

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 580 of 2014

Babulal, S/o Manohar, Aged About 51 Years, R/o Village- Lakhram,
Police Station- Ratanpur, Civil & Revenue District- Bilaspur (C.G.)

---- Petitioner

Versus

1. Sunderlal, S/o Gangaram, Aged About 45 Years.
2. Ramsnehi, S/o Asharam, Aged About 35 Years.
3. Dashrath, S/o Balmukund, Aged About 50 Years.
4. Panchram, S/o Kishun, Aged About 55 Years.
5. Ghanshyam, S/o Gangaram, Aged About 33 Years.
6. Chandan Lal, S/o Sarha Ram, Aged About 40 Years.
7. Ramji, S/o Kunjram, Aged About 58 Years.

All R/o Village- Lakhram, P.S. Ratanpur, Civil & Revenue
District- Bilaspur (C.G.)

8. Chotelal, S/o Manohar Lal, Aged About 35 Years, R/o. Village-
Lakhram, P.S. Ratanpur, Civil & Revenue District- Bilaspur
(C.G.)

---- Respondents

For Petitioner : Mr. Rajeev Bharat, Advocate.

For respondent No. 1 to 7 : Mr. Goutam Khetrapal, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

28/06/2021

1. The petitioner has filed this petition under Section 378 (4) of Cr.P.C. for special leave to appeal before this Court being aggrieved by the order dated 09.09.2010 (Annexure P/1) passed by Judicial Magistrate First Class, Kota, District- Bilaspur (C.G.), whereby the Criminal Complaint case No. 2069/2007 (Babulal Vs. Sunderlal and others), has been dismissed for want of prosecution and respondents have been acquitted .
2. The brief facts as projected by the petitioner are that he has filed complaint against respondents for committing offence

punishable under Sections 500, 504 120 B, and Section 34 Indian Penal Code and same was dismissed by the learned Judicial Magistrate First Class on 09.09.2010. Thereafter, he filed Criminal Revision No. 217/2011 before learned Second Additional Judge to the Court of Sessions Judge, Bilaspur, same was dismissed by the Revisional court vide order dated 02.04.2013 thereafter, the petitioner filed petition under Section 482 of the Cr.P.C. challenging the order passed by the Revisional court before this Court . This Court vide its order dated 08.11.2013 dismissed the CRMP No. 600 of 2013 directing him to take appropriate steps in terms of Section 378 of the Cr.P.C. Thereafter, the petitioner has filed acquittal appeal No. 63/2014 before this Court and this Court vide order dated 18.06.2014 dismissed the petition as withdrawn with liberty granted in favour of the petitioner to file duly constituted petition in accordance with law. Thereafter, the present leave to appeal has been filed with a prayer that leave be kindly granted against order dated 09.09.2010 passed by learned Judicial Magistrate First Class in Complaint Case No. 2069/2007 and acquittal appeal be kindly allowed.

3. From perusal of the report submitted by the Registry, there is delay of 1316 days in filing the present petition .The applicant has filed an application for condonation of delay mentioning the steps taken by him from 2010 to 2014 by prosecuting remedies before different forum including this Court and would pray for condoning the delay in filing this petition.
4. On the other hand, learned counsel for respondent No. 1 to 7 would submit that the application filed by the petitioner for condonation of delay is not maintainable and the petitioner has not explained the delay. There is no bonafide reason for delay, therefore, the application for condonation of delay as well as present acquittal appeal may kindly be dismissed. He would further submit that It is crystal clear that if a private person, who has filed a complaint under Section 2 (d) of the Cr.P.C. before the trial Court, on the basis of a private

complaint, wherein the accused is acquitted, an appeal does not lie before the High Court under Section 372 of the Cr.P.C., but an appeal lie under Section 378 (4) of the Cr.P.C. The rider put under Section 378 (5) is that in order to entertain the appeal Special Leave has to be sought. But under sub clause (5) that Special Leave Application has to be filed within 60 days computed from the date of the order of acquittal that means only statutory periods which can be excluded like the taking of the certified copy of the order or the day on which the court is closed, in such circumstances, only such period has allowed by law can be extended as per the plain reading of the above said provision, therefore, provision of Limitation Act is expressly excluded, as such, application for condonation of delay is not maintainable and Criminal Miscellaneous Petition as well as the acquittal appeal is liable to be dismissed.

