

ANDHRA PRADESH HIGH COURT

Putchalapalli Venkata Subbareddi

Vs.

Duvvuru Papireddi

Criminal Misc. Petns. Nos. 219, 153 and 169 of 1956

(Umamaheshwaram, J.)

11.04.1956

JUDGMENT

Umamaheshwaram, J.

1. These are applications filed under Section 5 of the Limitation Act for excusing the delay in filing applications for special leave under Section 417 (3) of the Code of Criminal Procedure as amended by Act XXVI of 1955, and they raise an important and interesting question of law. The period of limitation for preferring an appeal under Section 417 (1), Criminal Procedure Code, is fixed under Article 157 of the Limitation Act. To such appeals it is not disputed that Section 5 of the Limitation Act applies. Even in regard to other criminal appeals provided under Articles 150, 150-A, 154 and 155 the provisions of Section 5 of the Limitation Act, apply. The decision of the Madras High Court in *Janakiramayya v. Brahmayya*¹ and of the Punjab High Court in *The State v. Dittu Ram*² clearly hold that Section 5 applies to all criminal appeals.

2. The main question that arises for decision in these petitions is, whether the terms of Section 417 (4), Criminal Procedure Code, preclude the application of the provisions of Section 5 of the Limitation Act. Sub-section (4) of Section 417, Criminal Procedure Code, is in the following terms :

"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."

It is contended by Sri Ramalinga Reddi and Sri Kondayya appearing for the respondents that the period prescribed under Sub-section (4) cannot be extended under any circumstances, as, according to them, the words are mandatory in character. For the purpose of appreciating this contention, it is necessary to examine the relevant provisions of the Indian Limitation Act.

3. Section 5 of the Limitation Act enacts that any application or application for a

¹48 Mad LJ 457 : (AIR 1925 Mad 709)

² AIR 1955 Pun164

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 appellant or applicant satisfied the Court that he had sufficient cause for not preferring the appeal or making the application within such period. The section applies to (i) appeals (ii) applications for review of judgments, (iii) applications for leave to appeal and (iv) to any other application to which the section may be made applicable. As already stated, Section 5 has been held to be applicable to Criminal appeals including appeals filed under Section 417 (1), Criminal Procedure Code. The only question to be decided is, whether Section 5 applies also to an application for special leave to appeal under the amended Section 417 (4), Criminal Procedure Code. The preamble of the Act makes it clear that the Limitation Act was passed to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Court. If Section 5 applies to criminal appeals, it would also apply in respect of applications for leave to appeal, unless the terms of Section 417 (4), Criminal Procedure Code, clearly exclude the application of Section 5.

4. Reference may next be made to the terms of Section 29 (2) of the Indian Limitation Act which runs as follows :

"29. (2). Where any special or local law prescribes for any suit, 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 were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for 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."

In order that Section 29 might apply to the facts of this case, it is necessary to consider, whether Criminal Procedure Code is a special or local law prescribing a different period of limitation in respect of applications for special leave. In *Kandaswami Pillai v. Kannappa Chetty*³ the question arose whether the Civil Procedure Code is a special law within the meaning of Section 29 of the Limitation Act and Rajamannar, C.J., delivering the judgment of the Full Bench held that the Civil Procedure Code is not a special law but is a general law relating to procedure. Applying the same reasoning, I hold that the Criminal Procedure Code is not a special law so as to fall within the terms of Section 29. Section 29 has therefore no application.

5. The next question is, whether Sub-section (4) of Section 417, Criminal Procedure Code, excludes the application of the provisions of Section 5 of the Limitation Act by reason of the words employed, namely, that

³ AIR 1952 Mad 186 (FB)

"no application 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."

6. Section 48, Civil Procedure Code, is also in similar terms. It enacts that no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 12 years from (a) the date of the decree sought to be executed.....The question whether the provisions of Section 15 (1) of the Limitation Act control the terms of Section 48, Civil Procedure Code, arose before the Full Bench of the Madras High Court in the case referred to supra in AIR 1952 Madras 186 (FB), and it was held that the Limitation Act and the Civil Procedure Code ought to be read together

"because both are statutes relating to procedure and they are in pari materia and therefore to be taken and construed together as one system as explanatory of each other."

