

BOMBAY HIGH COURT

Anjanabai Yeshwant Rao

Vs.

Yeshwantrao Daulatrao Dudhe

Criminal Appeal No. 18 of 1959

(Chainani, C.J., Tambe and Patwardhan, JJ.)

17.02.1960

JUDGMENT

Chainani, C.J.

1. The question referred to the Full Bench is:

"Can the delay on the part of the applicant in making an application under Section 417(3) of the Criminal Procedure Code, for the grant of special leave to appeal from the order of acquittal be condoned under the provisions of Section 5 of the Limitation Act on proper case having been made out?"

Section 5 of the Limitation Act provides as follows :

"Any appeal or application for a 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 therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period".

2. On behalf of the respondents, it has been urged that this section does not apply, in view of the provisions of sub-section (2) of Section 29 of the Act. Sub-section (2) of Section 29 is as follows :

"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 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."

This sub-section can apply only when any special or local law prescribes a period of limitation different from the period prescribed by the first schedule. The first question for consideration therefore is whether sub-section (4) of Section 417 of the Criminal Procedure Code is a special law. It is necessary to bear in mind that the words used are special law and not special Act. In Section 41 of the Indian Penal Code the expression "special law" is defined as meaning a law applicable to a particular subject. This definition is of course only for the purposes of the Penal Code, but it indicates the sense in which the expression is used by the Legislature. In our opinion, the expression, "special law" means a provision of law, which is not applicable generally, but which applies to a particular or specified subject or class of subjects. The right to appeal from an order of acquittal was formerly conferred only upon the State. A private party or a complainant did not enjoy such right. The right was conferred for the first time in 1955, when the new Section 417 was enacted. Before the complainant can file an appeal against an order of acquittal, he has first to make an application for special leave under sub-section (3) of Section 417. Sub-section (4) prescribes a period of limitation for such an application. It states that no such application shall be entertained by the High Court after the expiry of sixty days from the date of the order of acquittal. This period of limitation is prescribed not for all appeals under the Criminal Procedure Code, or even for all appeals from the orders of acquittal. It is prescribed only for applications for special leave to appeal from orders of acquittal. It is therefore a special provision for a special subject and is consequently a special law within the meaning of Section 29(2) of the Limitation Act.

3. Mr. Mandlekar has contended that even if sub-section (4) of Section 417 is a special law within subsection (2) of Section 29 of the Limitation Act, this subsection (2) can only apply where, as stated in the sub-section, the special law prescribes a period of limitation different from the period prescribed therefor by the first schedule. The first schedule to the Limitation Act does not prescribe any period of limitation for an application for special leave from an order of acquittal. Mr. Mandlekar has therefore contended that the period prescribed by sub-section (4) of Section 417 of the Criminal Procedure Code cannot be said to be different from that laid down in the first schedule to the Limitation Act. He has relied upon a decision of a single Judge of the Madras High Court *In re, Viswanathan Chettiar*, (5) AIR 1957 Madras 300 and of the Ajmer Judicial Commissioner's Court in *Moti Lal v. Thandiram*¹, A contrary view has however been taken by a Division Bench of this Court in *Canara Bank Ltd. v. The Warden Insurance Co. Ltd.*². In that case at page 662 (of BLR) : (at p. 36 of AIR) it was observed :

"The contention of Mr. Adarkar is that subsection (2) only applies when you find a period of limitation laid down in the first schedule and a special law alters or modifies that period, and inasmuch as the Limitation Act does not provide for a period of limitation in

respect of an appeal from a special officer to the High Court, Section 29(2) has no application to this particular special law. In our opinion, that is not the correct interpretation to put upon the language used by the legislature, viz., 'a period of limitation different from the period prescribed therefor by the first schedule'. The period of limitation may be different under two different circumstances. It may be different if it modifies or alters a period of limitation fixed by the first schedule to the Limitation Act. It may also be different in the sense that it departs from the period of limitation fixed for various appeals

¹ AIR 1951 Ajmer 52(1)

² 54 Bom LR 661 : (AIR 1953 Bom 35)

under the Limitation Act. If the first schedule to the Limitation Act omits laying down any period of limitation for a particular appeal and the special law provides a period of limitation, then to that extent the special law is different from the Limitation Act. We are conscious of the fact that the language used by the Legislature is perhaps not very happy, but we must put upon it a construction which will reconcile the various difficulties caused by the other sections of the Limitation Act and which will give effect to the object which obviously the Legislature had in mind, because if we were to give to Section 29(2) the meaning which Mr. Adarkar contends for, then the result would be that even Section 3 of the Limitation Act would not apply to this special law. The result would be that although an appeal may be barred by limitation, it would not be liable to be dismissed under Section 3. If possible, we must try and avoid such a startling result and we are sure that the Legislature did not intend that such a result should come about by the language used by it. Therefore, in our opinion, it is clear that we have before us a special law which does prescribe a period of limitation different from the period prescribed therefor by the first schedule to the Limitation Act."

