referred to us lies in a narrow compass. It is not contended, nor could it be successfully contended, that the provisions of

¹ AIR 1958 All 691

² AIR 1959 All 500

Section 5 of the Limitation Act apply only to an appeal or an application for a review of judgment or for leave to appeal for which a period of limitation is prescribed in the third column of the first schedule to that Act. It is the settled view of this Court that unless the word 'prescribed' in the Limitation Act is qualified by appropriate words it means prescribed by any law : *Durag Pal Singh v. Pancham Singh*³, It is also common ground that unless (as held by this Court in Mohammad Ibrahim's case, AIR 1958 Allahabad 691), the terms of Section 417 (4) of the Code make manifest the intention of the legislature that the period of limitation shall not be extended, the provisions of Section 5 of the Limitation Act will apply unless the Criminal Procedure Code is a special or local law within the meaning of Section 29 of the former Act.

3. The Criminal Procedure Code is clearly not a local law. The expression 'special law' has not been defined in the Limitation Act, but it is defined in Section 41 of the Indian Penal Code as a law applicable to a particular subject; and that in my opinion is its essential meaning. The Madras High Court in *Kandaswami Pillai v. Kannappa Chetty*⁴, was of opinion that the Civil Procedure Code was a general and not a special law. When considering this question Rajamannar, C.J., said

"I think that the expression "special law" which has not been defined in the Limitation Act was intended to cover only laws like the Rent Act of 1859 which was held by the Privy Council to be a complete Code in itself. In the ordinary sense "special" is used in antithesis to "general". A special Act as opposed to a general or public Act means one that is directed towards a special subject or special class of objects - It is a specious argument to say that the Civil Procedure Code deals with a particular subject, namely, procedure. The special law contemplated is the law which gives rise to special causes of action and which itself provides for the method of enforcement of rights conferred by that Act or for redress of injuries suffered by the Application of the provisions of that Act. The Provincial Insolvency Act, for instance, would be a special law; likewise the Income-tax Act. The Civil Procedure Code is not such a special law. It is a general law relating to procedure.

With these observations I am, with great respect, in complete agreement, and applying the test stated by the learned Chief Justice I am of opinion that the Criminal Procedure Code is a general and not a special law. Prima facie, therefore, the provisions of Section 5 of the Limitation Act will apply to applications for leave to appeal made under Section 417 (3) of the Code against an order of acquittal. This also is the view which has been taken by the Madras High Court in *Coimbatore Municipality v. K.L. Narayanan*⁵, by the Andhra Pradesh High Court in *P. Venkata*

*Subbareddl v. D. Papireddi*⁶, and *In re, Parchuri Adeshamma*⁷,

4. Does Section 417 (4) itself show that it was the intention of the legislature that the

³ AIR 1939 All 403 (FB) ⁵ AIR 1958 Mad 416 ⁷ AIR 1958 And Pra 230

⁴ AIR 1952 Mad 186 (FB) ⁶ AIR 1957 And Pra 406

prescribed period of sixty days should in no circumstances be extended? The words used in the Sub-Section are :

"No application shall be entertained after the expiry of sixty days from the date of that order of acquittal."

At first sight these words may seem to constitute an absolute bar to an extension of time, but they are in fact not markedly dissimilar from the corresponding words used in Section 48 (1) of the Civil Procedure Code, which provides that

"Where an application to execute a decree has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiry of twelve years from."

and then follow the alternative starting points for the period of limitation. Notwithstanding the express terms of this Sub-Section this Court has held in Durag Pal Singh's case, AIR 1939 Allahabad 403 (FB), that the Sub-Section is subject to the provisions Section 15 of the Limitation Act. In my opinion Section 417 (4) will not bear the narrow interpretation which is sought to be placed on it. I do not think that it could have been the intention of the legislature that if the period of sixty days expired on a day on which the Court is closed the application for leave to appeal will necessarily have to be rejected. I am of opinion, with great respect, that the case of AIR 1958 Allahabad 691, was wrongly decided, and that the answer to the question referred to this Bench must be in the affirmative.

Srivastava, J.