7. It was further held that even though the period of limitation was not prescribed in schedule 1 but by the Code of Civil Procedure, Section 15 (1) of the Limitation Act has to be read in conjunction with the terms of Section 48, Civil Procedure Code. The conclusions of the learned Chief Justice are in the following terms :

"The expression 'prescribed' in Section 15 (1) of the Limitation Act does not mean 'prescribed by the first schedule' to the Act. It would include a case where a period of limitation is prescribed by any general statute like the Civil Procedure Code."

Adopting those observations I hold that the provisions of Section 5 would apply to special leave applications under Section 417 (4), Criminal Procedure Code.

8. If the contention of the learned advocate for the respondent has to be accepted none of the provisions of the Limitation Act would apply to special leave applications under Section 417 (4). If the period of sixty days expires on a day when the Court is closed, the application will have to be rejected. Similarly the provisions of Section 12 which excludes the period for obtaining copies would not apply. As pointed out by Rajamannar, C.J., in AIR 1952 Madras 186 (FB) (C) :

"It is permissible to adopt a beneficent construction of a rule of limitation if alternative constructions are possible."

9. I see no reason why, if all the provisions of the Limitation Act including Section 5 apply to Criminal appeals including appeals filed under Section 417 (1), Criminal Procedure Code, a different rule of interpretation should be placed in regard to the terms of Section 417 (4) newly added.

10. Sri Ramalinga Reddi, the learned advocate for the respondent relied on the Full Bench decision in *Chenchu Ramanna Reddi v. Annachalam*⁴ in support of his

⁴ ILR 58 Mad 794 : (AIR 1935 Mad 857)

contention. That decision has really no bearing on the facts of this case. It was held by the Full Bench that the terms of Section 9 (1) (c) of the Provincial Insolvency Act do not prescribe a period of limitation. What was decided was that Section 9 (1) (c) was a condition precedent to the filing of the petition or,

"in other words, the petitioning creditor must, on the date when he presents his petition,

have in view some act of insolvency which the debtor has committed within the preceding three months."

As Section 417 (4) provides only a period of limitation the decision in ILR 58 Madras 794 : (AIR 1935 Madras 857) (FB) (D) is inapplicable. In the decision in C.R.P. No. 623 of 1939, 50 Mad L.W. (Short Notes) page 79, the question that arose was whether the terms of Section 5 applied to an application under Section 20 of Madras Act IV of 1938 and it was held that Section 5 had no application. That case clearly falls under Section 29 of the Limitation Act and has consequently no bearing on the point which arises for decision in this case. Sri Kondayya, the learned advocate for the respondent, invited my attention to a decision in *Baijnath v. Dulari Hajjam*⁵ The question that arose was whether Section 5 of the Limitation Act applied to Letters Patent Appeals. It was held that under the old rules framed by the Allahabad High Court there was power to extend the time for good cause shown but that under the new Rule 5-A there was no such power to extend the time. The case therefore turned upon the construction of the particular rules framed by the Allahabad High Court in regard to the filing of Letters Patent Appeals. The decisions in *Muttoor Moideen Hajee, In Re*⁶ and *Kristo Singh Sardar v. Secretary of State*⁷ have also no application as they related to special acts and they were consequently governed by the provisions of Section 29 of the Limitation Act. The last case to be referred is the decision in *Gallagher v. Emperor*⁸, relied on by Sri Gangadhavarao. The question that arose for consideration in that decision was whether the terms of Section 5 of the Indian Limitation Act applied to application filed by a European British subject for leave to appeal from a sentence by the High Court Criminal Sessions. It was assumed in that case that the terms of Section 5 applied and it is therefore not of much assistance.

11. As Section 5 applies to appeals, in my opinion, it equally applies to all applications for leave to appeal whether provided under Schedule 1 of the Limitation Act or not. It is only in respect of applications other than applications for leave to appeal or for review of judgment that the terms of Section 5 should be specially made applicable. I am therefore clearly of opinion that the terms of Section 5 are applicable to applications for special leave under the new Section 417 (4), Criminal Procedure Code.

Order accordingly.

⁵ ILR 50 All 865 : (AIR 1928 All 708) ⁷ AIR 1927 Pat 333

⁶ AIR 1923 Mad 95

⁸ ILR 54 Cal 52 : (AIR 1927 Cal 307)