

IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

CRMSPL 27 of 2023

(IA NO: CRAN 1 of 2023)

Sri Sunil Kumar Manna

Vs.

Gaffar Molla & Anr.

With

CRMSPL 35 of 2023

(IA NO: CRAN 1 of 2023)

Binod paper Mart

Vs.

The State of West Bengal & Anr.

With

CRMSPL 52 of 2023

(IA NO: CRAN 1 of 2023)

M/s. Alps Tourist Services

Vs.

The State of West Bengal & Anr.

For the Appellant

:Mr. Dipta Dipak Banerjee, Adv.
.... CRMSPL No. 27 of 2023

Mr. Ayan Bhattacharjee, Adv.
... CRMSPL No. 35 & 52 of 2023

Mr. Debrpratim Guha, Adv.
Ms. Anchita Sarkar, Adv.
... CRMSPL No. 35 of 2023

Mr. Apalak Basu, Adv.
Mr. Nazir Ahmed, Adv.
Ms. Sanghamitra Mridha, Adv.
... CRMSPL No. 52 of 2023

For the Respondent no.1.

:Mr. Anirban Tarafdar, Adv.
Mr. S. Tudu, Adv.
.... CRMSPL 27 of 2023

For the State

:Mr. Narayan Prasad Agarwala, Adv.
Mr. Pratick Bose, Adv.
.... CRMSPL No. 27 of 2023

Heard on

: 8th August,2023 (CRMSPL 27 of 2023) &
30thAugust,2023 (CRMSPL 35&52 of 2023)

Judgement on

: September 12, 2023

Bibhas Ranjan De, J.

- 1.** Whether Section 5 of the Limitation Act, is applicable to an application with a prayer for special leave to appeal under Section 378 (5) of the Criminal Procedure Code (for short CrPC) is the question that needs to be decided in the aforesaid three applications for special leave to appeal. Initially, CRMSPL 27 of 2023 was heard by me at length and judgement was reserved. Subsequently, two other applications, namely, CRMSPL 52 of 2023 and CRMSPL 35 of 2023 came up for hearing before me in which identical question was involved.
- 2.** Ld. advocate, appearing for the petitioner in the subsequent two applications argued the matter and I had to reserve subsequent two CRMSPL applications with a view to dispose of all three applications having identical question of law by a common judgement. That is why, all three applications are being disposed of by this common judgement.
- 3.** Accordingly, I proceed to decide the said question of law, referred to hereinabove first, before taking up for decision of each of the applications for special leave to appeal, on merits.

4. At the outset, I am dealing with an application for condonation of delay for 247 days **(IA No. CRAN 1 of 2023) with CRMSPL 27 of 2023** in filing the special leave to appeal petition assailing the judgment and order of acquittal under Section 255(1) CrPC passed by Learned Metropolitan Magistrate, 4th Court, Calcutta in connection with Case no. C-638/2012 under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as NI Act).
5. Ld. Advocate, Mr. Dipta Dipak Banerjee, appearing on behalf of the petitioner submitted that against the judgment and order of acquittal passed by Ld. Magistrate, 4th Court, Calcutta one appeal has been preferred before the Court of Ld. Chief Judge, City Sessions Court, Calcutta which, in turn was transferred to Additional Sessions Judge, Fast Track Court-II for disposal. In the mean time, a Co-ordinate Bench of this Court held *inter alia* that an appeal against acquittal in a case under Section 138 of the NI Act would lie to the High Court not before the City Sessions Court. Therefore, according to Mr. Banerjee, the time taken in a proceeding before wrong forum is liable to be excluded from the period of limitation prescribed therefor. In support of his contention he relied on a case of

Mangu Ram Vs Municipal Corporation of Delhi reported in ***AIR 1976 SCC 105*** as well as ***Kaushalya Rani Vs. Gopal Singh*** reported in ***AIR 1964 Supreme Court 260***.

