

Mohd Abaad Ali vs Directtorate Of Revenue Prosecution ... on 20 February, 2024

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

REPORTABLE

2024 INSC 125

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. OF 2024
(ARISING OUT OF SLP (CRL.) NO. 2052 OF 2017)

MOHD ABAAD ALI & ANR.

...APPELLANTS

VERSUS

DIRECTORATE OF REVENUE
PROSECUTION INTELLIGENCE

...RESPONDENT

JUDGMENT

SUDHANSHU DHULIA, J.

Leave granted.

1. The present appellant was one of the four accused in a case instituted, inter-alia under Section 135(1)(b) of Customs Act, 1962. He faced trial (S.C. No. 33 of 2009) where he was ultimately acquitted by the Additional Sessions Judge, North, Delhi vide order dated 06.10.2012.

2. Against the order of acquittal, the Directorate of Revenue Intelligence filed an appeal before the High Court on NEETA SAPRA Date: 2024.02.20 17:28:22 IST Reason:

27.06.2013. That appeal against acquittal filed under Section 378 of CrPC was accompanied by a delay condonation application, since the appeal was belated by 72 days. The delay condonation application was allowed by the Delhi High Court on 18.05.2016.

3. An application was then moved by the present appellant before the High Court under Section 482

of CrPC for recalling of the said order on grounds that Section 5 of the Limitation Act would not apply in case of an appeal against acquittal since the period of filing an appeal against acquittal, has been prescribed under Section 378(5) of CrPC itself, where there is no provision for condonation of delay. By order dated 20.01.2017 the Delhi High Court nonetheless dismissed the application for recall filed by the appellant, although no reasons were assigned while dismissing the application under Section

482.

4. This order has been challenged before us on the grounds that the High Court has committed a patent error in allowing the belated appeal against acquittal filed by public servant as the High Court has no powers to condone the delay since the provisions of the Limitation Act would not be applicable as Section 378 is a self- contained Code as far as limitation is concerned since there is no period prescribed in the Limitation Act for filing a appeal against acquittal.

5. In support of his argument, the learned counsel for the appellant Mr. Vijay Kumar Aggarwal, has relied upon the judgment of this Court in Kaushalya Rani v. Gopal Singh (1964) 4 SCR 982. The facts of Kaushalya Rani are as follows: Kaushalya Rani had filed a case against one Gopal Singh under Section 493 IPC and alternatively under Section 496 IPC, alleging that Gopal Singh had deceitfully made her believe that he is her lawfully married husband and thus had sexual intercourse with her. Gopal Singh faced a trial in which he was acquitted by the Trial Court and an appeal against acquittal was filed by Kaushalya Rani under the Code of Criminal Procedure, 1898 (hereafter referred to as the “old CrPC”), under Section 417. The appeal was filed beyond the period of 60 days as provided under sub-section (4) of Section 417, i.e., the then prevailing Criminal Procedure Code. The appeal was dismissed on grounds of limitation by the Punjab & Haryana High Court. This matter was thus taken by Kaushalya Rani before this Court. The case was filed before this Court on a certificate of fitness granted by the Punjab & Haryana High Court and the question for determination before this Court was whether the provisions of Section 5 of the Limitation Act, 1908 (i.e. Act 9 of 1908 i.e. the old Limitation Act) would apply to an application for special leave to appeal from an order of acquittal under sub-section 3 of Section 417 of the old CrPC.

6. This Court on its interpretation of sub-section 4 of Section 417 of old CrPC and Section 29(2) of the old Limitation Act i.e. Indian Limitation Act, 1908 held that Section 5 of the Limitation Act would not apply in an application for leave to appeal under sub-section 3 of 1 Section 417 of the old CrPC is as follows:

417 (1) Subject to the provisions of sub-section (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 a acquittal passed by any Court other than a High Court.

(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 (XXXV of 1946), the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

(3) If such an order of acquittal is passed in any case instituted upon the 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. (4) No application under sub-section (3) for the grant of special leave to appeal from the order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. (5) If, in any case, the application under sub-section (3) 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). Section 417 of the old CrPC before High Court, in as much as Section 417 is a special code in itself and the limitation prescribed therein is 60 days and the court has no power to relax such a limitation to condone the delay. Relying upon a full Bench judgment of the Bombay High Court [Anjanabai v. Yeshwantrao Daulatrao Dudhe ILR (1961) Bom 135] which held that Section 417(4) was special law within the meaning of Section 29(2) of the Limitation Act. Thus, the appeal was dismissed while relying on Section 29(2) of the old Limitation Act. For ready convenience of this Court, Section 29(2) of the old Limitation Act is reproduced below:

“(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.” A perusal of the aforesaid provision clearly shows that where there is a special or local law prescribing the period of limitation in any suit, appeal or application which is different from the period of limitation prescribed in the first schedule of the Limitation Act, the applicability of the Limitation Act will be only as regarding Section 4 and Sections 9 to 18 & 22 of the Limitation Act. The meaning thereby afforded is that Section 5 of the old Act was expressly excluded in cases where special law or local law provides for a period of limitation. The learned counsel for the appellant would argue that although in the present case, we are dealing with present Criminal Procedure Code, 1973 and the new Limitation Act, 1963 however, the provisions in the present Code for appeal against acquittal i.e., under Section 378 of CrPC are of similar nature regarding the prescription of a period of limitation for filing an appeal and therefore the law as laid down by Kaushalya Rani (supra), would apply in the present case as well.

7. This submission of the learned counsel is not correct.

Subsequent to the decision of this Court in Kaushalya Rani (supra), this Court in Mangu Ram v. Municipal Corporation of Delhi (1976) 1 SCC 392, while dealing with a similar problem of limitation

(in an appeal against acquittal), distinguished Kaushalya Rani as Kaushalya Rani was dealing with the old Criminal Procedure Code, 1898 and the old Limitation Act, 1908, where provisions were differently worded. Under Section 378 of the new CrPC read with Section 29(2) of the Limitation Act, 1963 though a limitation is prescribed, yet Section 29(2) of 1963 Act, does not exclude the application of Section 5. Section 29(2) of Limitation Act, 1963 reads as under:-

“(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 insofar as, and to the extent to which, they are not expressly excluded by such special or local law.” (emphasis supplied) The crucial difference here is of applicability of Section 5 of Limitation Act. In both the Limitation Acts, i.e. Limitation Act of 1908 and the present Limitation Act of 1963, the provision of extension of time of limitation is given in Section 5 of the two Acts. Whereas 1908 Act specifically states that Section 5 will not apply when the period of limitation is given in special Acts, the 1963 Act makes Section 5 applicable even in the special laws when a period of limitation is prescribed, unless it is expressly excluded by such special law. A comparative provision of Section 29(2) in the two Acts is given below:-

Section 29(2) of the Old Limitation Act of new Limitation Act of 1908 1963 (2) Where any special or (2) Where any special or local law prescribes for local law prescribes for any suit, appeal or any suit, appeal or application a period of application a period of limitation different from limitation different from the period prescribed the period prescribed by therefor by the first the Schedule, the schedule, the provisions provisions of section 3 of section 3 shall apply shall apply as if such as if such period were period were the period prescribed therefor in prescribed by the that schedule and for the Schedule and for the purpose of determining purpose of determining any period of limitation any period of limitation prescribed for any suit, prescribed for any suit, appeal or application by appeal or application by any special or local law: any special or local law,

(a) the provisions the provisions contained contained in section 4, in sections 4 to 24 sections 9 to 18, and (inclusive) shall apply section 22 shall apply only in so far as, and to only in so far as, and to the extent to which, they the extent to which, they are not expressly are not expressly excluded by such special excluded by such special or local law.

or local law; and
(b) the remaining
provisions of this Act
shall not apply.

As Kaushalya Rani (supra) was decided under

provisions of old Limitation Act of 1908, this Court in Mangu Ram (supra) distinguished Kaushalya Rani and held as under:

“There is an important departure made by the Limitation Act, 1963 insofar 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 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 insofar 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 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 case 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.

(emphasis supplied)

8. Mr. Vijay Kumar Aggarwal, learned counsel would then rely upon two cases, namely, *Hukumdev Narain Yadav v. Lalit Narain Mishra* [AIR 1974 SC 480] and subsequently *Gopal Sardar v. Karuna Sardar* [2004 (4) SCC 252].

9. Both the above mentioned cases were dealing with special laws where a period of limitation was prescribed. Whereas *Hukumdev Narain Yadav* (supra) relates to Election matter where Section 81 of the Representation of People's Act, 1951, prescribes a limitation of 45 days for filing an Election Petition, *Gopal Sardar* (supra) dealt with the right of pre-emption under Section 8 of the West Bengal Land Reforms Act, 1955 which again prescribed three months limitation for a bargadar and four months for a 'raiyat' to make an application for pre-emption to the concerned authorities.

10. There can be no quarrel with the argument that where a special law prescribes a period of limitation, Section 5 of the Limitation Act would have no application, subject only to the language used in the special statute. The language prescribing a period of limitation is an important factor as well. For example, in the Representation of Peoples Act, 1951 Section 81 prescribes limitation for presenting an election petition as under :-

“81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in 207[sub-section (1)] of Section 100 and Section 101 to the 208[High Court] by any candidate at such election or any elector 209[within forty-

five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates].