7. I agree that the answer to the question referred to us must be in the affirmative.

6. The circumstances in which the question this arisen are not in dispute. The applicant Rajjan Lal presented an application to this Court under Section 417 (3) Criminal Procedure Code praying for special leave to appeal against an order of acquittal dated the 21st May 1959. As the application was filed more than sixty days after the date of the acquittal the learned Judge before whom it came up for consideration rejected it. He did not accede to the prayer of the applicant that he be given the benefit of Section 5 of the Limitation Act and that the delay be condoned. In taking that view he purported to follow a decision of this Court in AIR 1958 Allahabad 691.

There after an application under Section 561A, Criminal Procedure Code was filed praying for a review of the order rejecting the application for the condonation of the delay and the ground put forward was that in view of the observations made in a subsequent case reported in AIR 1959 Allahabad 500, the decision in Mohammad Ibrahim's case, AIR 1958 Allahabad 691, deserved reconsideration. Finding that there was a conflict between the decisions in *Mohammad Ibrahim's case*⁸, and the case of Municipal Board, Lucknow, AIR 1959 Allahabad 500, which needed to be resolved the learned Judge has referred the matter to a Full Bench.

⁸ AIR 1958 All 691

7. It may be observed at the very outset that though some doubt has been expressed in the case of Municipal Board, Lucknow, AIR 1959 Allahabad 500, in respect of the correctness of the decision in Mohammad Ibrahim's case, AIR 1958 Allahabad 691, there is no real conflict between the two decisions. The question which arose for decision in Mohammad Ibrahim's case, AIR 1958 Allahabad 691, did not arise at all in the case of Municipal Board, Lucknow, AIR 1959 Allahabad 500. The only question that was being considered in the latter case related to the application of Section 12 of the Limitation Act to an application for special leave filed under Section 417 (3), Criminal Procedure Code. Even if the benefit of Section 12 was available in respect of such an application it did not necessarily follow that the applicant would be entitled to take advantage of Section 5 of the Limitation Act.

8. But the question referred to us is of importance and has arisen in a number of cases, The view taken on that question by this Court in Mohammad Ibrahim's case, AIR 1958 Allahabad 691, appears to be in direct conflict with the decisions of the Madras High Court in AIR 1958 Madras 416 and of the Andhra Pradesh in AIR 1957 Andhra Pradesh 406 and in AIR 1958 Andhra Pradesh 230.

9. The contention put forward on behalf of the applicant is that as shown by its Preamble the Indian Limitation Act aims at consolidating the entire law relating to limitation of suits, appeals and applications. A perusal of its provisions will show that in some of its sections the Legislature enacted general rules relating to limitation and rules of computing limitation which in the absence of anything definite to the contrary were intended to be of general application. The rule enacted in Section 5 of the Limitation Act, it is contended is such a rule. It is pointed out that it has been held to be applicable to an appeal filed under Section 417 (1), Criminal Procedure Code vide *Janki Ramayya v. Brahmayya*⁹, and also to an appeal filed under Section 417 (2) of the Code vide *State v. Dittu Ram*¹⁰, There is therefore no reason why the benefit of the provision should not be available in respect of applications for special leave to appeal made under Section 417 (3) of the Code.

10. Three reasons have been put forward on behalf of the State in support of the contention that Section 5 of the Limitation Act should not be held applicable to applications filed under Section 417(3), Criminal Procedure Code. They are :

That from its terms Section 5 of the Limitation Act does appear to be applicable to appeals, applications for review, applications for leave to appeal or other applications for which limitation has not been provided in the Schedule of the Limitation Act itself. Section 5 is to be found in Ch. 11 of the Limitation Act which starts with Section 3. That section clearly applies only to suits, applications or appeals for which the period of limitation is prescribed in the First Schedule. The words "the period of limitation prescribed therefore" used in Section 5 should therefore be interpreted as "the period of limitation prescribed therefore in the First Schedule". As no limitation for an application for special leave contemplated by Section 417(3), Criminal Procedure Code has been provided for in the First Schedule in the Limitation Act the benefit of

⁹ AIR 1925 Mad 709

¹⁰ AIR 1955 Pun 164

Section 5 of the Act cannot be claimed in respect of that application.

2. That the entire Criminal Procedure Code and in any case the rule of limitation provided in Section 417(4) of the Code constitutes a special law within the meaning of Section 29 of the Limitation Act and the second part of clause (2) of Section 29 makes Section 5 inapplicable to such a special law.

