

APPELLATE CRIMINAL

Before D. Falshaw and A. N. Grover, JJ.

Mst. KOSHALYA RANI,—Appellant

versus

GOPAL SINGH,—Respondent

Criminal Appeal No. 825 of 1960

1961

Oct., 31st

Code of Criminal Procedure (V of 1898)—Section 417 (4)—Application for leave to appeal filed by complainant against the order of acquittal beyond sixty days—Whether can be entertained by High Court—Provision in Section 417 (4)—Whether special law within the meaning of Section 29 of the Indian Limitation Act—Indian Limitation Act (IX of 1908)—Section 5—Whether applicable to applications for leave to appeal under Section 417(4) of the Code of Criminal Procedure.

Held, that it is difficult to hold that sub-sections (3) and (4) of section 417 of the Code of Criminal Procedure are not special law within the meaning of section 29(2) of the Indian Limitation Act, 1908. A right of appeal was given to a complainant against an order of acquittal for the first time in the year 1955 and that could be exercised only if the High Court granted special leave to appeal from the order of acquittal. As an application has to be filed for obtaining special leave, a specific period has been prescribed by sub-section (4) for filing that application and the language employed leaves no doubt that the High Court cannot entertain that application after the expiry of sixty days from the date of the order of acquittal.

Held, that it cannot be disputed, that special provisions can exist even in a general enactment and although the Code of Criminal Procedure may be general law, the provisions in question embodied in section 417 would be special law. General provisions in an Act do not override special provisions; so that where an Act contains special provisions as to particular matter, they must be read as exceptions to the general provisions, whether contained in the same or any other Act.

Held, that the benefit of section 5 of the Limitation Act cannot be extended to an application for leave to appeal preferred under section 417(4) of the Code of Criminal Procedure.

Appeal from the order of Shri R, K. Baweja, Additional Sessions Judge, Gurdaspur, dated 31st December, 1959, acquitting the respondent.

M. R. MAHAJAN, ADVOCATE, for the Appellant.

V. K. RANADE, ADVOCATE, for the Respondent.

The Judgment of the Court was delivered by:—

GROVER, J.—Pursuant to a complaint made by Mst. Kaushalya Rani, Gopal Singh was committed to the Court of Session to stand his trial under section 493 or in the alternative section 495, Indian Penal Code, but he was acquitted by the learned Additional Sessions Judge on 31st December, 1959. By means of a petition dated 22nd April, 1960 the complainant moved this Court under section 417(3) of the Criminal Procedure Code for leave to appeal against the order of acquittal. A note was appended in that petition to the following effect:—

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“That the time in filing the present petition might be excluded in view of the fact that the District Magistrate, Gurdaspur, had moved the Advocate-General for filing the appeal under section 417, Criminal Procedure Code, which if filed would have obviated the necessity of filing this petition. But the State declined to file appeal and the intimation to this effect was received on 1st April, 1960. The original letter is attached herewith; from this date it is within time.”

A Division Bench consisting of S. B. Kapoor and D. K. Mahajan JJ., made an order on 9th June, 1960

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for summoning the records. On 1st September, 1960 the appeal was admitted by them to a hearing.

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The learned counsel for the respondent has raised a preliminary objection that the appeal is barred by time. Mr. M. R. Mahajan, who appears for the appellant, agrees that the petition for leave to appeal under section 417(3) of the Criminal Procedure Code was filed long after the period prescribed by sub-section (4) of section 417. That sub-section runs as follows:—

“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.”

Mr. Mahajan, however, submits that the delay could be condoned under section 5 of the Limitation Act and has in fact been condoned by the Bench when the appeal was admitted. He has further prayed that in case we are of the view that the Bench has not condoned the delay, we should condone it ourselves inasmuch as after the respondent had been committed to the Court of Session, the State became interested in his prosecution and steps were being taken by the District Magistrate of Gurdaspur for filing a State appeal against the order of acquittal. When the State declined to file an appeal and an intimation to that effect was received on 1st April, 1960, the present appeal was filed. No application was made by the appellant for extension of the period of limitation for filing the petition for leave and it is difficult to accede to the contention that the Bench while admitting the appeal condoned the delay under that provision. At any rate, the position taken up by the learned counsel for the respondent is that delay could be or can be condoned only if section 5 of the Limitation Act applies. According to him, the provision in section 417(4), Criminal Procedure Code, is a

special provision which falls within the expression "special law" in section 29(2) of the Limitation Act which would exclude the applicability of section 5 of that Act. Our attention has been invited to a judgment of a Full Bench of the Bombay Court in *Anjanabai v. Yeshwantrao* (1). The Full Bench followed the law laid down in the previous Bench decisions of the Bombay Court [*Canara Bank Ltd. v. Warden Insurance Co., Ltd.* (2), and *State v. C. N. Raman* (3)], and it was held that the provision contained in sub-section (4) of section 417 of the Criminal Procedure Code 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, Limitation Act. The Full Bench expressed dissent from the contrary view taken in *Venkata Subbareddi v. Papireddi* (1), and *In re. P. A. deshamma* (5), as also *Coimbatore Municipality v. Narayan* (6).

