

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 20.11.2017

Orders Pronounced on: 29.11.2017

Coram:

The Hon'ble **Dr.Justice G.JAYACHANDRAN**

Crl.O.P.No.14256 of 2016
in
Crl.A.Sr.No.45971 of 2015

State represented by
Inspector of Police,
CBI, ACB, Chennai.

.... Petitioner/Appellant/Complainant

Versus

1.Shri M.Sathyamoorthy (Died)
2.Smt.S.Shahnaz Begum
3.Shri S.Syed Muzakir
4.Shri S.N.Kasilingam
5.Shri K.S.Thanikachalam
6.Shri S.Ramachandran
7.Shri M.Mani

.... Respondents/Respondents/Accused

Criminal Original Petition filed Under Section 378(2) of Cr.P.C.,
seeking to grant Leave to file this Appeal against the acquittal
judgment dated 26.02.2015 in CC No.07/2007 passed by learned II
Additional District Judge for CBI Cases, Coimbatore.

For Petitioner ..Mr.K.Srinivasan, Spl.PP for CBI Cases.

For Respondents ..Mr.S.Ramachandran-R2&R3

Mr.Mukund R.Pandiyan-R4

Mr.N.Jothi, Sr.Counsel for

Mr.M.C.Govindan, Counsel for R5

Mr.N.Manokaran-R6

Mr.K.Prasanna-R7

ORDER

The State has filed this petition to grant leave to prefer appeal against the Order of acquittal passed by the II Additional District Judge, (CBI cases), Coimbatore, in C.C.No.7 of 2007 dated 26.02.2015.

2.The CBI has registered a case in RC 02(A)/2007 of CBI/ACB, Chennai, as per the directions of the Hon'ble High Court of Madras, in Writ Petition No.39956 of 2005 etc., alleging that the Motor Accident Claim Petition in MCOP No.560 of 2003 on the file of the MACT, Krishnagiri, filed by the legal heirs of deceased Syed Noorudin, seeking compensation for the alleged road accident, is a fake claim and no such accident took place involving Tempo Van bearing No.TN 29 X 8926 and the scooter bearing No.TN 01 D.6946, on the alleged date.

3.After investigation, the prosecution has laid final report against the respondents herein and tried them for the offence under Sections 120B read with 419 and 511 read with 420 IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act since one of the accused is a public servant employed in the Police Department. After trial, the trial court has acquitted all the accused.

4.Challenging the Order of acquittal passed by the trial court, the State has filed the present petition to grant leave for preferring the

appeal against the Order of acquittal.

5. Since there was some delay in preferring the appeal, notice was sent to the respondent and this Court has condoned the said delay in filing the petition to grant leave.

6. The respondents herein have filed a detailed counter opposing the petition seeking leave to prefer the appeal against the Order of acquittal passed by the trial court. The main contention raised in the counter is that the petitioner seeking leave to prefer the appeal against the Order of acquittal dated 26.2.2015 is not maintainable in law since there is statutory bar under Section 378(5) of Cr.P.C., because the Special leave petition was not filed within the time prescribed. Hence, the petition is liable to be rejected. Apart from this legal plea, on merits the respondents have canvassed in favour of the Order of acquittal passed by the trial court.

7. The learned Senior Counsel for the respondent, made a fervent submission that prior to 1973 appeal against Order of acquittal by the aggrieved person other than the State was not provided. However, the new Code provides for appeal against the Order of acquittal, however, subject to grant of leave or Special leave as the case may be. Under sub-section (5) of Section 378 Code of Criminal Procedure, 1973, after expiry of 60 days from the date of order appeal against the Order of

acquittal cannot be entertained. There cannot be any plea seeking leave to prefer appeal against the Order of acquittal with condonation of delay since when there is a Special Act prescribing the period of limitation, general Act namely Limitation Act is not applicable.

8. In support of his argument the learned counsel has also referred the judgment of the Supreme Court in **ONGC vs. Gujarat Energy Transmission Corporation Limited and others** reported in **(2017) 5 SCC 42**, wherein the Apex Court while dealing Section 125 of the Electricity Act, 2003, held that Electricity Act, 2003 is a special enactment within the meaning of Section 29(2) of the Limitation Act. The limitation prescribed for appeal under the said Special enactment is 60 days. In case there is delay beyond the maximum statutory period of 60 days, then if the court is satisfied that the appeal could not be filed within the time prescribed can entertain the appeal within further period of 60 days. Thus when the Special enactment has fixed the outer limit to file appeals as 120 days, Court cannot entertain appeal under Section 125 of the Electricity Act beyond that period and Section 5 of Limitation Act will not apply.