3. That the terms in which Section 417(4) has been couched show the clear intention of the Legislature that the period of limitation provided therein was to be an absolute bar to the entertainment of applications for special leave and that it was not to be extended on any pretext. That by implication excludes the application of Section 5 of the Limitation Act.

11. The Full Bench decision in AIR 1939 Allahabad 403, appears to be a complete answer to the first contention of the learned counsel for the State. In that case the expression "period of limitation prescribed" used in Section 15 of the Limitation Act was being interpreted. The Full Bench rejected the contention that the expression meant "limitation prescribed in the First Schedule of the Limitation Act" and held that the benefit of the section could lie claimed in respect of periods of limitation provided for in other statutes also like the Civil Procedure Code. The reasons which led to that interpretation appear to be equally applicable to the interpretation of the same expression in Section 5 of the Limitation Act also. It is therefore not possible to interpret the expression "prescribed therefor" in the narrow manner contended for by the learned counsel for the State and to hold that as the period of limitation in the present case has been provided in the Criminal Procedure Code, itself Section 5 of the Limitation Act becomes inapplicable. In this connection it has also to be considered whether clause (4) of Section 41.7, Criminal Procedure Code, prescribes a period of limitation at all. It may be said that it does not prescribe any limitation and that it only prescribes a condition for the exercise of the Court's jurisdiction in respect of applications or special leave. The terms "limitation" or "period of limitation" have, however, not been defined anywhere. They are generally understood as a period

of time provided by law in which a certain action has to be taken in a Court of law. The time limit may be provided for in a positive way by laying down that the action should be taken during a particular period. It may also be provided for in a negative way by saying that if an action is not taken in a particular period certain consequences would follow. Looked at from this point of view it is not at all difficult to see that clause (4) of Section 417, Criminal Procedure Code, provides a period of limitation.

It fixes the period of sixty days from a particular date as the period during which an application for special leave to appeal must be filed in order to be entertained. It also provides that if the application is not filed during that period it shall not be entertained. The terms of Section 48, Civil Procedure Code, are very similar. There it is laid down that no order for execution of a decree shall be made upon a fresh application presented after the period mentioned in the section and in the case of Durag Pal Singh, AIR 1939 Allahabad 403 (FB), the section was interpreted as providing a period of limitation.

12. The second contention also appears to be unacceptable. Section 29 of the Limitation Act will be attracted only if the entire Criminal Procedure Code or at least Section 417(4) of it is held to be a special or local law. It is not contended that it is a local law and it is difficult to see how it can be called a special law. The term "special law" has not been defined in the Limitation Act. There is a definition of the term in Section 41 of the Indian Penal Code but it does not appear to be of general application and as meant only for that Code. In *Phoolbas Kunwar v. Lalla Jogeshur*¹¹, the Civil Procedure Code was considered to be a general law. Richard, C.J., in *Smt. Dropadi v. Hira Lal*¹², held the Provincial Insolvency Act to be a special law as it created a special jurisdiction and dealt with a very special branch of law. Rajamannar, C.J., in AIR 1952 Madras 186 (FB), was of opinion that the Civil Procedure Code, did not become a special law simply because it dealt with a particular subject, named 'procedure'. He thought that the special law contemplated by Section 29 of the Limitation Act was a law "which gives rise to special causes of action and which itself provides for the method of enforcement of rights conferred by that Act and for redress of injuries suffered by the application of the provisions of that Act". If the term "special law" is interpreted as indicated by these high authorities the contention that the Criminal Procedure Code is a special law cannot be accepted. Nor is it possible to concede to the contention that though the Criminal Procedure Code, as a whole is not a special law, as was held in *Sita Ram Nanasa v. Chunni Lalsa Bhag Chandsa*¹³, the particular period of limitation provided in it by Section 417(4) is a special law. In *Sita Ram Nanasa's* case, AIR 1944 Nagpur 155, Section 48, Civil Procedure Code, was held to be a special law on the ground that "any enactment which prescribes a period of limitation for any suit, appeal or application is a special law with reference to the Limitation Act". There is no discussion on the point and no reasons have been given for that interpretation of the term "special law". I am therefore of opinion that the agreement that the application of Section 5 of the Limitation Act stands excluded in view of Section 29 of the Limitation Act on the ground that the Criminal Procedure Code, or Section 417(4) of it is a special law is not sound.