6. Per contra, Ld. Advocate, Mr. Anirban Tarafdar, appearing on behalf of the respondent no. 1, raised the issue of applicability of Section 5 of the Limitation Act as well as grounds for condonation of delay in terms of Section 378 of the CrPC.
7. Mr. Tarafdar has submitted that under the Provision of Section 378 (5) of the CrPC delay in filing special leave petition cannot be condoned by the High Court. According to him, applicability of Section 5 has been excluded by codifying the Provision of Section 378(5) of the CrPC by the legislature.
8. In support of his contention, Mr. Tarafdar relied on a case of ***Hukumdev Narain Yadav Vs. Lalit Narain Mishra*** reported in ***AIR 1974 Supreme Court 480*** and ***Gopal Sardar Vs. Karuna Sardar*** reported in ***AIR 2004 Supreme Court 3068***.
9. On the issue of explanation of delay, Mr. Tarafdar has submitted that the time wasted before any wrong forum cannot be condoned from the period of limitation on the principle of “ignorance of law is no excuse”. In support of his contention Mr. Tarafdar relied on a case of ***The Swadeshi***

Cotton Mills Co. Ltd. Vs. The Government of U.P. and Ors.

Reported in **1975(4) SCC 378** as well as observation of a Co-ordinate Bench of this Court in connection with C.O No. 2203 of 2019.

10. Mr. Tarafdar further distinguished the principle laid down in the case of ***Mangu Ram*** (supra) by submitting that in ***Mangu Ram*** principle laid down in ***Hukumdev*** (supra) by larger bench has not been referred to.
11. In **CRMSPL 52 of 2023**, petitioner prefer one revisional application being aggrieved by and dissatisfied with the impugned judgement and order of acquittal dated 10.11.2022 passed by Ld. Judge, Fast Tract Court, City sessions court, in connection with criminal appeal no. 221 of 2019. Hon'ble Justice Trithankar Ghosh by the order dated 01.08.2023 allowed the revisional application to be not pressed and granted liberty to prefer an appeal under Section 378 (4) of the CrPC. That is why, the CRMSPL 52 of 2023 was filed with CRAN 1 of 2023 for condonation of delay in filing special leave petition.
12. In **CRMSPL 35 of 2023**, petitioner being aggrieved by and dissatisfied with the impugned judgement and order of

acquittal dated 20.04.2023 passed by Ld. Judge, 1st Fast Track Court, Bichar Bhawan in connection with Criminal Appeal no. 251 of 2022, filed the special leave petition no. CRMSPL 35 of 2023 with CRAN 1 of 2023 for condonation of delay in filing special leave petition.

13. Ld. Adv. Mr. Ayan Bhattacharjee, appearing on behalf of the petitioners in CRMSPL No. 52 of 2023 & CRMSPL 35 of 2023, by referring to chapter XXIX of the CrPC, has contended that right of appeal protected under Section 372 of CrPC cannot be taken away only by providing period of limitation under Section 378(5) of CrPC.

14. Mr. Bhattacharjee in support of his contention relied on ***Hukumdev Narain Yadav Vs. Lalit Narain Mishra*** reported in ***AIR 1974 Supreme Court 480***, ***Gopal Sardar Vs. Karuna Sardar*** reported in ***AIR 2004 Supreme Court 3068***, ***Patel brothers Vs. State of Assam and others*** reported in ***(2017) 2 Supreme Court Cases 350***, ***C. N. Rudramurthy Vs. K. Barkathulla Khan and others*** reported in ***(1998) 8 Supreme Court Cases 275***, ***Bengal Chemists and Druggists Association Vs. Kalyan Chowdhury*** reported in ***(2018) Supreme Court Cases 4***, ***Suganthi Suresh Kumar***

Vs. Jagdeeshan reported in ***(2002) 2 Supreme Court Cases 420, Manager, National Insurance Company Limited Vs. Saju P. Paul and another*** reported in ***(2013) 2 Supreme Court Cases 41*** and ***Mangu Ram Vs. Municipal Corporation of Delhi*** reported in ***(1976) 1 Supreme Court Cases 392***.

15. Mr. Bhattacharjee, has further contended that ***Hukumdeb*** (supra) dealt with an election petition under Representation of the People Act, 1951 unlike the law provided in the CrPC.
16. On the issue of distinguishing ***Mangu Ram*** (supra), I am in agreement with Mr. Tarafdar. After going through the case of ***Mangu Ram*** (supra), I find that though ***Kaushalya Rani*** (supra) was referred to but there is no reference qua ***Hukumdev*** (supra) by a larger bench prior to ***Mangu Ram*** (supra).
17. Before delving into the merit of this application for condonation of delay, I find it profitable to reproduce the provision of section 378 of CrPC as follows:-

“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)."