5. The issue required for determination before this Court is whether Section 5 of the Limitation Act is applicable in the filing leave to file appeal under Section 378(5) of the Cr.P.C. for filing of appeal against acquittal, therefore, it is apt to examine the provision of Section 378 of the Cr.P.C., which is extracted below:-

" 378. Appeal in case of acquittal.- (1) Save as otherwise provided in sub- section (2) and subject to the provisions 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 Court² or an order of acquittal passed by the Court of Session in revision.]

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the

provisions of sub- section (3), to the High Court from the order of acquittal.

(3) No appeal under sub- section (1) or sub- section (2) shall be entertained except with the leave of the High Court.

(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.

(6) If in any case, the application under sub- section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub- section (1) or under sub- section (2)."

6. For determining the issue whether the Indian Limitation Act is applicable or not with regard to filling of appeal against acquittal it is necessary to examine the provision of the Limitation Act. Section 3 of the Act is extracted below:-

"3. Bar of Limitation - (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act -

(a) a suit is instituted -

(i) in an ordinary case, when the plaint is presented to the officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted -

- (i) in the case of a set off, on the same date as the suit in which the set off is pleaded;
- (ii) in the case of a counter claim, on the date on which the counter claim is made in court;
- (c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

7. This provision refers to the application of Section 4 to 24 of the Limitation Act, for a suit, appeal and application, which are filed after the prescribed period of limitation. Though the limitation is fixed, under the Limitation Act, under various provisions, the extension of Limitation Act also to be entertained by the court u/s.5 of the Indian Limitation Act. Section 5 is a general provision which in fact gives discretion to the court as to under what circumstances, even if the period of limitation is expired and under what circumstances, the court can extend the said period of limitation by condonation of delay. The Criminal Procedure Code is general law and is not special law, therefore, Section 29 (2) of the Limitation Act, is applicable. So far as Special Leave to appeal under Section 417 (3) & (4) is concerned, the High Court of Andhra Pradesh in **Putchalar Alli Venkata Subbareddi Vs. Duvvuru Papireddi & another**¹. The High Court has held as under:-

"5. The next question is, whether Sub-section (4) of Section 417, Criminal Procedure Code, excludes the application of the provisions of Section 5 of the Limitation Act by reason of the words employed, namely, that no application 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.

6. Section 48, Civil Procedure Code, is also in similar terms. It enacts that no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 12 years from (a) the date of the decree sought to be executed. The question whether the provisions of Section 15(1) of the Limitation Act control the terms of Section 48, Civil Procedure Code, arose before the Pull Bench of the Madras High Court in the case referred to supra in

¹ 1957 Cri.LJ 923

Kandaswami Pillai Vs. Kannappa Chetty alias Arunachala Chetty, and it was held that the Limitation Act and the CPC ought to be read together because both are statutes relating to procedure and they are in pari materia and therefore to be taken and construed together as one system as explanatory of each other.

7. It was further held that even though the period of limitation was not prescribed in schedule 1 but by the Code of Civil Procedure, Section 15(1) of the Limitation Act has to be read in conjunction with the terms of Section 48, Civil Procedure Code. The conclusions of the learned Chief Justice are in the following terms:

The expression 'prescribed' in Section 15(1) of the Limitation Act does not mean 'prescribed by the first schedule' to the Act. It would include a case where a period of limitation is prescribed by any general statute like the Civil Procedure Code.

Adopting those observations I hold that the provisions of Section 5 would apply to special leave applications u/s 417(1), Criminal Procedure Code."