13. No certain conclusion about the Legislature's intention to exclude the application of Section 5 of the Limitation Act can be inferred merely from the manner in which Section 417(4) of the Criminal Procedure Code, has been worded. As has already been pointed out, the terms of Section 48, Civil Procedure Code, were similar and in connection with that section it was held in Durag Pal Singh's case, AIR 1939 Allahabad 403 (FB), that Section 15 of the Limitation Act applied. Sections 4 and 5 are similar to Section 15 inasmuch as they lay down similar rules of general application. There appears to be nothing in clause (4) of Section 417 of the Code on the basis of which it can be said that the Legislature intended to exclude the application of Section 4 of the Limitation Act. How then can it be said to have excluded the application of Section 5 of the Act ?

14. The question referred to us must therefore be answered in the affirmative.

Uniyal, J.

15. I have had the advantage of reading the judgment of my Lord the Chief justice,

¹¹ ILR 1 Cal 226 (PC) ¹³ AIR 1944 Nag 155

¹² ILR 34 AH 496

and, after giving my earnest consideration to the matter, I find myself in respectful agreement with his view that the answer to the question referred to this Bench must be given in the affirmative.

16. The facts giving rise to the reference were these : The applicant filed an application under Section 417(3), Criminal Procedure Code, for special leave to appeal from the order of acquittal passed by a Magistrate of the 1st Class. The application was dismissed by a learned Judge of this Court on the ground that, as it had been filed after the expiry of sixty days from the date of the order of acquittal, there was no power in the High Court to extend the period of limitation under Section 5 of the Limitation Act. He relied on the case reported in AIR 1958 Allahabad 691.

17. The applicant then applied for review under Section 561-A, Criminal Procedure Code, and relied on certain observations made by another Bench of this Court in AIR 1959 Allahabad 500. In the latter case the learned Judges held that Section 12 of the Limitation Act was applicable to application, for special leave to appeal under Sub-Section (3) of Section 417, Criminal Procedure Code. In view of the conflict between the two Division Benches of this Court, the following question was referred to the Full Bench :

"Whether Section 5 of the Limitation Act applies to an application for special leave to appeal from an order of acquittal made under Section 417(3), Cri. P.C. ?

18. Sub-sections (3) and (4) of Section 417 of the Code are new. They were added by the

Criminal Procedure Code, Amendment Act (XXVI of 1955), and are as given below :

Section 417(3). If such an order of acquittal is passed in any case instituted upon complaint and the High Court on an application made to it by the complainant in this behalf, grants special leave to? appeal from the order of acquittal, the complainant may present such an appeal to the High Court."

Section 417(4). 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.

19. The points that arise for consideration are whether Sub-Section (4) of Section 417, Cri. P.C., prescribes a period of limitation, and if so, whether it operates as a bar to the making of an application under Section 417(3) after the expiry of sixty days from the date of the order of acquittal. In other words, whether Sub-Section (4) of Section 417 is controlled by the provisions of Section 5 of the Limitation Act or not.

20. In order to appreciate the point in controversy it is necessary to refer to the relevant provisions of the Indian Limitation Act.

21. Section 5 of the Indian Limitation Act runs as follows :

"Any appeal or application for review of judgment or for leave to appeal, or any other application to which this section may be made applicable by or under any enactment for the time being in force, may be admitted after the period of limitation prescribed therefor, when the applicant or appellant satisfies the Court that he has sufficient cause for not preferring the appeal or making the application within such period."

Section 29(2) of the Act runs as follows :

"Where any special or local law prescribes for any appeal or application a period of limitation different from the period prescribed therefor by the first Schedule, the provisions of Section 3 shall apply, as if such period was prescribed therefor in that Schedule, and for the purpose of determining the period of limitation prescribed in any suit, appeal or application by any special or local law :-

(a) the provisions contained in Section 4, Sections 9 to 18 and Section 22 shall apply only, in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

22. Section 3 of the Limitation Act provides that every suit, appeal and application filed after the period of limitation prescribed therefor by the First Schedule of the Limitation Act shall be dismissed unless the suitor makes out grounds for the applicability of Sections 4 to 25 of the Act.