18. In **Mangu Ram** (supra) and **Kaushyla Rani** (supra)

Hon'ble Division Bench of Supreme Court held that the time limit of sixty (60) days laid down in Section 417 (4) of (old)

CrPC is a special law of limitation and nothing was found in that special law which expressly excludes the applicability of Section 5.

19. On the other hand, larger bench of the Hon'ble Apex Court in **Hukumdev** (supra) as well as Hon'ble Division Bench in **Gopal Sardar** (supra) it was held that even in a case where the special law does not exclude the Provisions of Sections 4 to 24 of the Limitation Act by an express reference it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and scheme of the special law excluded their operation.

20. More particularly, I would like to quote the observation in **Hukumdev** (supra) by the Hon'ble Larger Bench of the Apex Court in paragraph 17 & 18:-

“17. Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be

attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. It will be seen that Section 81 is not the only Section mentioned in Section 86, and if the Limitation Act were to apply to an election petition under Section 81 it should equally apply to Sections 82 and 117 because under Section 86 the High Court cannot say that by an application of Section 5 of the Limitation Act, Section 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Sections 82 and 117 of the Act, or alternatively if the provisions of the Limitation Act do not apply to Section

82 and Section 117 of the Act, it cannot be said that they apply to Section 81. Again Section 6 of the Limitation Act which provides for the extension of the period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Sections 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filing of election petitions and their trial.

18. It was sought to be contended that only those provisions of the Limitation Act which are applicable to the nature of the proceedings under the Act, unless expressly excluded, would be attracted. But this is not what Section 29(2) of the Limitation Act says, because it provides that Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law. If none of them are excluded, all of them would become applicable. Whether those Sections are applicable is not determined by the terms of those Sections, but by their applicability or inapplicability to the proceedings under the special or local law. A person who is a minor or is insane or is an idiot cannot file an election petition to challenge an election, nor is there any provision in the Act for legal representation of an election petitioner or respondent in that petition who dies, in order to make Section 16 of the Limitation Act applicable. The applicability of these provisions has, therefore, to be Judged not from the terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of that Act.”

21. *Hukumdeb* (supra) & **Gopal Sardar** (supra) dealt with election petition under Section 81 of the Representation of the People Act, 1951 and Section 8 of the Land Reforms Act

respectively. In both the cases Hon'ble Apex Court dealt with two separate special Acts in terms of Section 29 of the Limitation Act and laid down a principle whereby Court can interpret the special law/statute with regard to implied exclusion of the limitation Act unlike that of ours.

22. In the case at hand, I am dealing with the Provision of Section 378(4) of CrPC giving right to prefer an appeal to the petitioner/complainant against the order of acquittal. The Provision of Section 378(5) specifically prohibits the High Court to entertain any special leave application after 60 days from the day of order of acquittal. Admittedly, the petition seeking special leave to appeal was filed after 274 days from the date of expiry of the period of limitation prescribed therein. The words “ 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 (6) months, where the complainant is a public servant, and sixty (60) days in every other case, computed from the date of that order of acquittal. Now the question is whether codification of the provision clearly reflects the intention of the legislature

regarding non-applicability of the Section 5 i.e. condonation of any kind of delay or not.

23. At this stage, I am unable to hold me back from referring to a judgement of **Saroja Narasimhan Vs. Vijaya Sharma** reported in **2020 SCC OnLine Kar 5108** wherein Hon'ble Single Judge, by his great deal of efforts, dealt with almost all the judgements of the Hon'ble Apex Court including **Hukumdeb** (supra) and **Gopal Sardar** (supra) in deciding the issue of applicability of Section 5 of the Limitation Act for condonation of delay in filing special leave petition for appeal against acquittal under Section 378 (5) of the Code of Criminal Procedure.