9. To buttress his submissions, the learned counsel for the respondent referred Section 417 Code of Criminal Procedure, 1898 under title appeal in case of acquittal and Section 378 Code of Criminal Procedure, 1973, under title appeal in the case of acquittal and the

object and reason for prescribing two different period of limitation in sub-section (5) of Section 378 in new Code.

10. By so comparing the old provision and new provision the learned counsel contended that the trial court delivered the judgment on 26.2.2015, the judgment copy made ready on 11.3.2015, appeal against acquittal was filed on 8.10.2015, the period prescribed under Code to prefer appeal is 6 months, in this case the appeal is filed beyond 6 months and the condonation of delay, cannot be entertained in view of limitation prescribed u/s 378(5) of the Code. The word "entertainment" employed in Section 378(5) of the Code, is a total bar to very presentation of appeal.

11. According to the learned counsel, appeal against acquittal shall be presented within 6 months from the date of order and beyond 6 months appeal cannot be entertained in view of limitation. Only If any appeal is presented within 6 months, Court can entertain it, by granting Special Leave, that too only if the appeal deserves any merit for consideration.

12. At the outset this Court is bound to point the factual error in the above submission made by the respondents. This is not an appeal filed against the Order of acquittal in a case instituted upon the complaint wherein Section 378(4) of the Code to apply. It is a case

instituted by CBI established under the Delhi Special Police Establishment Act. Therefore, only sub-sections (2) and (3) of Section 378 of the new Code is applicable. Whereas sub-section (5) has no relevancy to the case in hand. The limitation mentioned in 378(5) will apply only when appeal is filed against acquittal in complaint cases. In such circumstances, when the Code does not prescribe any limitation, we have to necessarily refer the Limitation Act.

13. Under the Second Division of Limitation Act, the time prescribing for preferring appeal from the order of acquittal is 90 days. Second Division of Limitation Act, reads as under:-

Description of Suit	Period of Limitation	Time from which period begins to run
114. Appeal from an order of acquittal (a) under sub-section (1) or sub-section (2) of Section 417 of the Code of Criminal Procedure, 1898.	Ninety days	The date of the order appealed from.
(b) under sub-section (3) of section 417 of that Code	Thirty days	The date of the grant of special leave.

14. Learned counsel for the respondents submitted that Second Division of the Limitation Act refers only old Code and not new Code. Therefore, it cannot be pressed into service. If this submission is accepted then it will lead to a situation that in case of State appeals against acquittal there will be no limitation at all. This will be a worst situation to imagine for a person who has been acquitted in a criminal case but the ordeal of trial will never end till his life.

15. When similar contention was raised by a learned counsel before the Bombay High Court, in **State of Maharashtra vs. Deepchand Khushalchand Jain and others** reported in **1983 CRI.L.J.561**, the learned Judge has recorded his finding in the following manner:-

"8. If Mr. Ganatra's contention that the period of limitation for appeals by the State against orders of acquittal is provided for in S. 378 of the Code of 1973 is accepted, then naturally the limitation provided for in the Limitation Act would not be applicable. The question is whether this contention is correct. Though Art. 114 of the Limitation Act, 1963 refers to S. 417 of the Code of 1898, by virtue of the provision contained in S. 8 of the General Clauses Act, the reference in Art. 114 will have to be read as one to the corresponding provisions in the Code of 1973, viz. Section 378.

9. One must now subject S. 378 of the Code of 1973 to a proper analysis. Sub-section (1) of the said section mentions : "Save as otherwise provided in sub-section (2) and subject to the provision of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court." No appeal under sub-section (1) or sub-section (2) can be entertained except with the leave of the High Court. It is so provided in sub-section (3) of S. 378. In other words, when the State decides to prefer an appeal

through the Public Prosecutor against an order of acquittal, it has to first obtain the leave from the High Court and after such leave is granted the appeal would be entertained.

10. Sub-sections (4) and (5) may now be reproduced :-

"(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the high Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal."