23. It was contended before us that Section 417(3) was not controlled by the provisions of Section 5 of the Limitation Act, as it prescribes a period of limitation and, as such, is a special law with reference to the Limitation Act. The second step in the argument was that inasmuch as Section 417(3) prescribes a period of limitation for special leave to appeal from an order of acquittal, Section 29 of the Limitation Act completely bars the applicability of Section 5 to such special law.

24. The point that falls to be determined, therefore, is whether the Criminal Procedure Code, is a special or local law. It is conceded that it is not a local law. Is it then a special law? In considering this question the scheme and the purpose of the Code has to be kept in view. The Code was enacted to consolidate and amend the law relating to Criminal procedure. The object of the Legislature in enacting the Code was to provide a machinery for the trial, punishment and prevention of offences generally. This is clearly borne out by the terms of Section 1(2) of the Code which are in these words :

"It extends to the whole of India, except the States of Jammu and Kashmir and Manipur; but in the absence of any specific provision to the contrary, nothing herein contained shall affect any special jurisdiction or power conferred, or any special form or procedure prescribed, by any other law for the time being in force"

25. It will be seen that Section 1(2), Criminal Procedure Code, enacts a rule of construction to be applied in the interpretation of the Code and provides that where there is a special or local law dealing with a particular subject, then the procedure laid down by that law shall be applicable to that law. The section clearly provides that the provisions of the Code shall not affect any special or local law in force in the absence of a specific provision to the contrary. It follows, therefore, that the Criminal Procedure Code is a general law relating to Criminal Procedure and is not a special law.

26. The expression "special law" has been defined in Section 41, Indian Penal Code, and means :

"A special law is a law applicable to a particular subject."

The definition is by no means exhaustive, but there have been a large number of judicial decisions on the question as to what constitutes a "general law". This matter has particularly arisen with reference to the Civil Procedure Code. It would be useful to examine the *raison d'etre* of these decisions because both the Codes deal with procedure relating to civil and criminal cases respectively.

27. In ILR 1 Calcutta 226 (PC), their Lordships of the Privy Council held that the limitation of one year provided by Section 246, Civil Procedure Code, (Act VIII of 1859) is subject in the

case of a minor to be modified by Sections 11 and 12 of the Limitation Act (XIV of 1859). In considering the general question as to whether the provisions of the Limitation Act govern the provisions of the Civil Procedure Code, their Lordships observed (at p. 242) as follows :

"The two statutes were passed in the same year, the assent of the Governor-General being, given to Act VIII on the 22nd of March, to Act, XIV on the 4th of May 1859. The object of the first was to enact a general Code of Procedure for the Courts of Civil Judicature not established by Royal Charter. The object of the second was to establish a general law of Limitation in supersession both of the Regulations which had governed these Courts and of the English Statutes which had regulated the practice of the Courts established, by Royal Charter. Looking to the fifth Sub-Section of the first section, and the 3rd and 11th sections of Act XIV of 1859, their Lordships have no doubt that the intention of the Legislature was that the period of limitation resulting from the 246th section of Act VIII should, in the case of a minor, be modified by the operation of the 11th section of Act XIV."

28. In *Veeramma v. Abiah*¹⁴, Muttuswami Ayyar, J., held that the general provisions of the Limitation Act of 1887 were applicable to suits and other proceedings under other Acts prescribing such period of limitation; unless, those Acts were complete Codes in themselves to which the general provisions of the Limitation Act could not be applied without incongruity. This view was accepted by Strachey, C.J. and Banerji, J., in *Beni Prasad Kuari v. Dharaka Rai*¹⁵, In ILR 34

¹⁴ ILR 18 Mad 99 (FB)

