by compounding, infractions, and that too for a paltry sum, as indicated in the composition-fee scale would be tantamount to abetment of breaches which have lethal potentialities. The power given to the transport authority to recover from the permit holder a sum of money as may be agreed upon, is meant to be exercised in extremely rare cases, and the discretion is intended to be used after serious circumspection, and in the presence of genuinely mitigating circumstances. The wholesome and deterrent effect of penalties of suspension and cancellation of permits, ought not to be thrown away by ready acceptance of composition fees.

The plea of the petitioner, that his permit should not have been suspended, and instead a composition fee of thirty rupees as per scale should have been charged in the background of the facts, and of his previous record of habitual violations, borders on the frivolous; and more so, his contention that he has been discriminated against out of *mala fides* of the transport authority.

The petition is devoid of merit and no interference with the order of the suspension of the permit is called for. Consequently, it is dismissed with costs.

B.R.T.

CRIMINAL MISCELLANEOUS

Before J. S. Bedi and R. S. Sarkaria, JJ.

PARSANO,—*Complainant*

versus

HAZARA SINGH,—*Respondent*

Criminial Miscellaneous No. 719 of 1967

December 4, 1967

Code of Criminal Procedure (V of 1898)—S. 417—Limitation Act (XXXVI of (1963)—Ss. 5 and 29—Application filed under S. 417(3) for grant of special

leave to appeal beyond limitation—Whether limitation can be extended under S. 5—S. 29—Scope of.

Held, that section 5 of the Limitation Act, 1963 would apply to applications made under section 417(3) of the Code of Criminal Procedure. Sub-section (2) of section 29 of the Limitation Act is based on the maxim *generalia specialibus non derogant* (the general does not derogate from the special). Sub-section (2), accordingly, provides that where a special or local law prescribes for any application, etc., a period different from the period prescribed therefor by the Schedule, the provisions of the Limitation Act will not apply "except to the extent expressly specified in this section". The first question, that falls for determination is whether the Code of Criminal Procedure prescribes for an application under section 417(3) a period of limitation "different from the period prescribed by the Scheduled" to the Limitation Act. This would cover two types of cases. Firstly, it may *expressly* modify or alter the period mentioned in the Schedule to the Limitation Act. Secondly, it contemplates those cases in which the Schedule *omits* laying down any period of limitation, but the special or local law provides a period. In the present case the Limitation Act does not prescribe any period of limitation for a petition under section 417 (3) of the Code of Criminal Procedure. But the Code, which is a special law does provide a period of sixty days' limitation within which such a petition is required to be made. To that extent, the special law is different from the Limitation Act. Further, there is nothing in the Code of Criminal Procedure which expressly excludes the application of section 5 of the Limitation Act to such petitions for leave to appeal. Under sub-section (2) of section 29 of the Limitation Act, therefore, a person can claim the indulgence of section 5 of the Limitation Act and get the delay condoned by satisfying the Court that he or she had sufficient cause for not making the petition within the prescribed period of sixty days.

Petition under section 417(3) *of the Code of Criminal Procedure,* 1898, *praying that special leave to appeal be granted to the petitioner after condoning the delay in filing the application.*

H. S. GUJRAL, ADVOCATE, for the Petitioner.

D. N. RAMPAL, ASSISTANT ADVOCATE-GENERAL (PB.), J. L. GUPTA, R. L. SIAL, ADVOCATES, for Respondent.

JUDGMENT

SARKARIA, J.—This is a petition under section 417(3) of the Code of Criminal Procedure for grant of special leave to appeal from an order, dated 28th February, 1967, of the Additional Sessions Judge, Amritsar, aquitting the respondent of the charges under section 406, Indian

Penal Code. Notice of this petition was issued to the respondent under order, dated 16th August, 1967, by Gurdev Singh and Jindra Lal, JJ.

The first objection taken by the respondent to this petition is that it is time-barred. He first argued that the provisions of section 29 of the Limitation Act do not empower this Court to extend limitation and condone the delay by the application of section 5 of the Act. In support of his contention, Mr. Jawahar Lal Gupta has cited *Mst. Koshalya Rani* v. *Gopal Singh* (2) *and Kaushalya Rani* v. *Gopal Singh* (3). In the alternative, he contends that even if section 5 of the Act is applicable, then also no sufficient cause has been shown as to why the petitioner delayed the making of this petition for fourteen days after the expiry of the limitation.

In reply, Mr. Harbans Singh Gujral, Learned counsel for the petitioner, contends that these rulings of the Punjab and the Supreme Court were given under the old Limitation Act of 1908, which has since been repealed, and under section 29 of the new Limitation Act of 1963, the provisions of section 5 are applicable even to applications under local and special laws including petitions under section 417(3) of the Code of Criminal Procedure. He has referred to the affidavit of his client, Smt. Parsano, wherein, she has sworn that she had obtained a copy of the trial Court's judgment on 22nd February (March), 1967. She misplaced the copy and was labouring under a wrong impression that the said copy was in the brief of the lawyer. When she had to start for Chandigarh on 1st May, 1967, she detected this mistake and continued to search for the said copy. Eventually, it was found in the papers of her husband, Surjan Singh, mixed up with the papers regarding their son, Gian Singh. It was found out on the morning of 16th May, 1967, whereafter the papers were completed to file the appeal.

