

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 231 of 2022

With

CRAN 1 of 2022

Sheikh Rahamtulla @ Sajid @ Burhan Sheikh @ Surot Ali & Ors.

Vs.

National Investigation Agency

For the Appellants : Mr. Sabyasachi Mukherjee, Adv.
Mr. Mukesh Khanna, Adv.
Mr. Syed Neaz Ahmed, Adv.

For the Respondent : Mr. Bhashar Prosad Banerjee, Adv.
Mr. Prashan Baidya, Adv.

Hearing Concluded on : February 2, 2023
Judgement on : March 1, 2023

DEBANGSU BASAK, J.:-

1. Whether delay in filing of an appeal under Section 21 of the National Investigation Agency Act, 2008 beyond 90 days can be condoned under Section 5 of the Limitation Act, 1963 is the issue which has fallen for consideration in the present proceedings.

2. By the impugned judgement and order dated August 28, 2019 the Learned Chief Judge, City Session Court had convicted the appellants under Sections

120B/125/419/420/467/468/471 of the Indian Penal Code, 1860 and under Sections 16/17/18/18A/18B/20 of the Unlawful Activities (Prevention) Act, 1967 and under Section 14 of the Foreigners Act, 1946 and under Section 12 (1) (b)/12 (1A) of the Passport Act, 1967.

3. A police complaint had been lodged on October 2, 2014 in respect of a bomb explosion. The investigation of such police case had been handed over to the CID, West Bengal. The Ministry of Home Affairs, Government of India had transferred the investigation of such police case from CID, West Bengal to the National Investigation Agency invoking Section 6 (5) of the Act of 2008. The appellants had been convicted by the learned trial judge in such police case.

4. It has not been disputed on behalf of the parties that, an appeal against the impugned judgement of conviction and the order of sentence would be governed by the provisions of the Act of 2008 particularly Section 21 thereof.

5. Learned advocate appearing for the appellant has referred to the provisions of the Act of 2008 and the Limitation Act, 1963. He has submitted that, the provisions of the Act of 2008 do not oust the applicability of the provisions of the Limitation Act, 1963. He has submitted that, the Calcutta

High Court in **2016 SCC Online Cal 4483 (Sadanala Ramkrishna and others versus National Investigation Agency)** recognised the applicability of Section 12 (3) of the Limitation Act, 1963 to an appeal filed under Section 21 of the Act of 2008. Therefore, on a parity of such reasoning Section 5 of the Limitation Act, 1963 has application in respect of consideration of condonation of the period of limitation prescribed under Section 21 of the Act of 2008.

6. Learned advocate appearing for the appellant has submitted that, the Delhi High Court in **2019 SCC Online Del 9158 (Farhan Shaikh versus State (National Investigation Agency))** held that an application for condonation of delay is maintainable in an appeal governed by the Act of 2008. It has held that, Section 5 of the Limitation Act, 1963 cannot be excluded as it would lead to travesty of justice if the substantive appeal was not heard on merits and rejected at the threshold only on account of bar of limitation prescribed under Section 21 (5) of the Act of 2008.

7. Learned advocate appearing for the appellant has submitted that, the view of the Delhi High Court has been accepted and followed by the Jammu and Kashmir High Court in **GLA (D) No. 46 of 2022 GLM No. 1474 Of 2022 (National**

Investigation Agency versus 3rd Additional Sessions Judge District Court Jammu).

8. Learned advocate appearing for the appellant has submitted that, the right of appeal is a substantive right. The same should not be curtailed so as to deny the appellant the unfettered right of appeal to agitate the grievances of the appellant. In the facts of the present case, the appellant had been prevented by economic reasons from preferring the appeal within the prescribed time of limitation provided under the provisions of Section 21 of the Act of 2008. He has contended that, since provisions of Section 5 of the Limitation Act, 1963 are attracted to an appeal under Section 21 of the Act of 2008, the Court should be pleased to condone the delay and admit the appeal and hear the appeal on merits. The appellants have substantial grounds to urge in the appeal if the same is heard on merits.