24. Hon'ble Single Judge expounded the issue of applicability of Section 5 with clarity leaving hardly any scope for further elucidation by drawing a final decisions as follows:-

“ 50. Before advertng to the above said question to be answered, we must bear in mind, the general principles with regard to the right of appeal recognized under the statute which should be very jealously safeguarded by the Courts. The Court should bear in mind when right is recognized that should not be in any manner allowed to be frustrated on the ground of technicalities particularly delay and the Court should not become handicapped in order to advance substantial justice and in order to safeguard the rights, liabilities recognized under the statute

unless the statute itself prohibits the court doing that exercise. The correctness of the judgment or an order of acquittal by preferring an appeal to the High Court is conferred upon the victim, even it gone to the extent of providing such right to the LRs. and others as defined under Section 2(wa) of Cr. P.C. under the proviso to Section 372. The rider is only that they have to obtain leave of the High Court under the said provision and special leave under the provisions of sub-sections (4) and (5) of 378 of Cr. P.C. Therefore, it is settled principle of law that right to an appeal is a statutory right or a creature of statute and no other right to file an appeal can be recognized and dehorse a statute. Therefore, though Section 378(4) and (5) right to appeal is created under the statute otherwise than that no appeal can be filed unless it is clearly expressed in the terms of a statute. The rights created under the substantive laws are called as substantive rights and not merely a matter of procedure. Once the right of appeal is vested, which can be exercised when the adverse judgment is pronounced. Such right is governed by substantive law and how it has to be exercised are governed by procedural laws. Therefore, exercising right in a particular manner by following certain procedures should always take the back seat and the substantive right of a person occupies the front seat. Hence, the court should also bear in mind that, there is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to prefer an appeal under the statute. An appeal is the right to enter a superior court and invoking its aid and interposition to redress the error of the trial courts. In an appeal, the main question to be considered by the appellate court is whether the order of the court from which the appeal is brought was right or erroneous, illegal or irregular. Thus, the right of appeal and consideration of that right is a paramount compared to the procedure for hearing the appeal. Therefore, the courts must be fair enough to ascertain the workability of the appeals as provided both under substantive laws and procedural laws.

51. *In this back ground, the courts should also bear in mind that the rules or procedure like application to be filed for condonation of delay under Limitation Act are not meant to totally destroy the rights of the parties recognized under substantive laws. The riders under the procedural law are only meant to see that the parties do not resort to dilatory tactics. In such an eventuality, only the strict rule of procedure has to be adopted. But, if the court is of the opinion that the parties very promptly seek their remedy without adopting any dilatory tactics too reasonably and genuinely prevented from exercising their substantive right, in such an eventuality, adopting of strict procedure may not be advisable. Therefore, the object of providing legal remedy is to repair the damage caused by reason of legal injury.*

52. *Of course, the law of limitation fixes a life span for such legal remedy for the redress of the legal injuries so suffered. Of course, time is very precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. Therefore, the life span must be fixed for each remedy. Such life span should also be interpreted in such a manner it would definitely advance substantial justice rather than disturbs the right created under a statute. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium i. e., it is for the general welfare that a limitation period be put to litigation. Therefore, Rules of Limitation are not meant to destroy the rights of the parties but to regulate the dilatory tactics that may be ventured by the parties to curb such persons who approaches the court with unclean hands. Therefore, the total idea is that, every legal remedy must be kept alive for a legislatively fixed period of time subject to other provisions given for relaxation of fixed period of time by exercising the discretion of the court considering the genuineness of the reasons provided for such condonation of delay.*

53. *It is true that the maxim vigilantibus non dormientibus jura subveniunt i. e., law assists those who are vigilant and not those who sleep over their rights is strictly applicable, but, even a vigilant litigant some time may prone to commit mistakes. Those mistakes may be beyond his control. Therefore, the general principle is that - to err is human' is more a practiced notion of human behaviour than an abstract philosophy. Therefore, sometimes, unintentional lapse on the part of a litigant should not normally close the doors of the judicature permanently where still there exists right vested with such person. Therefore, the ultimate effort of the court should not be one of finding means to pull down the doors of the court but to advance the justice substantially even considering all other procedural laws.*

54. *In this background, in almost all the substantive laws where the rights, liabilities and disabilities are recognized and the procedural laws connected with those laws, definitely enshrined jealously safeguarding the substantial rights.*

55. *In the above said backdrop, the court has to examine the real controversy in this particular case.*

56. *Now, the court has to examine the special law i.e., Section 378(4) & (5) of Cr. P.C., whether it expressly or impliedly excludes the application of Limitation Act Sections 4 to 24. Under the old Limitation Act, which I have already referred to above, there was a specific exclusion of application of Section 5 of the Limitation Act. But, under the new Act, such provision is not available but the new act says that if the special law or the law otherwise than the Limitation Act, which prescribes any period of limitation on its own, in such an eventuality, such limitation should be treated as the limitation prescribed under Section 3 of the Indian Limitation Act. However, Section 29(2) also says that if the other provisions of the Limitation Act i. e., Sections 4 to 24, if not specifically excluded by the special law, in such an eventuality, the provisions of Sections 4 to 24 can be very well invoked even*

under the special law to extend the period of limitation on the grounds recognized under the provisions of the Limitation Act.

57. *In the light of the above said legal mandate, as could be seen from Section 378 of Cr. P.C. and any of the provisions under the Cr. P.C. as we have already defined which prescribes a special period of limitation, in contrast with the Limitation Act, but there is no express exclusion of the provisions of the Limitation Act. Express exclusion of the words used in the legal parlance means, it specifically says that there must be specific wordings in the special statute or a special provision stating that, the application of the provisions of the Limitation Act or any particular provision of the Limitation Act, is 'Expressly' excluded. Otherwise, the court has to examine whether by means of other circumstances, the court can infer such an exclusion. Plainly said that the above said provision Section 378 does not expressly exclude the provisions of Limitation Act, as no such specific or synonymous words are used. Therefore, I have to examine whether by means of other implications such exclusion can be inferred by the court.*

58. *The implied exclusion can be inferred by the court in two specific circumstances. (1) If the special provision is provided under the Act itself empowering or giving discretion to the court to condone the delay even after the appeal, applications are filed beyond the period of limitation fixed by the special statute; (2) Secondly, if on perusal of the special statute itself, if the special statute whether as provided the period of limitation and also further period giving discretion to the court to condone such delay. In other provisions of the same statute, but excluding a particular provision in such an eventuality also, the Court can draw such inference. Now, I will examine the above said two aspects one by one.*

59. *The Hon'ble Apex Court in the case of Commissioner of Sales Tax Uttar Pradesh, Lucknow and Parga... Kanpur¹, while dealing with the question of limitation, in relation to revision filed*

beyond time prescribed by Section 10 of UP Sales Tax Act, 1948 has made an observation that. —

“The principle that emerges is that if the legislature in a special statute, prescribes a certain period of limitation for filing a particular application thereunder provides in dear terms that for such period sufficient cause being shown may be extended, in the maximum, only upto a specified time limit and no further - then the Tribunal concerned has no jurisdiction to treat within the period of limitation, application filed before it beyond which minimum time limit specified in the statute by excluding the time spent in prosecuting an act, fall and due diligence under Section 14(2) of the Limitation Act. this particular principle is also can be gathered in a decision already referred to in Commissioner of Customs and Central Excise v. Hongo India Private Limited, (2009) 5 SCC 791, which I have already referred to in detail.”

60. *The same principle is also enunciated in another decision which I have already referred to in Bengal Chemists v. Druggists and Kalyan Chowdhury². In the above said case, though the period of limitation for filing Application, Revision, Appeal etc., are prescribed, a further period is also fixed by the statute giving discretion to the court to condone such delay as fixed by the statute and it specifically excludes the discretion of the court to condone the delay except that further period of limitation fixed by the statute. Therefore, it clearly discloses that if two limitation periods are fixed one limitation period fixing the period of limitation for the purpose of filing appeal, revision, review, applications etc., and another further period of limitation giving discretion to the courts to condone the delay, in such circumstance, it virtually amounts to substitution of Section 5 of the Limitation Act in the special statute itself empowering the court to condone only such delay as fixed by the statute.*

61. *In the above said background, if the provision of Section 378(4) and (5) particularly sub clause (5) the said provision is examined, it prescribes the period of limitation of 60 days only for*

the purpose of filing an application for special leave. No further period of limitation is fixed giving any discretion to the court to condone such delay of any period more than 60 days as fixed by the statute. Therefore, it clearly goes to show that the court cannot infer even an implied exclusion of the provisions of the Limitation Act if we read Section 378 in proper perspective.