¹⁵ ILR 23 All 277

Allahabad 496, the point which arose for consideration was whether the Provincial Insolvency Act is a special law within the meaning of Section 29 of the Indian Limitation Act. That was a case in which an appeal had been filed under the insolvency Act beyond the period of Limitation. The Provincial Insolvency Act contained a provision as to limitation applicable to appeals. The question for consideration was whether Section 12 of the Limitation Act applied to an appeal filed under the provisions of the Provincial Insolvency Act or whether Section 29 operated as a bar to the applicability of Section 12. Their Lordships came to the conclusion that there was authority for the proposition that the general provisions of the Limitation Act, 1877 were applicable to suits and other proceedings under other Acts which prescribe special periods of limitation but which are not intended to be complete Codes in themselves, and that the words 'affect or alter' in Section 6 of the Limitation Act, 1877 (S. 29 of the present Act) relate only to the period prescribed and not to the way in which that period is to be computed. In this connection it was observed by their Lordships that the expression 'special law' was intended to cover only laws like the Rent Act (10 of 1859) which was held by the Privy Council' to be a complete Code in itself.

29. In another Full Bench of our High Court, AIR 1939 Allahabad 403, the question referred for decision was whether Section 48, Civil Procedure Code, imposed a complete bar to the execution

of a decree after the expiry of a period of 12 years irrespective of the provision of Section 15, Limitation Act. It is relevant to quote Section 48 because the wordings of this section are in pari materia to those of Sub-Section (4) of Section 417, Criminal Procedure Code. Section 48 runs thus :

"Where an application to execute a decree..... has been made, no order for the execution of the same decree shall lie made upon any fresh application presented after the expiration of 12 years from :

(a) the date of the decree sought to be executed....."

30. It will be seen that Section 48 prohibits execution after the expiry of 12 years from the date of the decree. It was contended by the decree-holders before the Full Bench that by virtue of the provisions of Section 15 of the Limitation Act, in computing the time within, which they were entitled to execute the decree, the period during which the execution of the decree had been stayed should not be included. Two questions were posed before the Full Bench. One was whether Section 48 prescribed a period of limitation within the meaning of Section 15, Limitation Act, and the second was whether Section 15 was not confined in its operation to periods of limitation prescribed by the Act or Schedule 1 thereof. The Full Bench answered both the questions in the affirmative. We are not here concerned with the first question because it is not contended before us that Sub-Section (4) of Section 417 does not prescribe a period of limitation. The second question which fell for consideration by the Full Bench in Durga Pal Singh's case, AIR 1939 Allahabad 403, is very similar to the one referred to this Bench for decision. Thom, C.J., who delivered the principal judgment in the case observed upon consideration of the terms of Section 48, Civil Procedure Code, and Sections 15 and 29, of the Limitation Act, that the general provisions of Section 15, Limitation Act are intended to apply to periods of limitation prescribed in the Civil Procedure Code and are not confined in their operation to periods prescribed by the Limitation Act or by Sch. 1 thereof. Iqbal Ahmad, J., who concurred in the opinion of the learned Chief Justice, after considering the relevant provisions of the Limitation Act and the Code of Civil Procedure and the course of legislation on the subject came to the conclusion that in the group of sections from 3 to 29 in Sections 3, 6 and 29, after the word "Prescribed" reference has expressly been made to the first Schedule. It was held that the omission of this qualification in the other sections was not without significance and that the word "prescribed" has been used in these sections in a general sense as meaning prescribed by any law whatsoever.

31. A similar question arose before a Full Bench of the Madras High Court in AIR 1952 Madras 186. Exactly the same question which arose before the Allahabad High Court in Durga Pal Singh's case. AIR 1939 Allahabad 403 came up for consideration before the Madras Full Bench. The judgment of the court was delivered by Rajamannar, C.J. After reviewing the case law bearing on the point he agreed with the ratio of the Full Bench decision in Durga Pal Singh, AIR 1939 Allahabad 403. The learned Chief Justice was of the opinion that

"the provisions of the Limitation Act must be read with those provisions of the Civil Procedure Code which are intimately connected therewith. There is no doubt room for comment in the fact that while other provisions prescribing periods of limitation for applications, appeals and suits found in the Civil Procedure Code of 1859 are subsequently transferred to the Limitation Act, the provision corresponding to Section 48 of the Code, namely, Section 230 of the Code of 1877 continued to remain in the Code and did not find a place in the subsequent Limitation Act. But it is equally apparent that the Legislature was well aware that Section 48 of the Code also prescribed a period of limitation apart from the period of limitation prescribed by the Articles in the Limitation Act."