9. Learned advocate appearing for the National Investigation Agency has submitted that, an appeal governed by the provisions of Section 21 of the Act of 2008 is barred if the same is filed beyond the prescribed period of 90 days. He has submitted that, in the facts of the present case, the present appeal is sought to be directed against a judgement

and order of conviction dated August 28, 2019. A period in excess of 90 days had elapsed from the date of the impugned judgement and order of conviction till the present appeal sought to be filed.

10. Learned advocate appearing for the National Investigation Agency has submitted that, the provisions of Section 21 of the Act of 2008 are mandatory and in support of such contention, he has relied upon **2015 SCC Online Ker 39625 (Nasir Ahammed versus National Investigation Agency)**.

11. Learned advocate appearing for the National Investigation Agency has contended that, provisions of Section 5 of the Limitation act, 1963 have no manner of applications and that the time period specified in Section 21 of the Act of 2008 is mandatory. An appeal filed beyond 90 days cannot be entertained. In the present case, the appellants not having filed the present appeal within the prescribed period of 90 days in terms of Section 21 of the Act of 2008, the appeal should not be entertained.

12. The issue as to whether the time period stipulated under Section 21 of the Act of 2008 is mandatory or not has received the consideration of 3 high Courts as it appears from

the authorities cited at the bar. The 1st in point of time is by the Kerala High Court in ***Nasir Ahammad (supra)*** which has held that the time period stipulated in Section 21 of the Act of 2008 is mandatory. The Delhi High Court in ***Farhan Shaikh (supra)*** and the Jammu and Kashmir High Court in ***National Investigation Agency (supra)*** have however held that Section 21 of the Act of 2008 is not mandatory and that an appeal filed beyond the stipulated period of 90 days in such Section can be entertained. These two high Courts have held that, Section 5 of the Limitation act, 1963 applies to Section 21 of the Act of 2008 and therefore, an appeal filed beyond the stipulated period of 90 days can be entertained.

13. The Calcutta High Court in ***Sadanala Ramkrishna (supra)*** has held that, principles incorporated in Section 12 (3) of the Limitation Act, 1963 applies to an appeal under Section 21 of the Act of 2008 also. ***Sadanala Ramkrishna (supra)*** has been rendered by a Division Bench.

14. ***Nasir Ahammed (supra)*** has considered the provisions of the Act of 2008 and the Limitation Act, 1963. It has held that, Section 29 (2) of the Limitation Act, 1963 would apply to an appeal under Section 21 of the Act of 2008 and consequently, Sections 4 to 24 thereof would apply unless

their application has been expressly excluded by the Act of 2008. It has held that, application of Section 12 of the Limitation Act 1963 has not been excluded under the Act of 2008. Therefore, the time taken for obtaining a Certified Copy of the judgement and order passed by the Special Court in the Act of 2008 is liable to be excluded in computing the period of limitation under Section 21 of the Act of 2008. In arriving at such conclusion, ***Nasir Ahammed (supra)*** has taken into consideration the following authorities :-

- i. ***AIR 1964 Supreme Court Cases 1099 (Vidyacharan Shukla v. Khubchand Baghel and Ors.)***
- ii. ***1976 (4) SCC 464 (Commissioner of Sales Tax U.P v. Madan Lal Das & Sons, Bareilly)***
- iii. ***2009 (5) SCC 791 (Commissioner of Customs and Central Excise v. Hongo India Private Limited & Anr.)***
- iv. ***1974 (2) SCC 133 (Hukumdev Narain Yadav Vs. Lalit Narain Mishra)***
- v. ***2001 (8) SCC 470 (Union of India v. M/s Popular Construction Co.)***

- vi. **2011 (15) SCC 30 (*Ketan v. Parekh v. Special Director, Directorate of Enforcement & Anr.*)**
- vii. **2008 (7) SCC 169 (*Consolidated Engg. Enterprises v. Principal Secretary, Irrigation Department*) and**
- viii. **2010 (5) SCC 23 (*Chattisgarh State Electricity Board v. Central Electricity Regulatory Commission & ors.*).**

15. The Delhi High Court in ***Farhan Shaikh (supra)*** has considered ***Nasir Ahammed (supra)***. It has differed with the view of ***Nasir Ahammed (supra)***. It has held that, the prescription of limitation in Section 21 (5) of the Act of 2008 is directory and that, a High Court is empowered to entertain and consider an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the appeal.