8. Hon'ble the Supreme Court in **Mangu Ram Vs. Corporation of Delhi**², also discussed with regard to Section 417(3) & (4) application under Criminal Procedure Code 1898 and Section 5 of the Limitation Act,. The section 417(3) and (4) are pari materia of section 378 (4) & (5) of Criminal Procedure Code 1973. The Hon'ble Apex Court considering the effect of Section 29 of Limitation Act 1963 discussing in detail has held as under:-

"7. There is an important departure made by the Limitation Act, 1963 in so far as the provision contained in Section 29, Sub-section (2) is concerned. Whereas under the Indian Limitation Act. 1908 Section 29, Sub-section (2), Clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded. Section 29, Sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of

²¹ 1976(1) SCC 392

limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. Section 29, Sub-section (2), Clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, Sub-section (2) of the Limitation Act, 1963 in clear and unambiguous terms provides for the applicability of Section 5 and the ratio of the decision in Kaushalya Rani's case can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963 Section 5 is specifically made applicable by Section 29, Sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or, local law if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani Vs. Gopal Singh, the time limit of sixty days laid down in Sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of Sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for 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. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed

after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in Sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it. The High Court, in the present case, did not, therefore, act without jurisdiction in holding that the application preferred by the Municipal Corporation of Delhi was not barred by the time limit of sixty days laid down in Sub-section (4) of Section 417 since the Municipal Corporation of Delhi had sufficient cause for not preferring the application within such time limit the order granting special leave was in the circumstances not an order outside the power of the High Court."

9. On analysis of the entire special statute itself, whether implied exclusion can be inferred to the effect that application of Limitation Act is excluded so far as Section 378 (4) and (5) alone is concerned. This has to be thrashed out by examining the other provisions of the Cr.PC. So far as the appeals and applications are concerned, on thorough examination, under the special statute in respect of various other provisions relating to filing of appeals under Chapter XXIX of the Code and revisions though specific provisions are made with reference to fixing the period of limitation to file Appeals, Revisions, Applications etc., but, in none of the said provisions, the application of Section 5 of the Limitation Act is not specially made applicable nor the said provisions are expressly excluded. Therefore, when the other provisions of Cr.PC. do not exclude the application of Section 5 of the Limitation Act nor it is made that Section 5 is made applicable to other provisions specifically excluding Section 378 of Cr.PC. As such, Section 29 (2) of the Limitation Act, 1963 is applicable so far as the special leave to appeal under section 378(5) of Cr.PC 1973 is concerned, on the ground that Section 5 of the Limitation Act has not been specifically excluded by the special law. Therefore, in my opinion, neither the

provisions of Indian Limitation Act have specifically or expressly excluded nor there is any indication in the special statute itself that the provisions of Limitation Act are impliedly excluded.

10. For the above said reasons, I am of the considered opinion that the provisions of the Limitation Act as enunciated under Section 29 (2) of the Indian Limitation Act can be very well pressed into service and in turn, it can be unequivocally said that the provisions of Limitation Act from Sections 4 to 24 are very well applicable for the purpose of condoning the delay in filing the application under sub sections (4) and (5) of Section 378 of Cr.PC. for Special Leave to prefer an appeal filed after the period of limitation fixed under that provision, if sufficient ground are made out as contemplated under section 5 of the Limitation Act.
11. Now coming to the facts as mentioned in the application of condonation of delay, it is quite clear that the petitioner is prosecuting his remedial steps by filing the revision, acquittal appeal, therefore, it cannot be said that he is no vigilant and there is bonafide reasons available in not filing the acquittal appeal within time, as such, there is sufficient cause for condoning the delay. Accordingly, 1316 days delay in filing the Criminal Miscellaneous Petition is condoned and the petition is allowed. Application for grant of leave to appeal is allowed. Registry is directed to register the case as regular Acquittal Appeal.
12. With these directions, the present petition is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge