

30.07.2024
SL No.3
Court No.29
(gc)

**CRA (DB) 25 of 2024
CRAN 1 of 2024**

**Sanaul Sk @ Senaul
Vs.
Union of India**

Mr. Apalak Basu,
Mr. Nazir Ahmed,
Ms. Sanghamitra Mridha
....For the Appellant.
Mr. Anirban Mitra
....For the NIA.

1. The question with regard to the applicability of Section 5 of the Limitation Act in a statutory appeal under Section 21(5) of the NIA Act, 2008 is no more *res integra* in view of the judgment of the Hon'ble Division Bench presided over by Justice Debangsu Basak in ***Sheikh Rahamtulla v. National Investigation Agency*** reported at **2023 SCC OnLine Cal 493**.
2. Mr. Apalak Basu, learned Counsel appearing on behalf of the appellant has submitted that this provision may be read down and interpreted in favour of the power of the court to condone delay in order to ensure the fundamental right of a convict to prefer an appeal as any other interpretation would cause serious hardship to the appellant.
3. We have read the judgment of the Hon'ble Division Bench carefully. All the relevant issues including the issues raised in this regard have been carefully and meticulously considered by the Division Bench in arriving at a finding that Section 5 of the

Limitation Act would have no manner of application in an appeal under Section 21(5) of the NIA Act, 2008.

4. To put it pithily, NIA Act is a special statute, vis-à-vis, the Code of Criminal Procedure. While Section 5 may have manner of application in a statutory appeal under the provision of Code of Criminal Procedure the same benefit is not extendable to Section 21(5) of the NIA Act, 2008 in view of absence of such provision and exclusion of the said provision and exclusion of the said provision in the said Act. NIA Act is a special statute and a code in itself. As rightly pointed out by the Hon'ble Division Bench that in absence of any challenge to the vires of the said provision being challenged and decided in an appropriate proceeding, whereby the said provision may be read down or declared ultravires, the Court under the garb of interpretation cannot rewrite the statute and make applicable the provision of Section 5 of the Limitation Act to such an appeal.
5. Apart from the aforesaid, the comity of Court requires that a Coordinate Bench shall follow the ratio of the earlier Bench unless it is demonstrated that the decision of the earlier Bench is *per incurium* or *sub silentio*. None being evident or demonstrated in this proceeding and the fact remains that the points urged have been clearly gone into and decided by the Division Bench of this Court notwithstanding the decision of some of the other High Courts on this point.
6. Although we appreciate the anxiety of Mr. Basu that the exclusion of the provision of Section 5 of the Limitation Act in the NIA Act, 2008 may cause undue hardship and act unfairly to

a convict as an otherwise meritorious case may not be allowed to be decided on merits, we are unable to accept the said submission as the NIA Act, 2008 is a special statute within the meaning of Section 29(2) of the Limitation Act, 1963 and unless Section 5 of the Limitation Act is made specifically applicable to the said Act, the Court cannot rewrite the statute by making the said provision applicable. The legislature in its wisdom has clearly excluded the said provision in the NIA Act, 2008 like many other special statutes. Unless the vires of the said Section is challenged on the ground of arbitrariness or unreasonableness and the said Section is struck down, we are unable to accept the submission of Mr. Basu. In fact, the Coordinate Bench has also noted that in absence of the vires of the said provision being challenged and the Court is called upon to decide the constitutional validity of the said provision, the present relief cannot be granted.

7. On such consideration, we are unable to accept the submission of Mr. Basu, although, we appreciate that it may act unfairly to a convict and he may be denied of his right to prefer an appeal. We also appreciate that unlike civil remedies, a conviction would mean confinement and put fetter to his free movement.
8. We make it clear that we have not gone into the merits of the matter.
9. Accordingly, the application for condonation of delay, being CRAN 1 of 2024, stands dismissed as not maintainable since it is filed beyond the period of limitation.

10. In view of dismissal of the application for condonation of delay, the appeal, being CRA (DB) 25 of 2024 also stands dismissed.
11. However, there shall be no order as to costs.
12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Soumen Sen, J.)

(Uday Kumar, J.)