16. In arriving at its finding that, Section 5 of the Limitation Act, 1963 is attracted to an appeal under Section 21 of the Act of 2008, ***Farhan Shaikh (supra)*** has noticed the following authorities :-

- i. **1974 (2) SCC 133 (*Hukumdev Narain Yadav v. Lalit Narain Mishra*)**

- ii. **2004 (4) Supreme Court Cases 252 (Gopal Sardar v. Karuna Sardar)**
- iii. **2017 Volume 2 SCC 350 (Patel Brothers v. State of Assam)**
- iv. **2004 (11) SCC 472 (Fairgrowth Investments Ltd. v. The Custodian)**
- v. **2018 (3) SCC 41 (Bengal Chemists and Druggists Association V. Kalyan Chowdhury)**
- vi. **1975 Volume 4 SCC 22 (The Commissioner of Sales Tax, U.P. Lucknow v. Parson Tools and Plants, Kanpur)**
- vii. **All Indian Reporter 1961 Supreme Court 751 (State of UP v. Baburam Upadhyay)**
- viii. **1979 (2) SCC 656 (Sita Ram v. State of U.P.)**
- ix. **AIR 1967 Supreme Court 1877 (Shah and Co. Bombay v. State of Maharashtra)**
- x. **2007 Volume 6 SCC 528 (Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.)**
- xi. **2010 Volume 7 SCC 263 (Selvi v. State of Karnataka)**

- xii. **2008 Volume 16 SCC 417 (Noor Aga v. State of Punjab)**
- xiii. **2018 SCC Online Allahabad 2087 (Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015 vs. Nil)**
- xiv. **1978 Volume 3 SCC 544 (Madhav Hayawadanrao Hoskot v. State of Maharashtra)**
- xv. **1998 Volume 7 SCC 123 (N. Balakrishnan v. M. Krishnamurthy)**
- xvi. **2011 Volume 14 SCC 465 (Abdul Ghafoor v. State of Bihar)**

17. The Jammu and Kashmir High Court in ***National Investigating Agency (supra)*** has followed the view of ***Farhan Shaikh (supra)*** and held that, delay in filing an appeal under Section 21 of the Act of 2008 can be condoned on an application under Section 5 of the Limitation Act, 1963. There, the question of condonation has been considered on an application filed against a judgement of acquittal.

18. ***National Investigating Agency (supra)*** has noticed following authorities :-

- i. **2000 Criminal Law Journal 959 (State of Maharashtra vs. Yadav Kohachade)**
- ii. **1995 Criminal Law Journal 3505 (Rajneet Singh vs. State of UP)**
- iii. **1992 Volume 3 CCR 2793 (Harshad S. Mehta vs. CBI)** and
- iv. **2005 Volume 2 Crimes 272 (State of Rajasthan Vs. Santosh Yadav).**

19. Baburam Upadhyay (supra) has considered the provisions of Section 116A (1) of the Representation of People Act, 1951 and held that, since the period of limitation was different from that of the Code of Civil Procedure, and Representation of People Act, 1951 being a special law, the period of limitation prescribed in Representation of People Act, 1951 shall apply. However, it has held that, Section 12 of the Limitation Act, 1963 would apply to exclude the time taken by the appellant to obtain the certified copy of the impugned order.

20. Vidyacharan Shukla (supra) has considered Section 29 (2) of the Limitation Act, 1963 and the provisions of the Representation of People Act, 1951 particularly Section 116A

thereof and held that, Section 12 of the Limitation Act, 1963 would apply.