32. While dealing with the question whether Section 48 of the Civil Procedure Code was a special of local law within the meaning of Section 29 of the Limitation Act, he remarked as follows :-

"I think that the expression 'special law' which has not been defined in the Limitation Act, was intended to cover only laws like the Rent Act of 1859 which was held by the Privy Council to be a complete Code in itself. In the ordinary sense 'special' is used in antithesis to 'general'. A special Act as opposed to a general or public Act means one that is directed towards a special subject or special class of objects. (See *Garnett v. V. Bradley*¹⁶.) It is a specious argument to say that the Civil Procedure Codes deals with a particular subject, namely, procedure. The special law contemplated is the law which gives rise to special causes of action and which itself provides for the method of enforcement of rights conferred by that Act or for redress of injuries suffered by the application of the provisions of that Act. The Provincial Insolvency Act, for instance, would be a special law likewise the Income, tax Act. The Civil Procedure Code is not such a special law. It is a general Jaw

¹⁶1878-3 AC 944 at p. 950

relating to procedure."

33. With respect I agree with the above observations of the learned Chief Justice as to the meaning of the expression "special law". By parity of reasoning the grounds on which the decisions of Durga Pal Singh's case, AIR 1939 Allahabad 403 (FB) and Kandaswami Pillai's case, AIR 1952 Madras 186 (FB), are founded would, mutatis mutandis, apply to the present case.

34. It has always been held that Section 5 applies to criminal appeals including appeals filed under Section 417 (1) Criminal Procedure Code. Vide AIR 1925 Madras 709 and AIR 1955 Punjab 164 :

35. It is difficult to conceive of any valid reason why Section 5 should be excluded from

operation in the case of an application for special leave to appeal from an order of acquittal. When an application of this nature is made it has to be accompanied by a memorandum of appeal. It does not stand to reason that though the court can excuse the delay in filing the appeal beyond the period of limitation yet it cannot extend the period of limitation for making an application for special leave to appeal, whom the grounds for condonation of delay in both cases must necessarily be the same. I am, therefore, of opinion that Section 5 is applicable to applications for special leave to appeal from orders of acquittal made under Section 417 (3) of the Code. The view taken by me is further supported by the following cases : AIR 1957 Andhra Pradesh 406; AIR 1958 Andhra Pradesh 230; In re, Vishwanathan Chettiar, AIR 1957 Madras 300; AIR 1958 Madras 416.

36. It was faintly suggested at the Bar that Section 417 (4) Criminal Procedure Code was a special law as it prescribed a period of limitation. The argument was that in so far as Section 417 (4) trench on the subject of limitation it would be deemed to be a special law. Reliance was placed on the case of AIR 1944 Nagpur 155 where it was held that the Civil Procedure Code could be treated as a special law in so far as it provided a period of limitation in Section 48. I do not find any warrant for the proposition laid down by the learned Judges of the Nagpur High Court, and I find it difficult to endorse the view that a provision in an enactment becomes a special law merely because it prescribes a period of limitation. I think the proper test for determining whether an enactment is a general or a special law is its intrinsic character. If a statute has been enacted for a special object and is a complete Code in itself, then it would be a special law and not otherwise. Enactments like the Income-tax Act, the Excise Act, the Opium Act, the Cattle Trespass Act and the Rent Act of 1959 are instances of special laws. But where a statute deals with procedure, and is of a general application, it will not assume the character of a special law merely by reason of the fact that it contains some provision as to limitation. Neither Sub-Section (3) nor Sub-Section (4) of Section 417 of the Code prescribed a period of limitation for appeal from an order of acquittal passed in a case instituted upon complaint. It cannot, therefore, be said that the provisions of Sub-Sections (3) and (4) of Section 417 are a complete Code in themselves so as to constitute a "special law." Thus Section 29 of the Limitation Act has no application to the present case.

37. I am definitely of the opinion that the Criminal Procedure Code as a whole is a

¹⁷1878-3 AC 944 at p. 950

general law, and that Section 3 of the Limitation Act fully applies to an application for special leave to appeal from an order of acquittal within the meaning of Section 417 (3) of the Code.

Answer in the affirmative.