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On behalf of the appellant a great deal of reliance has been placed on a Full Bench decision of the Allahabad Court in *Rajjan Lal v. State* (7). According to this decision, the Code of Criminal Procedure is a general law relating to Criminal Procedure and is not a special or local law within the meaning of section 29 and section 417(4) itself cannot be considered as special law merely because it provides a short period of limitation. Mootham C. J., who presided over the Full Bench, considered that there was nothing in section 417(4) which showed that it was the intention of the legislature that the prescribed period of sixty days should in no circumstances be extended. The learned Chief Justice for the sake of analogy referred to section 48(1) of the Code of Civil Procedure and relied on the decision of a

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- (1) A.I.R. 1961 Bom. 154.
 - (2) A.I.R. 1953 Bom. 35.
 - (3) A.I.R. 1956 Bom. 447.
 - (4) A.I.R. 1957 Andh. Pra. 406.
 - (5) A.I.R. 1958 Andh. Pra. 230.
 - (6) A.I.R. 1958 Mad. 416.
 - (7) A.I.R. 1961 All. 139.

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previous Full Bench in *Durag Pal Singh v. Pancham Singh* (1), to the effect that the sub-section was subject to the provisions of section 15 of the Limitation Act. Srivastava J., who delivered a separate judgment, based his decision largely on the principles laid down in *Durag Pal Singh's case* with regard to the period of limitation prescribed by sub-section (1) of section 48. Uniyal J. while examining other aspects of the matter again rested his decision mainly on the view expressed by the previous Full Bench in respect of sub-section (1) of section 48 of the Code of Civil Procedure and a Full Bench of the Madras Court in *Kandaswami Pillai v. Kannappa Chetty* (2), on the same point. The question referred to the Full Bench in *Durag Pal Singh's case* was "is section 48 of the Code of Civil Procedure uncontrolled by the provisions of section 15 of the Limitation Act?" A good deal of discussion was confined to the question whether section 48 prescribed a period of limitation. That could possibly have no bearing on what is being considered in the present case. As is clear from the judgment of Thom C. J., the only question with which the Bench was concerned was whether the general provisions in section 4, sections 9 to 18 and section 22 in the Limitation Act and in particular section 15 governed section 48 of the Code Civil Procedure. Thom C.J. proceeded to observe that the Code of Civil Procedure is not a special or local Act, but there is a high authority for the proposition that the provisions of the Code are subject to the provisions of the Limitation Act. His conclusion on this point may be stated in his own words—

"Now the present Limitation Act and the present Civil Procedure Code were enacted in the same year 1908, and upon a consideration of the terms of the Sections under consideration and of the authorities above referred to in my judgment the general provisions of

(1) A.I.R. 1939 All. 403.

(2) A.I.R. 1952 Mad. 186.

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 Schedule I."

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Iqbal Ahmad J. in his separate, but concurring judgment dealt more with the divergence of judicial opinion on the varying meaning of the word "prescribed" used in section 15 of the Limitation Act and dealt with that matter at length. After referring to the different conflicting decisions which prompted the legislature in the year 1922 to set the controversy at rest by amending section 29 of the Limitation Act, it was observed by him that the amendment was rendered necessary not because the word "prescribed" in Part 3 of the Act did not mean prescribed by any law for the time being in force but because certain Courts had held that the application of the general provisions of the Limitation Act laid down in Part 3 to special and local Acts did "affect or alter" the periods of limitation prescribed by those Acts and the legislature disapproved of those decisions. After holding that section 48 of the Code of Civil Procedure prescribes a period of limitation for an application for the execution of a decree, Iqbal Ahmad J. came to the conclusion that it was subject to the provisions of section 15 of the Limitation Act. Bajpai J. expressed similar views. It is noteworthy that in *Durag Pal Singh's case* the Allahabad Full Bench did not consider directly those questions which had been examined by the Bombay Full Bench, the most important matter being whether a special provision can exist even in a general law like the Code of Criminal Procedure. In view of the language of section 29(2), all that has to be seen is whether sub-section (4) of section 417 of the Code of Criminal Procedure is a special law prescribing a period of limitation different from the period prescribed therefor by the First Schedule. If it is so, then although the general provisions contained in section 4, sections 9 to 18 and section

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22 shall apply but the remaining provisions of the Limitation Act shall not apply and that would exclude the applicability of section 5.

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The Full Bench decision in *Kandaswami Pillai v. Kannappa Chetty* (1), on which the subsequent decisions of the Madras Court as also the Andhra Court are mainly based related to the question of section 48, Civil Procedure Code, being controlled by section 15(1) of the Limitation Act. After discussing the case-law and tracing the history of legislation relating to the law of limitation as also the Code of Civil Procedure Rajamannar C.J., who delivered the judgment of the Full Bench, observed as follows at page 191:—

“It appears to me from the course of legislation to which I have adverted above 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 provisions 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.”