21. *Shah and Co, Bombay (supra)* has also held that, Section 12 of the Limitation Act, 1963 would apply in an appeal governed by the provisions of the Representation of People Act, 1951.

22. *Hukudev Narain Yadav (supra)* has considered the issue as to whether Section 4 to 24 of the Limitation Act, 1963 stood excluded by the provisions of the Representation of People Act, 1951 or not. It has held that, Court has to see whether scheme of special law, nature of remedy of law show that the legislature intended to limit the provisions of the Limitation Act, 1963. Even if the special law does not exclude the provisions of the Limitation Act, 1963 by express reference, Court has to examine whether and to what extent the provisions of nature, subject matter and scheme for special law exclude their operation.

23. In *Parson Tools and Plants (supra)* the Supreme Court has held that, Court has to give full effect to what is written in the statute. It has held that Section 10 of the UP Sales Tax Act, 1948 does not allow invocation of Section 14 (2) of the Limitation Act, 1963 in terms or in principle for

excluding the time in prosecuting proceedings in setting aside the dismissal of appeals.

24. *Madan Lal Dan (supra)* has observed that, for the purpose of determining the period of limitation prescribed for any application by special/local law, provisions of Section 12 (2) of the Limitation Act, 1963 has to be applied unless expressly barred by the special/local law.

25. In *Mangu Ram (supra)* the Supreme Court has held that, Section 5 of the Limitation Act, 1963 would not apply in respect of an appeal governed by a proceedings initiated under the provisions of the Prevention of Food Adulteration Act, 1954.

26. *Madhav Hayawadhanrao (supra)* has held that, subject to just exceptions, at least a single right of appeal on facts, in criminal conviction resulting in long loss of liberty is basic civilised jurisprudence. It is integral to fair procedure, natural justice and normative universality except in special cases where original tribunal is a high bench having collegiate members. First appeal from sessions Court to High Court as provided in the Criminal Procedure Code manifest the value held in Article 21 of the Constitution of India.

- 27. *Sita Ram (supra)*** has held that, single right of appeal is an universal requirement of the guarantee of life and liberty.
- 28. *Mukri Gopalan (supra)*** has held that, Section 5 of the Limitation Act, 1963 could be invoked to condone delay in filing an appeal under the Kerala Buildings (Lease and Rent Control) Act.
- 29. *N. Balakrishnan (supra)*** has held that, the object of fixing time limits in the Limitation Act, 1963 is not to destroy rights but is founded on public policy fixing a lifespan of all legal remedy for general welfare.
- 30. *Popular Construction Company (supra)*** has construed the provisions of Section 34 of the Arbitration and Conciliation Act, 1991 and held that, Section 5 of the Limitation Act, 1963 stood excluded by the express provision of Section 34 of the Act of 1991.
- 31. *Gopal Sardar (supra)*** has held that, Section 5 of the Limitation Act, 1963 would not be applicable in an application made under Section 8 of the West Bengal Land Reforms Act, 1955. It has observed that, Section 8 of the Act of 1955 is a self-contained code in relation to enforcement of rights of pre-emption. An application under Section 8 of the Act of 1955

was in the nature of a suit and therefore provisions of Section 5 of the Limitation Act, 1955 could not be applicable.

32. *Fairgrowth Investments Ltd (supra)* has held that, the provisions of limitation prescribed in Section 4 (2) of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 was mandatory as it was a special statute and that, allowing invocation of Section 5 of the Limitation Act, 1963 would defeat the intention of the legislature.

33. *Dilip S. Dhanukar (supra)* has held that, right to appeal from a judgement of conviction is a fundamental right. It is an absolute right and can neither be interfered with nor impaired nor can it be subjected to any condition. It has rendered such observations in respect of an appeal relating to a proceeding under the Negotiable Instruments Act, 1881.

34. *Noor Aga (supra)* has observed that, the right to appeal where it exist, is a matter of substance and not of procedure. It has made those observations in the light of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985.