11. From the above provisions it is easily seen that S. 378 itself prescribes a period of limitation for an application for special leave to appeal against an order of acquittal to be filed by the complainant. Where the complainant is a public servant, the period is six months and in other cases it is sixty days. Sub-sections (4) and (5) obviously do not deal with an application for leave to appeal to be filed by the State if it desires to prefer an appeal against an order of acquittal. The difference in the terminology of sub-sections (3) and (4) should not be overlooked. In the case of an appeal under sub-

section (1) or sub-section (2) of [S. 378](#). Which is to be preferred by the State, what is to be obtained by the State is the leave of the High Court : in the case of appeals to be preferred by the complainant, the application has to be filed for obtaining special leave to appeal from the order of acquittal. Sub-section (5) of [S. 378](#) will apply only to a situation covered by sub-section (4) of that section. It cannot, by the very terminology used in the said sub-section, apply to sub-section (3) of [S. 378](#). In other words, application for grant of special leave to appeal from an order of acquittal mentioned in sub-section (5) of [S. 378](#) necessarily refers only to an application which is to be filed under sub-section (4).

12. As far as the State is concerned, [S. 378](#) only provides that an appeal under sub-section (1) or sub-section (2) shall not be entertained except with the leave of the High Court. That leave may be obtained by preferring an appeal itself and making a prayer in that appeal for leave to appeal as mentioned in sub-section (3) of [S. 378](#). A proper reading of all the provisions contained in [S. 378](#) must necessarily lead to the conclusion that as far as the State is concerned, no period of limitation is mentioned in the said section. Though [S. 378](#) is a special law, since the period of limitation is not mentioned in the said section, one has necessarily to refer to the [Limitation Act](#) for finding out what the period of limitation is for a State appeal against an order of acquittal."

changes in respect of appeal against acquittal, which is capsulized as under:-

(i) Under Section 417 of the 1898 Code, unrestricted right of appeal against acquittal was given to State whereas in cases instituted on complaint through private prosecution Special Leave has to be granted by the High Court. In the said context, the limitation for preferring Appeal Against the Order of Acquittal by the State under Section 417(1) or (2) was prescribed as 90 days and if Appeal Against the Order of Appeal is upon a complaint case, it was 60 days from the date of granting Special Leave.

(ii) Later realizing the difficulty in getting direction from the Government to prefer Appeal Against the Order of Acquittal, in complaint cases initiated by public servants under Special Law, two different period of limitation was suggested in the 41st Law Commission Report. As a result under the new Code, for Appeal Against the Order of Acquittal in complaint cases instituted by public servants the period of limitation is prescribed as 6 months and in complaint cases instituted by private individuals the limitation is prescribed as 60 days. The Legislators to strike a balance between the spirit of guarding against reckless acquittal and personal vindictiveness from seeking to call in question Order of acquittal had placed a check valve as below:-

- *In case of State appeal, the District Magistrate/ the State Government/ Central Government as the case may be should, direct the Public Prosecutor to prefer Appeal Against the Order of*

Acquittal under Section 378(1) or (2) of the Code.

- *No such appeal shall be entertained except with the leave of the High Court under Section 378(3) of the Code.*
- *Whereas in an Appeal Against the Order of Acquittal arise out of complaint cases filed under sub-section (4) of Section 378 of the Code, the grant of Special Leave is mandatory and limitation to entertain such request is also prescribed under sub-section (5) of Section 378 which is conspicuous by not found in Section 378(3) of the Code.*

17. In this regard it is appropriate to refer the judgment of the Hon'ble Supreme Court rendered in **State of Delhi vs. Dharampal** reported in **[AIR 2001 Supreme Court 2924]**

"25. A comparison of Section 378 with the old Section 417 shows that whilst under the old Section no application for leave to appeal had to be made by the State Government or the Central Government; now by virtue of Section 378(3) the State Government or the Central Government have to obtain leave of the High Court before their appeal could be entertained. Sub-section (4) of Section 378 is identical to sub-section (3) of Section 417. Thus a complainant desirous of filing an appeal against acquittal must still obtain special leave. Thus Section 378 makes a distinction between an appeal filed by the State Government or the Central Government, who only need to obtain "leave", and an appeal by a complainant who needs to obtain "special leave".