62. *The next important point is that whether 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. P.C. So far as the appeals and applications are concerned, on thorough examination, under the special statute in respect of the 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. P.C. does 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. P.C. Therefore, the court cannot infer that the application of the Limitation Act in view of section 29(2) and in turn the application of Sections 4 to 24 of the Limitation Act are specifically expressed or impliedly excluded for provision under Section 378 (5) of Cr. P.C.*

63. *Therefore, in my opinion, neither the provisions of the Indian Limitation Act has specifically or expressly excluded nor there is any indication in the special statute itself that the provisions of Limitation Act are impliedly excluded.*

64. *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 intum 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. P.C. 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.”

25. I am agreeable with the ratio of **Saroj Narasimhan** (supra) as there is nothing provided in special Provision under Section 378 (5) of Code of Criminal Procedure towards discretion to the Court for condoning delay in the case of filing of appeal beyond period prescribed in the Provision of Section 378(5) of the CrPC to exclude the application of Limitation Act. Therefore, language of Section 378(5) of CrPC cannot be said to have excluded applicability of Section 5 of the Limitation Act.

26. In CRAN 1 of 2023 of CRMSPL 27 of 2023, I am dealing with the question of validity of the grounds for condonation of delay, I find it convenient to refer to the principle laid down in **Swadeshi Cotton Mills** (supra), particularly in paragraph 3:-

“ 3. We do not think that in this case it is necessary for us to consider whether Article 226 can be used for challenging the validity of the orders passed prior to January 26, 1950. But

we are in agreement with the High Court on the other two grounds. As mentioned earlier, the impugned assessments were made in 1949. The writ petition was filed in 1956. The explanation given by the petitioner for this long delay is that he did not know the correct legal position and he came to know about the same after the decision of the Allahabad High Court in the Commissioner of Sales Tax, U.P. v. Modi Food Products Ltd. [(1955) 6 STC 287] . Every individual is deemed to know the law of the land. The courts merely interpret the law and do not make law. Ignorance of law is not an excuse for not taking appropriate steps within limitation. Therefore the argument that the appellant did not know the true legal position is not one that can be accepted in law. That apart, even after the High Court rendered its decision in ModiFood Products' case [(1955) 6 STC 287] the petitioner did not move the High Court for over several months. There is no satisfactory explanation for that delay. That being so, the High Court was fully justified in refusing to exercise its discretion under Article 226 of the Constitution in favour of the appellant.”

27. In this regard, I am not also obliterate to refer the observation of our Co-ordinate Bench in C.O. No. 2203 of 2019 particularly in paragraph 20, 21& 25 as quoted below:-

“20. Although it is well-settled that the principle, that ignorance of law is no excuse for not complying with a statutory provision, is diluted by the settled juristic view that wrong advice of a counsel can be set up as a defence, the former, rather than the latter principle, applies to the present case. It is seen from the application for condonation of delay that the only ground for delay, repeatedly iterated in the application, was the ignorance of law of the petitioner, which is not a valid ground in law.

21. Nowhere in the application for condonation did the petitioner plead that he was wrongly advised by the counsel about filing the applications under [Section 7](#), sub-sections (1) and (2) in time.

25. Alleviating factors such as illiteracy, poverty or other components which could indicate that the petitioner was underprivileged and did not have proper legal assistance or the means to be appropriately advised, or was rustic or naïve, are entirely absent in the present case. Thus the petitioner has to own up to the delay caused in filing the applications-in-question.”

28. In this regard, I cannot refrain myself from referring to a order of Hon’ble Apex Court in ***M/s. Laxmi Srinivasa R and P Boiled Rice Mill Vs. The State of Andhra Pradesh & Anr*** reported in ***2022 LiveLaw (SC) 964*** wherein Hon’ble Apex Court divided the term ‘condonation of delay’ and ‘proceeding in wrong forum’ in terms of Section 14 of the Limitation Act, as quoted below:-

“Leave granted.

The impugned order passed by the High Court affirming the order dated 27.04.2018 passed by Appellate Deputy Commissioner (CT) (FAC), Vijayawada, holding that the delay is beyond condonable period is unsustainable in law.