35. *Consolidated Engineering Enterprises (supra)* has held that, the period of limitation prescribed under Section 34

(3) of the Arbitration and Conciliation Act, 1991 was mandatory and that the prescribed period of 3 months to set aside an award can be extended for 30 days and not thereafter. It has held that, the provisions of Section 5 of the Limitation Act, 1963 were barred.

36. *Hongo India Private Limited (supra)* has held that, even in a case where the special Act does not exclude Section 4 to 24 of the Limitation Act, 1963 by an express reference, it would be open to a Court to examine whether and to what extent the nature of the provisions or nature of subject matter and scheme of a special law exclude their operation. It has observed that, applicability of the Limitation Act, 1963 is not judged from terms of the Limitation Act, 1963 but from the provisions of the special statute.

37. The Supreme Court in ***Chhattisgarh State Electricity Board (supra)*** has observed that, Section 5 of the Limitation Act, 1953 cannot be invoked by the Supreme Court for entertaining an appeal filed against the direction or order of Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act in view of the provisions of such statute.

38. *Selvi (supra)* has held that, right against self-incrimination in respect of its multi-dimensional relationship with personal liberty includes right to fair trial and substantive due process.

39. *Ketan V. Parekh (supra)* has examined the issue as to whether a High Court can entertain an appeal under Section 35 of the Foreign Exchange Management Act beyond the period of 120 days. It has held that, Section 5 of the Limitation Act, 1963 cannot be invoked for condonation of delay as it would amount to amending the legislative mandate by which special period of limitation has been prescribed. However, Section 14 of the Limitation Act, 1963 can be invoked in appropriate cases for exclusion of time.

40. *Abdul Ghafoor (supra)* has observed that, limitation was meant to respect the Court's time and not let people approach higher judicial authorities at their own sweet will. Law of limitation must be respected and not observed by Courts. In cases of criminal conviction and sentence of imprisonment, Courts must show far greater indulgence and flexibility in applying the law of limitation than in any other kind of case. Sentence of imprisonment relates to a person's personal liberty which is one of the most important rights

available to an individual and therefore Courts should be very reluctant to shut out a consideration of the case on merits on grounds of limitation or any other technicality.

41. *Patel Brothers (supra)* has held that, Section 5 of the Limitation Act, 1963 was not applicable to a revision petition filed before the High Court under Section 81 of the Assam Value Added Tax Act, 2003. It has observed that, Courts cannot interpret a statute the way they have developed the common law which in a constitutional sense means judicially developed equity in abrogating/modifying rule of common law. The Courts exercise the power of creation that has built up the common law through its existence by judges of the past. The Courts can exercise no such power in respect of statutes.

42. *Bengal Chemists and Druggists Association (supra)* has held that, Section 5 of the Limitation Act, 1963 cannot be invoked to extend the period of limitation prescribed in Section 421 (3) of the Companies Act, 2013 since it was a special statute and expressly barred invocation of Section 5 of the Limitation Act, 1963.

43. As has been noted above, investigation relating to a First Information Report dated October 2, 2014 lodged by the police was transferred to the National Investigation Agency by

the Central Government under Section 6 (5) read with Section 8 of the National Investigation Agency Act, 2008. Such police case has ended in the impugned judgement of conviction and the order of sentence on completion of the trial. In view of the provisions of the Act of 2008, the police case had been tried by a Special Court. The Court that has passed the impugned judgement of conviction and the order of sentence is a Special Court within the meaning of the Act of 2008. Consequently, appeal against the impugned judgement of conviction and the order of sentence is governed by the provisions of Section 21 of the Act of 2008.

44. The statement of objects and reasons of the National Investigation Agency Bill which has resulted in the Act of 2008 noted that over the past several years, India has been the victim of large-scale terrorism sponsored from across the borders. It has noted that there have been innumerable incidents of terrorist attacks, not only in the militancy and insurgency affected areas and areas affected by Left-Wing Extremism, but also in the form of terrorist attacks and bomb blast in various parts of the hinterland and major cities. A large number of such incidents have been found to have complex inter-state and international linkages, and possible

connection with other activities like the smuggling of arms and drugs, pushing in and circulation of fake Indian currency, infiltration from across the borders, et cetera. Keeping all these in view, it has for long been felt that there is need for setting up an Agency at the Central level for investigation of offences related to terrorism and certain other acts which have national ramifications.