This case was followed by another Division Bench of this Court in *State v. C. N. Raman*³, In our opinion, the view taken in these two cases on this point is correct. We agree with the observations in the judgment in the Canara Bank's case, 54 Bom LR 661 : (AIR 1953 Bombay 35) which I have quoted above.

4. It has also been urged by Mr. Mandlekar that clause (b) of sub-section (2) of Section 29 only makes inapplicable those provisions of the Limitation Act, which relate to the computation of the period of limitation. He has contended that the words "for the purpose of determining any period of limitation prescribed" can only mean for the purpose of computing the period of limitation. He has urged that section 5 has no relevance when the period of limitation is to be determined. It comes into play after the period of limitation has expired and where the question for consideration is whether the delay in instituting a proceeding should be condoned. The effect of condoning delay is that the period of limitation is extended and the proceeding is held to be in time. Section 5 can therefore also be said to be a provision, which has to be referred to for "determining the period of limitation".

5. The words "for the purpose of determining any period of limitation" govern both clauses (a) and (b)). Clause (a) refers to several sections, some of which do not deal with the computation or calculation of the period of limitation. Section 9 provides that where once time has begun to run, no subsequent disability or inability to sue stops it. Section 10 provides that no suit against a person in whom property has become vested in trust shall be barred by any length of time. Section 11 provides that suits instituted in India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act. These and other sections mentioned in clause (a) have to be taken into consideration for the purpose of deciding whether any proceeding is in time. But they have no bearing on the computation of the period of limitation. The words "for the purpose of determining any period of limitation prescribed" cannot therefore be given the limited meaning as suggested by Mr. Mandlekar. In our opinion, they mean for the

³⁵⁸ Bom LR 295 : (AIR 1956 Bom 447)

purpose of deciding whether any proceeding is instituted in time or can be treated as having been instituted in time. Section 5 is one of the sections, which has to be referred to for deciding whether a proceeding should be entertained or whether it should be thrown out as being barred by time. This section will therefore also not apply, where a period of limitation is prescribed by a special law.

6. The argument urged by Mr. Mandlekar also was advanced in 54 Bom LR 661 : (AIR 1953 Bombay 35) but it was not accepted. At page 662 (of Bom LR) : (at p. 36 of AIR) it was observed :

"The other contention of Mr. Adarkar is that Section 29(2) only applies to that limited class of sections in the Limitation Act which deal with the computation of the period of limitation, and inasmuch as Section 5 does not deal with computation of the period of limitation, Section 29(2) has no application. In our opinion, the expression 'for the purpose of determining any period of limitation' does not mean 'computing the period of limitation'. In our opinion, every provision in the Limitation Act is intended for the purpose of determining the period of limitation. The Limitation Act by its operative Section 3 provides that every suit, appeal or application presented to the Court shall be dismissed unless it is filed within the period of limitation, and therefore the main thing that the Court has to consider is whether a suit or an application or an appeal is maintainable looking to the provisions of the Limitation Act, and in order to decide that not only has the Court to consider various sections like Section 4 and Sections 9 to 18 but also Section 5, because if a suit, appeal or application is out of time as provided by the first schedule, the Court has still to consider whether such suit, appeal or application should be allowed to be preferred by reason of Section 5. Therefore, in our opinion, there is no justification for giving to the expression 'for the purpose of determining any period of limitation' the restricted meaning suggested by Mr. Adarkar".

We agree with the view taken on this point in this case.

7. I will now refer to the decisions of other High Courts, which have been brought to our notice. In *Mohd. Ibrahim v. Gopi Lal*⁴, it was held that the words of sub-section (4) of Section 417, clearly show that the intention of the Legislature was that applications under sub-section (3) must be made within sixty days of the order of acquittal, that the High Court has no power to extend the period of limitation, and that the bar to the High Court's entertaining an application under subsection (3) after the expiry of sixty days is absolute. This case was referred to in *Municipal Board v. Bhagwan Das*⁵, in which it was observed that this case may require further consideration. The Andhra Pradesh High Court has taken a contrary view in *Venkata Subbareddi v. Papireddi*⁶, and *In re P. Adeshamma*⁷, The same view has been taken by a single judge of the Madras High Court in *Coimbatore Municipality v. Narayanan*⁸, The basis of these decisions of the Andhra Pradesh and Madras High Courts is that the Criminal Procedure Code is a general law and that consequently sub-section (2) of Section 29 does not exclude the application of Section 5 to applications for special leave under sub-section (3) of Section 417. But, as

⁴ AIR 1958 All 691

⁶ AIR 1957 And Prad 406

⁸ AIR 1958 Mad 416

⁵ AIR 1959 All 500

⁷ AIR 1958 And Prad 230

we have already pointed out, the provision contained in sub-section (4) of Section 417 is a special provision, which applies only to applications made by private parties for leave to appeal from orders of acquittal and is therefore a special law within the meaning of sub-section (2) of Section 29. With respect, therefore, we are unable to agree with the view taken by the Madras and the Andhra High Courts.

8. In our opinion, the question referred to the Full Bench must be answered in the negative. Reference answered accordingly.