

ANDHRA PRADESH HIGH COURT

Parchuri Adeshamma

Vs.

State (Andhra Pradesh)

Criminal Misc Petns. Nos. 370 and 371 of 1956, Guntur. in C. C. No. 1052 of 1953

(K. Subba Rao, C.J. and Basi Reddy, J.)

22.10.1957

JUDGMENT

Basi Reddy, J.

1. In these two petitions the question is raised as to whether the provisions of Section 5 of the Indian Limitation Act apply to sub-section 4 of Section 417 of the Criminal Procedure Code. If they do, the High Court has the power, notwithstanding the peremptory provisions of the said sub-section, to condone the delay in filing an application for the grant of special leave to appeal from an order of acquittal.

2. This question was considered by Umamaheswaram J., in *putchelapalle Venkata Subbareddi v. Duvvuru Papireddy*¹, and we are in agreement with the conclusion reached by the learned Judge.

3. By the Code of Criminal Procedure (Amendment) Act, 1955 (Act XXVI of 1955), for the first time in our penal system, the Legislature conferred on a private complainant a right of appeal from an order of acquittal. Apparently being conscious of the danger inherent in giving such a right to a private party, the Legislature imposed a two-fold restriction on the exercise of that right. By reason of sub-section 3 of Section 417, a complainant could prefer an appeal only where the High Court granted special leave to appeal, while sub-section 4 prescribed a shorter period of limitation than in the case of an appeal by the State Government.

4. Section 5 of the Limitation Act empowers the Court to extend the period of limitation in certain cases on sufficient cause being shown. Section 29 (2) of the said Act, however, provides 'inter alia' that for the purpose of determining any period of limitation prescribed for any application by any special law. the provisions of the Limitation Act other than those contained in Section 4, Sections 9 to 18 and Section 22 shall not apply; so that, if the Code of Criminal Procedure is a special law. Section 5 of the limitation Act does not apply, and the Court has no power to excuse the delay in filing an application for the grant of special leave inasmuch as sub-section 4 of Section 417 of the Criminal Procedure Code prescribes a period of limitation.

¹ AIR 1957 And Pra 406

5. Construing an analogous provision contained in Section 48 of the Code of Civil Procedure , a Pull Bench of the Madras High Court in *Kandaswami Pillai v. Kannappa Chetty*². held that the Code of Civil Procedure is a general law and not a special law. Following the Full Bench ruling we hold that the Code of Criminal Procedure is not a special law but is a general law relating to procedure. Therefore, Section 5 of the Limitation Act applies to an application for special leave made after the period prescribed by Sub-Section 4 of Section 417 of the Criminal Procedure Code, and the High Court can, in an appropriate case, extend that period.

6. It is true that the period of limitation is prescribed by a provision in the Criminal Procedure Code and does not find a place in the First Schedule to the Limitation Act : but that, in our opinion, does not alter the position as sub-section 4 itself enacts a rule of limitation.

7. In re Parchuri Adeshamma The order of acquittal was passed on 25-11-55. The Amendment Act XXVI of 195." came into force on 1-1-56; so that, on the date when the order of acquittal was made, the complainant had no right of appeal against an acquittal. Therefore an appeal does not lie, and only a revision lies.

Petitions dismissed.

² AIR 1952 Mad 186