45. The Act of 2008 has been promulgated to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts, enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto.

46. Section 3 of the Act of 2008 has empowered the Central Government to constitute a special agency to be called the National Investigation Agency for investigation and prosecution of offences under the Acts specified in the schedule. The Act of 2008 has a schedule prescribing the Acts

which the specialised agency namely, National Investigation Agency is required to investigate under the Act of 2008.

47. The Act of 2008 is a special statute governing specified criminal offences punishable under various statutes including those of the Indian Penal Code, 1860.

48. Section 21 of the Act of 2008 has stipulated as follows:-

“21 Appeals. -

(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-Section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-Section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this Section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty

days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days.”

49. Sub-Section (1) of Section 21 of the Act of 2008 has a non-obstante clause. It has stipulated that notwithstanding anything contained in the Code of Criminal Procedure, an appeal arising from any judgement, sentence order, not being an introductory order, of a Special Court shall lie to the High Court both on facts and on law. Sub-Section (1) has therefore overridden the provisions of the Code of Criminal Procedure which governs appeals and revision to a higher forum. Sub-Section (1) has specified that an appeal shall lie from any judgement, sentence or order which is not an interlocutory order. Such appeal can be both on facts and on law. Sub-Section (2) has stipulated that, every appeal under sub-Section (1) of Section 21 of the Act of 2008 shall be heard by a bench of 2 judges and shall, as far as possible, be disposed of within a period of 3 months from the date of admission of the appeal. Sub-Section (3) of Section 21 of the Act of 2008 reiterates that except as provided, no appeal or revision shall lie to any Court from any judgement, sentence or order including an interlocutory order of a Special Court under the

Act. Sub-Section (4) of the Act of 2008 has stipulated that, notwithstanding anything contained in sub-Section (3) of Section 378 of the Code of Criminal Procedure, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

50. Sub-Section (5) of Section 21 of the Act of 2008 has stipulated that, every appeal under Section 21 shall be preferred within a period of 30 days from the date of the judgement, sentence or order appealed from. The proviso to such sub-Section allows the High Court to entertain an appeal after the expiry of the period of 30 days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of 30 days. The second proviso has stipulated that, no appeal shall be entertained after the expiry of the period of 90 days.

51. The time period that has been stipulated in Section 21 of the Act of 2008 is the bone of contention in the present proceedings since the appellants are seeking to prefer an appeal which is beyond 90 days from the date of the impugned judgement and order of the Special Court. The impugned judgement and order of the Special Court is otherwise appealable in view of the same having finally

disposed of the trial, convicting the appellants and sentencing the appellants to imprisonment.

52. It has been recognised by different authorities that, the doctrine of limitation is founded on considerations of public policy and expediency. Statutes of limitation do not create new obligations but only provide periods within which action must be brought to Court. The object of limitation statute is to compel litigants to be diligent in seeking remedies in Courts of law by prohibiting stale claims. The law of limitation does not destroy the primary or substantive right itself but puts an end to the accessory right of action. The judicial remedy is barred but the substantive right itself survives and continues to be available. The rules of limitation are not meant to destroy the rights of the parties.

53. *Dilip S. Dhanukar (supra)* has held that, right to appeal from a judgement of conviction affecting the liberty of a person, is a fundamental right. The right of appeal can never be interfered with or be impaired, nor can it be subjected to any conditions.

54. Section 21 of the Act of 2008 has dealt with appeals from any judgement, sentence or order, not being an interlocutory order, of a Special Court passed in proceedings

governed by the Act of 2008. It has prescribed a period of 30 days from the date of the judgement, sentence or order appealed from to prefer an appeal. The first proviso has allowed the High Court to entertain an appeal after the expiry of the period of 30 days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of 30 days. The 2nd proviso has provided that, no appeal shall be entertained after the expiry of period of 90 days.