Surely this reasoning cannot be imported while discussing sub-sections (3) and (4) of section 417 of Criminal Procedure Code which has been substituted for the old section by the Criminal Procedure Code (Amendment) Act, 26 of 1955. The only portion in the Madras judgment which has any bearing on the point which is for consideration before us is where

(1) A.I.R. 1952 Mad. 186.

the learned Chief Justice examined the question whether the Civil Procedure Code can be deemed to be a special or local law within the meaning of section 29 of the Limitation Act. He was inclined to the view 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. According to him, 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 instances given by him are the Provincial Insolvency Act and the Income-tax Act. A full Bench of the Lahore High Court consisting of five learned Judges had occasion to consider the meaning of the expression "special law" as it appears in the context of section 29 of the Limitation Act in *Punjab Co-operative Bank Ltd. v. Official Liquidators, Punjab Cotton Press Company, Limited* (1). Under rule 4 of the rules framed by the High Court under clause 27 of the Letters Patent the period of limitation provided for filing an appeal under clause 10 of the Letters Patent is thirty days from the date of the judgment appealed from. The question for consideration was whether the Letters Patent and the rules framed thereunder by the High Court were a "special law" within the meaning of section 29. The Full Bench in *Jog Dhian v. Hussain* (2), had held that this was not a special law but that view was overruled and it is clear from the judgment delivered by Tek Chand J. that statutory rules framed under the Letters Patent would be a special law within the meaning of section 29. A Division Bench of this Court consisting of Teja Singh J. and Bhandari J. (as he then was) in *Harbans Singh v. Karam Chand and another* (3) had to decide whether section 5 of the Limitation Act had any applicability to appeals filed under clause 10 of the Letters Patent. The limitation for an appeal preferred under that clause is thirty days commencing from the date of the judgment appealed from. After holding that

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(1) A.I.R. 1941 Lah. 257.

(2) I.L.R. 16 Lah. 448.

(3) 1949 P.L.R. 50.

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the provisions of section 5 could not apply to cases which were governed by a special law, it was held that the statutory rules framed by the High Court under clause 27 being special law, section 5 could not be invoked. These decisions are more apposite, apart from the Bombay pronouncements. In *Sitaram v. Chunnilalsa* (1), Grille C.J., and Sen J. have expressed the view that the Civil Procedure Code is a general law in matters of civil procedure, but in so far as it prescribes a period of limitation it is a special law regarding limitation. Whatever the position may be with regard to the period of limitation prescribed by section 48 of the Code, it is difficult to hold that sub-sections (3) and (4) of section 417 of the Code of Criminal Procedure are not special law within the meaning of section 29(2). A right of appeal was given to a complainant against an order of acquittal for the first time in the year 1955 and that could be exercised only if the High Court granted special leave to appeal from the order of acquittal. As an application has to be filed for obtaining special leave a specific period has been prescribed by sub-section (4) for filing that application and the language employed leaves no doubt that the High Court cannot entertain that application after the expiry of sixty days from the date of the order of acquittal. The learned counsel for the appellant does not dispute, and indeed it cannot be disputed, that special provisions can exist even in a general enactment and although the Code of Criminal Procedure may be general law, the provisions in question embodied in section 417 would be special law. General provisions in an Act do not override special provisions; so that where an Act contains special provisions as to particular matter, they must be read as exceptions from general provisions whether contained in the same or any other Act (*Taylor v. Corporation of Oldham* (2)).

The learned counsel for the appellant finally contended that section 29 of the Limitation Act cannot be made applicable in the absence of there being a period of limitation different from the period prescribed therefor by the First Schedule in the Limitation Act. It is sought to be argued that the period of limitation prescribed for an appeal against

(1) A.I.R. 1944 Nag. 155.

(2) 1876 (4) Ch. D. 395.

acquittal in the First Schedule to the Limitation Act (Article 157) is three months from an order of acquittal under the Code of Criminal Procedure. It is pointed out that a different period has not been prescribed by sub-section (3) of section 417 of that Code and it is only for filing an application for leave to appeal that a period of two months has been prescribed, there being no such provision in the First Schedule to the Limitation Act itself. Such an argument was effectively answered by Chagla C. J. who delivered the judgment in *Canara Bank, Limited v. Warden Insurance Company Limited* (1), to which Gajendragadkar J. (now on the Bench of the Supreme Court) was a party, by saying that 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 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." It may be somewhat unfortunate that in fit cases the benefit of section 5 of the Limitation Act cannot be extended to an application for leave to appeal preferred under section 417(4) of the Code of Criminal Procedure but then it is for the legislature to rectify the defect or remove the lacuna.

In the result, this appeal is dismissed on the ground of bar of limitation.

R.S.

FULL BENCH

Before D. Falshaw, A. N. Grover and Harbans Singh, JJ.
THE STATE OF PUNJAB,—Appellant.

versus

THE MODEL WOOLLEN AND SILK MILLS AND ANOTHER,—
Respondents.

Letters Patent Appeal No. 476 of 1958.

District Boards Act (XX of 1883)—Section 31(6)—
Levy of licence fee on the owners for working, erecting or

(1) A.I.R. 1953 Bom. 35.

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