The limitation provided in sub-section (5) is only in respect of applications under sub-section (4) i.e. application for special leave to appeal by a complainant. A complainant may be either a public servant or a private party. If the complainant is a public servant then the period of limitation for an application for special leave is 6 months. If the complainant is a private party then the period of limitation for an application for special leave is 60 days. The period of 6 months and or/60 days do not apply to appeals by the State Government under sub-section (1) or the Central Government under sub-section (2). Appeals by the State Government or the Central Government continue to be governed by Article 114(8) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of the order appealed from. Needless to state if there is a delay in filing an appeal by the State Government or Central Government it would be open to them to file an application under Section 5 of the Limitation Act for condonation of such delay. That period can be extended if the Court is satisfied that there was sufficient cause for not preferring the appeal within the period of 80 days."

18. Thus it is clear, in case of State appeal against acquittal arising from police report, limitation to prefer appeal is not prescribed in the Code, so one has to necessarily refer to the Limitation Act with the aid of Section 8 of General Clauses Act. The facts of the case in

hand, the appeal by State is filed beyond the limitation prescribed. This Court being satisfied with reason given, had condoned the delay in filing appeal vide order in M.P.No.1 of 2015 in CrI.A.SR.45971 of 2015 dated 30.6.2016.

19.As far as merit of the appeal is concerned, the perusal of the impugned order and the grounds of appeal this Court finds that there are arguable points in the appeal in respect of the manner in which the trial court has acquitted the accused, hence the petition to grant leave is allowed. Leave granted. Office is directed to number the appeal and cause notice to the respondent returnable by 20.12.1017.

29.11.2017

Index:Yes

gr.

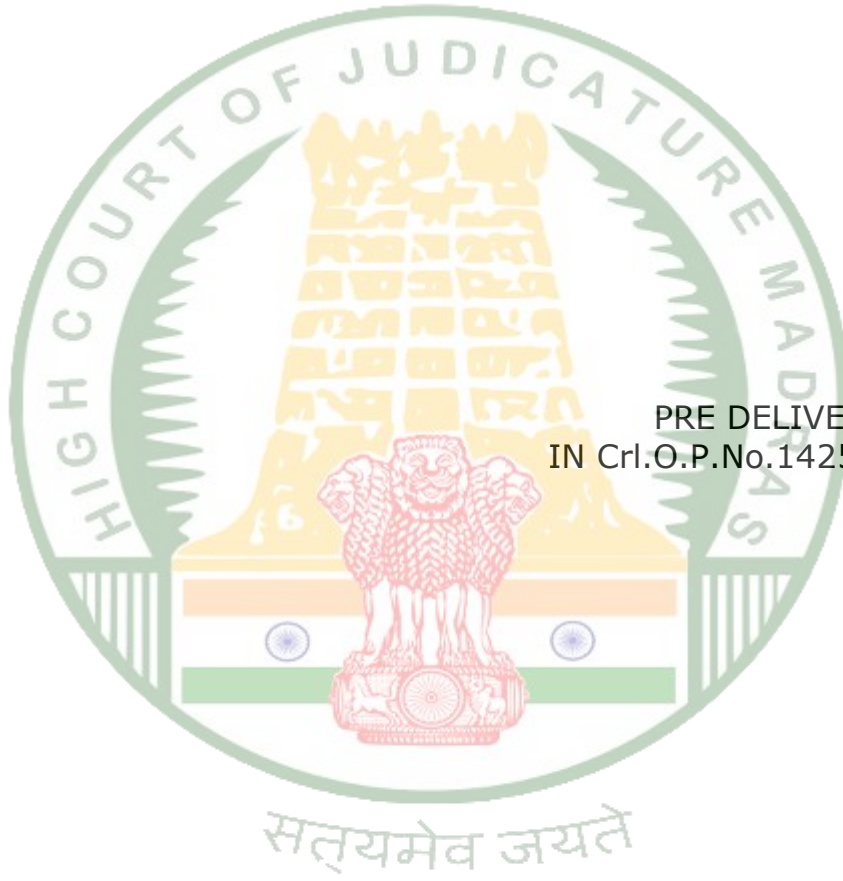
Copy to:

- 1.The II Additional District Judge for CBI Cases, Coimbatore.
- 2.The Public Prosecutor, High Court, Madras.

WEB COPY

DR.G.JAYACHANDRAN, J

gr.



PRE DELIVERY ORDER
IN CrI.O.P.No.14256 of 2016

WEB COPY

29.11.2017