55. Period of limitation has been prescribed in respect of appeals governed by the provisions of the Criminal Procedure Code. However, such period of limitation is subject to extension being granted and the delay in preferring the appeal being condoned by applying the provisions of Section 5 of the Limitation Act, 1963.

56. Accessory right to the appeal Court even under the provisions of the Criminal Procedure Code has been regulated. Accessory right to appeal has not been recognised to be ad infinitum in nature under such conditions. Unconditional right to access the appeal Court has been prescribed for a limited period and thereafter, subject to the compliance of Section 5 of the Limitation Act, 1963.

57. Section 21 of the Act of 2008 has prescribed a different set of limitation regulating the accessory right to appeal to the High Court. Section 21 of the Act of 2008 has allowed an unfettered and unconditional appeal to the High Court within 30 days from the date of the judgement, order or sentence. The first proviso has granted an extension of up to 90 days subject to the satisfaction of the High Court that the appellant had sufficient cause for not preferring the appeal within the period of 30 days.

58. For the first 30 days from the impugned judgement, order or sentence of the Special Court, the appeal is unfettered, unconditional and is not subject to any restriction. Fundamental right to prefer the appeal in a case of conviction affecting personal liberty has not been interfered with, trampled upon or subjected to any restriction for the first 30 days from the date of the impugned judgement, order or sentence.

59. The vires of Section 21 of the Act of 2008 has not been assailed in the instant proceedings. However, as the Section stands, it cannot be said that, fundamental right to appeal against a judgement, order or sentence of the Special Court has been infringed upon.

60. For the period beyond 30 days and subject to the maximum of 90 days, albeit satisfaction of the High Court as to the existence of sufficient cause for not preferring the appeal within the first 30 days, the appellant can prefer an appeal against a judgement, order or sentence under Section 21 of the Act of 2008.

61. The 2nd proviso to subSection (5) of Section 21 of the Act of 2008 has prescribed that no appeal shall be entertained after the expiry of the period of 90 days.

62. It would be apposite to refer to Section 29 (2) of the Limitation Act, 1963 which is as follows: –

“(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 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.”

63. Section 29 (2) of the Limitation Act, 1963 has provided that, 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 to the Limitation Act, 1963

then, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule. It has also 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 contained in Sections 4 to 24 both inclusive shall apply only so far as, and to the extent to which, they are not expressly excluded by such special or local law.

64. Section 34 (3) of the Arbitration and Conciliation Act, 1991 has been construed by the Supreme Court in ***Popular Construction Company (supra)*** to amount to an explicit exclusion within the meaning of Section 29 (2) of the Limitation Act, 1963 and would therefore bar the application of Section 5 of the Limitation Act, 1963. Significantly, the words “but not thereafter” used in Section 34 (3) of the Arbitration and Conciliation Act, 1991 have been construed to exclude Section 5 of the Limitation act, 1963. This view has been reiterated in ***Consolidated Engineering Enterprises (supra)***.

65. The words “allow it to be filed within a further period not exceeding sixty days” used in Section 35 of the Foreign Exchange Management Act, 1999 has been held to exclude

the applicability of Section 5 of the Limitation Act, 1963 in ***Ketan V. Parekh (supra)***. Similarly, in ***Bengal Chemists and Druggists Association (supra)*** the Supreme Court has held that, period of limitation prescribed in Section 421 (3) of the Companies Act, 2013 was mandatory and that, Section 5 of the Limitation Act, 1963 could not be invoked in order to condone the delay in view of the express bar and the statute being of special nature. Again in ***Fairgrowth Investments Ltd (supra)*** the Supreme Court has noted that, Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 being a special statute, Section 5 of the Limitation Act, 1963 would defeat the intention of the legislature.