It is an accepted position that the appellant had filed a writ petition before the High Court on 24.02.2018, which was not entertained vide the order dated 07.03.2018 on the ground that the appellant should approach the Appellate Authority. The appellant is entitled to ask for exclusion of the said period in terms of Section 14 of the Limitation Act, 1963. Exclusion of time is different, and cannot be equated with condonation of delay. The period once excluded, cannot be counted for the purpose of computing the period for which delay can be condoned. Of course, for exclusion of time under Section 14 of the Limitation Act, 1963, the conditions stipulated in Section 14 have to be satisfied.

In the facts of the present case, we find that the period from the date of filing of the writ petition on 24.02.2018 and the date on which it was dismissed as not entertained viz. 07.03.2018, should have been excluded. The writ proceedings were maintainable, but not entertained. Bona fides of the appellant in filing the writ petition are not challenged. Further, immediately after the dismissal of the writ petition, the appellant did file an appeal before the Appellate Authority. On exclusion of the aforesaid period, the appeal preferred by the appellant would be within the condonable period. Accordingly, we direct that the application for condonation of delay filed by the appellant would be treated as allowed. The delay is directed to be condoned.

Recording the aforesaid, the appeal is allowed with the direction that the Appellant Authority would examine the appeal on merits.

We clarify that have not expressed any opinion on the merit of the case. Pending application(s), if any, shall stand disposed of.”

- 29.** In this case, judgement of acquittal was passed on 31.05.2022 and within statutory period petitioner filed an appeal before the Ld. Chief Judge, City Sessions Court, Calcutta. In the mean time a Co-ordinate Bench of this Court was pleased to hold *inter alia* that an appeal agisnt acquittal in a case under the Negotiable Instrument Act could not lie to a court of sessions. Immediately, thereafter, application was filed before the Sessions Court wherein an order was passed on 02.05.2023 dismissing the appeal with a liberty to the petitioner to file afresh before the appropriate forum. The

special leave petition was filed on 18.05.2023 before this Court. Therefore, in our case, delay of filing special leave petition cannot be considered as ignorance of law in terms of facts and principle enunciated in ***Swadeshi Cotton Mills*** (supra).

30. In the aforesaid view of the matter, delay is condoned.

Thus, **CRAN 1 of CRMSPL 27 of 2023** stands disposed of.

31. In **CRAN 1 of 2023** in respect of **CRMSPL 52 of 2023**

Hon'ble Justice Tirthankar Ghosh of Coordinate Bench granted liberty to the petitioner to file special leave petition under Section 378(4). Thus, delay is condoned. CRAN 1 of 2023 in connection with **CRMSPL 52 of 2023** stands disposed of.

32. In **CRAN 1 of 2023** in respect of **CRMSPL 35 of 2023**

delay of 11 days has been explained in paragraphs 4 to 6. Delay is condoned. Thus, **CRAN 1 of 2023** in connection with **CRMSPL 35 of 2023** stands disposed of.

In Re: CRMSPL No. 27 of 2023

33. The leave petition is filed seeking leave to file appeal against judgment and order of acquittal dated 31.05.2022 passed by Ld. Metropolitan Magistrate, 4th Court, Calcutta in

connection with CS No. 638/2012 under Section 138 of the Negotiable Instrument Act, 1881.

Peruse the judgement.

Leave is granted.

Petitioner is directed to file appeal within statutory period.

34. Thus, **CRMSPL No. 27 of 2023** stands disposed of.

In Re. CRMSPL 52 of 2023

35. The leave petition is filed seeking leave to file appeal against judgment and order of acquittal dated 10.11.2022 passed by Ld. Judge, Fast Track Court, City Sessions Court, in connection with Appeal No. 221/2019.

Peruse the judgement.

Leave is granted.

Petitioner is directed to file appeal within statutory period.

36. Thus, **CRMSPL No. 52 of 2023** stands disposed of.

In Re. CRMSPL 35 of 2023

37. The leave petition is filed seeking leave to file appeal against judgment and order of acquittal dated 20.04.2023 passed by Ld. Judge, 1st Fast Track Court, City Bichar Bhawan, in connection with Appeal No. 250/2022.

Peruse the judgement.

Leave is granted.

Petitioner is directed to file appeal within statutory period.

- 38.** Thus, **CRMSPL No. 35 of 2023** stands disposed of.
- 39.** All parties to three applications shall act on the server copy of this order downloaded from the official website of this Court.
- 40.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]