Explanation.—In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not. (2) [Omitted] (3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition [* * *] and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.” Section 86(1) further says that in case an election petition is filed beyond a period of 45 days it shall be dismissed.

Section 86(1) reads as under:-

“86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of Section 98.” The election statute thus expressly bars filing of an election petition beyond 45 days. The language of the statute, leaves no ambiguity in this regard.

“The High Court shall dismiss an election petition”, is the language given in the statute. Simply put the Court has no choice but to dismiss an election petition, which is filed beyond a period of 45 days.

There is no scope for condoning the delay in an election matter. Therefore in *Hukumdev Narain Yadav* (supra) it was stated as under:-

“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..... 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.

(emphasis supplied)

11. Later, while dealing another special statute viz West Bengal Land Reforms Act, 1955 this Court in *Gopal Sardar* (supra) had an occasion to comment on *Mangu Ram* (supra) where it says that the decision of *Hukumdev Narain Yadav* (supra) was not brought to the notice of this Court when *Mangu Ram* (supra) was decided (we have discussed *Mangu Ram* in the preceding paragraphs). Much reliance has been placed by the learned counsel for the appellant *Shri Agarwal* on this observation of the Court.

Hukumdev Narain Yadav as we have already discussed above relates to election laws which falls in an entirely different category, as far as period of limitation is concerned. A bare comment of this Court that a case was not considered would not mean that the entire findings of the court arrived in Mangu Ram (supra) are wrong. We must appreciate Gopal Sardar for what it decides and the facts and the context on which this decision is based. What were the facts of Gopal Sardar and what were the findings of this Court? In Gopal Sardar, this Court was again dealing with the period of limitation relating to West Bengal Land Reforms Act, 1955 and the application of Section 5 of the Limitation Act. Section 8 of the West Bengal Land Reforms Act, 1955 gave certain right to a “raiyat” for transfer of land of co- sharer, exercising his right of pre-emption but this right had to be exercised “within a period of 4 months of the date of cause of action”. The same Act in its Section 14-‘O’ and Section 19 while discussing the period of appeal provides that Section 5 of the Limitation Act would apply. This Court thus came to a finding that though Section 5 of the Limitation Act would apply in the case of appeal but it will not apply in a case when the proceedings itself had to be initiated in form of suit under Section 8 of the Act which had to be done within a period of 4 months.

Section 8 of the West Bengal Land Reforms Act, 1955 reads as under:

“8. Right of purchase by co-sharer or contiguous tenant.—(1) If a portion or share of a plot of land of a raiyat is transferred to any person other than a co- sharer of a raiyat in the plot of land, the bargadar in the plot of land may, within three months of the date of such transfer, or any co-sharer of a raiyat in the plot of land may, within three months of the service of the notice given under sub- section (5) of Section 5, or any raiyat possessing land adjoining such plot of land, may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction for transfer of the said portion or share of the plot of land to him, subject to the limit mentioned in Section 14-M on deposit of the consideration money together with a further sum of ten per cent of that amount.

This is what this Court said on these two provisions:

“19. We conclude that Section 5 of the Limitation Act cannot be pressed into service in aid of a belated application made under Section 8 of the Act seeking condonation of delay. The right of pre- emption conferred under Section 8 is a statutory right besides being weak; it has to be exercised strictly in terms of the said section and consideration of equity has no place. On the facts found in these appeals, applications under Section 8 were not made within four months from the date of transfer but they were made four years and six years after the date of transfer respectively which were hopelessly barred by time. Benefit of Section 5 of the Limitation Act not being available to the applications made under Section 8, Section 3 of the Limitation Act essentially entails their dismissal.” Neither Hukumdev Narain Yadav nor Gopal Sardar would help the case of the appellant as both these cases deal with special laws which prescribed a period of limitation and the expression of the language contained in the law is very clear that under no circumstances can such a limitation be

condoned. The relevant provisions have already been discussed earlier.

In the present case, there is no such exclusionary provision under Section 378 of CrPC, or at any other place in the Code. The benefit of Section 5 read with Sections 2 and 3 of the Limitation Act, 1963 can therefore be availed in an appeal against acquittal. There is no force in the contentions raised by the appellants as regards the non-application of Section 5 of the Limitation Act in the present case and the appeal is therefore dismissed.

12. The interim order dated 20.03.2017 passed by this Court is hereby vacated. The Registry is hereby directed to apprise these proceedings to the Delhi High Court so that the matter may continue.

.....J. [SUDHANSHU DHULIA]J. [PRASANNA
BHALACHANDRA VARALE] New Delhi.

February 20, 2024.