66. The contention that, the words “expressly excluded” appearing in Section 29 (2) of the Limitation Act, 1963 would mean that there must be an express reference made in the special local law to the specific provisions of the Limitation Act, 1963 of which the operation is to be excluded, has been negated in ***Hukumdev Narain Yadav (supra)***, ***Popular Construction Company (supra)***, ***Hongo India Private Limited (supra)*** and ***Chhattisgarh State Electricity Board (supra)***. They have observed that, even in a case where the special law does not exclude the provisions of Sections 4 to 24

of the Limitation Act, 1963 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.

67. As has been discussed above, the Act of 2008 is a special law governing proceedings relating to offences which Special Courts recognised under the Act of 2008 are entrusted to decide in relation to offences enumerate it in the schedule to the Act of 2008.

68. The 2nd proviso to Section 21 (5) of the Act of 2008 has provided that no appeal shall be entertained after the expiry of 90 days. The plain meaning of such proviso would inculcate a prohibition to entertainment of an appeal presented after the expiry of 90 days from the impugned judgement or order or sentence. Reading Section 5 of the Limitation Act, 1963 to the 2nd proviso of subsection (5) of Section 21 of the Act of 2008 would do violence to the plain meaning of such proviso. The 2nd proviso prohibits extension of the period of limitation prescribed for the purpose of entertaining an appeal.

69. It is trite law that, the statute is an edict of the legislature and that the conventional way of interpreting or

construing a statute is to seek the intention of the legislature. The intention of the legislature must be found by reading the statute as a whole. Where the words of the statute are clear, plain or unambiguous the Courts are bound to give effect to that meaning irrespective of the consequences. It is wrong and dangerous to substitute some other words for the words of the statute. The rules of interpretation do not permit Courts to add words unless the section as it stands is meaningless or of doubtful meaning.

70. The 2nd proviso to sub-Section (5) of Section 21 of the Act of 2008 is plain, clear and unambiguous in its meaning. It has prohibited entertainment of any appeal after the expiry of a period of 90 days. To read Section 5 of the Limitation Act, 1963 into Section 21 (5) 2nd proviso would require substituting the word “no” appearing in such proviso with the word “an”. Such substitution would render the entirety of the 2nd proviso otiose and superfluous.

71. The scheme of the limitation prescribed under section 21 of the Act of 2008 is that, the time to prefer an appeal commences from the date of the judgement, order or sentence and terminates on the expiry of 90 days from such date. Such prescription of limitation is in sync with the object of the Act

of 2008 which is to have an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India. The Act of 2008 has waived many of the provisions of the Criminal Procedure Code in order to facilitate effective trial and disposal of the cases governed by it expeditiously.

72. Section 12 of the Limitation Act, 1963 is founded on the principle that no party can be prejudiced by an act of Court. In such context, where the Court has delayed the delivery of the certified copy of its judgement or order, the period taken by the Court to deliver the certified copy of its judgement or order is excluded from the calculation of the period of limitation prescribed by the statute for preferring an appeal. ***Sadanala Ramkrishna (supra)*** has to be understood in such context when it has held that the principles incorporated in Section 12 (3) of the Limitation Act, 1963 applies to an appeal under Section 21 of the Act of 2008. It cannot be read as an authority for the proposition that Section 5 of the Limitation Act, 1963 is attracted to Section 21 of the Act of 2008.

73. The issue that has been noted in paragraph 1 of this judgement has to be answered in the negative and as against

the appellant, in light of the discussions above. An appeal sought to be filed after expiry of the period of 90 days from the date of the judgement or order or sentence, under Section 21 of the Act of 2008 cannot be entertained. The period of 90 days from the date of the judgement or order or sentence has to be calculated on the principles analogous to Section 12 of the Limitation Act, 1963.

74. CRAN 1 of 2022 along with CRA (DB) 231 of 2022 are dismissed as not maintainable in view of the discussions above.

75. Urgent Photostat certified copy of this judgement and order be made available to the parties expeditiously, upon compliance of all formalities.

[DEBANGSU BASAK, J.]

76. I agree.

[MD. SHABBAR RASHIDI, J]