We are inclined to agree with Mr. Gujral that section 5 of the Limitation Act, 1963, now would apply to applications made under section 417(3) of the Code of Criminal Procedure. Sub-section (2) of the new section 29 reads 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 by the Schedule*, the provisions of section 3 shall apply as if such period were the

(2) A.I.R. 1963 Punj. 145.
(3) A.I.R. 1964 S.C. 260.

period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, *the provisions contained in sections* 4 *to* 24 *(inclusive) shall apply only* in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

This sub-section is based on the maxim *generalia specialibus non derogant* (the general does not derogate from the special). Sub-section (2) accordingly provides that where a special or local law prescribes for any application, etc., a period different from the period prescribed therefor by the Schedule, the provisions of the Limitation Act will not apply *except to the extent expressly specified in this section.* Now the first question, therefore, that falls for determination is whether the Code of Criminal Procedure prescribes for an application under section 417(3) a period of Limitation "different from the period prescribed by the Schedule" to the Limitation Act. This would cover two types of cases. Firstly, it may *expressly* modify or alter the period mentioned in the Schedule to the Limitation Act. Secondly, it contemplates those cases in which the Schedule *omits* laying down any period of limitation, but the special or local law provides a period. In the present case, the Limitation Act does not prescribe any period of limitation for a petition under section 417(3) of the Code of Criminal Procedure. But the Code, which is a special law does provide a period of sixty days' limitation within which such a petition is required to be made. To that extent, the special law is different from the Limitation Act. Further, there is nothing in the Code of Criminal Procedure which expressly excludes the application of section 5 of the Limitation Act to such petitions for leave to appeal. Under the above-quoted sub-section (2) of section 29, therefore, a petitioner can claim the indulgence of section 5 of the Limitation Act and get the delay condoned by satisfying the Court that he or she had sufficient cause for not making the petition within the prescribed period of sixty days. In the instant case, the impugned order of acquittal was made on 28th February, 1967. The petition was made on 17th May, 1967. It first came before the Division Bench on 16th August, 1967. The affidavit of the complainant accompanying the application for condonation of the delay is vague and general. It is well settled that a cause for delay, which by due care and attention a party could have avoided, cannot be a sufficient cause. Ordinarily, the test for determining whether or not a cause is sufficient is to see

whether it could have been avoided by the party by the exercise of due care and attention. The mere impression of the petitioner that the copy of the trial Court's judgment was lying in the brief of the case, when it was actually lying elsewhere, is not a 'sufficient cause'. At best, it shows remissness and negligence on her part. The provisions of section 5 cannot be used to put a premium on avoidable delay and laxity on the part of litigants. Moreover, the petitioner was bound to give satisfactory explanation of each day's delay beyond the period of limitation. No such explanation is coming forth. The petition under section 417(3) of the Code of Criminal Procedure, therefore, deserves dismissal on the score of limitation alone.

On merits also, we find no force in this petition. We have gone through the judgment of the Courts below. The complainant-petitioner's case was that she had entrusted a huge sum of Rs. 14,200 along with certain ornaments weighing 15½ *totlas* to Hazara Singh respondent on the understanding that he would return the amount and the ornaments at once, whenever, demanded. The whole affair was oral. It took place in village Dabipur. Kartar Singh, Sarpanch, Karam Singh, Panch of village Dabipur, Kartar Singh, Lambardar and Sadha Singh, Panch of another village were cited as witnesses by the complainant. Kartar Singh, Sarpanch and Karam Singh, Panch of Dabipur were not examined. Only Kartar Singh, Lambardar, and Sadha Singh of village Mastgarh were examined. The learned Additional Sessions Judge has given cogent reasons for not accepting the *ipse dixit* of the complainant and her witnesses. The learned Additional Sessions Judge has observed that firstly it was very improbable that the complainant would entrust such a big amount to the respondent without getting any document executed. Secondly, there was no occasion for the entrustment because the brother-in-laws and son of the complainant were living in the same village, with whom she had good relations. There was no necessity or reason for making this entrustment to the respondent. It was said that there was some recital in a mortgage deed in the possession of one Surjan Singh about this entrustment. This mortgage deed was never tendered in evidence. Taking into account all the circumstances the learned Additional Sessions Judge concluded that the case was not free from doubt. By no stretch of imagination, it can be said that the reasons advanced by the learned Additional Sessions Judge are manifestly untenable or erroneous.

In the light of the above discussion, we have no hesitation in dismissing this petition.

J. S. BEDI, J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

THE MANSA ROADWAYS (PRIVATE) LIMITED, MANSA,—*Petitioner*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents*

Civil Writ No. 1885 of 1967

December 8, 1967.

Punjab Passengers and Goods Taxation Act (VI of 1952)—Ss. 3, 4 and 8—Punjab Passengers & Goods Taxation Rules (1952)—Rule 9—Route passing through more than one State—Passenger tax—How to be calculated and levied—Punjab Reorganisation Act (XXXI of 1966)—S. 88—Effect of on application of Act to State of Haryana.

Held, that according to section 3 of the Punjab Passengers and Goods Taxation Act, 1952, tax at the rate of 1/4th of the value of the fare was levied, charged and paid to the State Government. Where passengers were carried by a motor vehicle from any place outside the State to any place within the State or vice versa, the tax was payable in respect of the distance covered within the State. According to section 8 of the Act, no owner could ply his motor vehicle in the State unless he was in possession of a valid registration certificate. Under rule 9-B, no person could purchase any stamp for the payment of the passengers tax except from the Collector of the District in which the motor vehicle, in respect of which the stamps were to be bought, was registered. This was the state of the law with regard to the levy and realisation of the passengers tax, before the Punjab Reorganisation Act, 1966, came into force on November 1, 1966.

Held that by virtue of section 88 of the Punjab Reorganisation Act, 1966, the Punjab Passengers and Goods Taxation Act, 1952 became applicable to the