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KAUSHALYA RANI

v.

GOPAL SINGH

(B. P. SINHA, C. J., J. C. SHAH AND N. RAJAGOPALA AYYANGAR, JJ.)

Code of Criminal Procedure, s. 417(3), (4)—Accused acquitted by Additional Sessions Judge—Application for special leave to appeal to High Court against acquittal filed after 60 days of order—Provisions of Limitation Act, s. 5, whether applicable—Special law—Limitation Act (9 of 1908) s. 29(2).

The respondent was committed to the Court of Sessions to stand his trial. However, he was acquitted by the Additional Sessions Judge on December 31, 1959. The appellant filed on April 22, 1960, an application under s. 417(3) of the Code of Criminal Procedure in the High Court for Special Leave to appeal from the order of the Additional Sessions Judge. The High Court dismissed the appeal on the ground that the application for special leave to appeal was barred by time. It was held that the provisions of s. 417(4) of the Code of Criminal Procedure were in the nature of a special law and the provisions of s. 5 of the Limitation Act were not applicable. The appellant came to this Court after getting a certificate of fitness to appeal to this Court. Dismissing the appeal,

HELD : (i) The special rule of limitation laid down in s. 417(4) of the Code of Criminal Procedure is a special law of limitation governing appeals by private prosecutors and s. 5 of the Limitation Act does not apply in view of s. 29(2)(b) of the Limitation Act. A special law means a law enacted for special cases, in special circumstances, in contra-distinction to the general rule of law laid down as applicable generally to all cases with which general law deals. In that sense, the Code of Criminal Procedure is a general law regulating the procedure for the trial of criminal cases generally. When it lays down the bar of time in respect of special cases, in special circumstances, like those contemplated by s. 417(3) and (4), it is a special law contained within the general law. Likewise, the Limitation Act is a general law laying down general rules of limitation applicable to all cases dealt with by the Act, but there may be instances of a special law of limitation laid down in other statutes, though not dealing generally with the law of Limitation.

S. M. Thakur v. The State of Bihar, 30 Pat. 126; *Canara Bank Ltd. v. The Warden Insurance Co.*, I.L.R. [1952] Bom. 1083; *Mohammad Ibrahim v. Gopi Lal*, A.I.R. (1958) All. 691; *Rajjan Lal v. State* I.L.R. [1960] 2 All. 761; *Viswanathan Chettiar*, in re. (1957) 1 M.L.J. 150; *Coimbatore Municipality v. K. L. Narayanan*, A.I.R. (1958) Mad. 416; *P. V. Subbareddi, v. D. Papireddi*,

A.I.R. (1957) Andh. Pra. 406; In re *Parchuri Adeshamma*, *A.I.R.* (1958) Andh. Pra. 230; *Anjanabai v. Yeshwantrao Daulatrao Dudhe*, *I.L.R.* [1961] Bom. 135, referred to.

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CRIMINAL APPELLATE JURISDICTION Criminal Appeal
No. 126 of 1962.

Appeal from the judgment and order dated October 31, 1961 of the Punjab High Court in Criminal Appeal No. 825 of 1960.

Vidya Dhar Mahajan, for the appellant.

The Judgment of the Court was delivered by

SINHA, C. J.—In this appeal, on a certificate of fitness granted by the Punjab High Court, the only question for determination is whether the provisions of s. 5 of the Limitation Act (9 of 1908) apply to an application for special leave to appeal, from an order of acquittal, under sub-s. (3) of s. 417 of the Code of Criminal Procedure (to be hereinafter referred to as the Code). The certificate was granted by the High Court “because there is a considerable conflict of opinion in the various High Courts”.

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In this case we are not concerned with the factual aspect of the controversy between the parties. It is not, therefore, necessary to set out in any detail the facts of that controversy. It is enough to state that the respondent was committed to the Court of Sessions to stand his trial under s. 493, or in the alternative under s. 495, of the Indian Penal Code, on the charge that he had, by deceit, caused the appellant who was not lawfully married to him to believe that she was so married, and in that belief had sexual intercourse with her. In the alternative, it was alleged that he married the appellant after concealing the fact that he was already married.

The prosecution was launched by a petition of complaint filed by the appellant before the Magistrate. The respondent was tried by the Additional Sessions Judge, Gurdaspur, who by his judgment dated December 31, 1959, acquitted him on the ground that the prosecution had failed to prove that there was a marriage between the complainant and the accused. The appellant filed an ap-

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plication on April 22, 1960, very much later than 60 days from the date of the order of acquittal, for special leave to appeal from that order, under s. 417(3) of the Code. In a note appended to the application it was stated "that the time in filing the present petition might be excluded in view of the fact that the District Magistrate, Gurdaspur, moved the Advocate-General in filing the appeal under s. 417, Criminal Procedure Code, which if filed would have obviated the necessity of filing this petition. But the State Government declined to file appeal and the intimation to this effect was received on April 1, 1960. The original letter is attached herewith; from this date, it is within time." On this application, a Division Bench of the High Court passed the order "Admitted", on September 1, 1960. When the appeal was placed for hearing before Falshaw and Grover, JJ, a preliminary objection was raised on behalf of the respondent that the appeal was out of time. While it was admitted on behalf of the appellant that the appeal was filed long after the period prescribed by sub. s. (4) of s. 417 of the Code, it was argued that the delay could be condoned under s. 5 of the Limitation Act, and that the delay had been so condoned by the Bench when the appeal was admitted.

The Bench pointed out that as a matter of fact no application had been made by the appellant for extension of the period of limitation for filing the petition for special leave. The Bench further held that it could not accede to the contention that the Bench while admitting the appeal had condoned the delay. The Court, on an elaborate examination of the provisions of the Code, and of the Limitation Act, came to the conclusion that the bar of time prescribed by sub-s. (4) of s. 417 was a 'special law' within the meaning of s. 29(2) of the Limitation Act, and that, therefore, s. 5 of the Limitation Act would not be available to the appellant for condoning the admitted delay in filing the application for special leave. The High Court noticed a number of decisions of the different High Courts and preferred to accept the view that the provisions of sub. s. (4) of s. 417 of the Code were in the nature of a 'special law' though the Code as a whole was a general law. In that view of the matter, the High Court dismissed the appeal on the ground that the application for

special leave to appeal was barred by time. The appellant applied to the High Court and obtained the necessary certificate of fitness and has come up to this Court on appeal from that order of the High Court. The High Court naturally did not go into the merits of the controversy. We have, therefore, to consider whether the High Court was right in coming to the conclusion that s. 5 of the Limitation Act could not be available to the appellant for condonation of the delay in filing the application for special leave under sub-s. (3) of s. 417 of the Code.

Before we refer to the different decisions of the High Courts, taking conflicting views on the only question now before us, we would examine the relevant provisions of the Code and the Limitation Act. Section 417 of the Code is in these terms :

"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 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 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)."

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It will appear that the section, which was recast by Act XXVI of 1955, for the first time made provision for an appeal by a private complainant from an order of acquittal, if he obtained special leave to appeal from the High Court. Previous to the Amending Act aforesaid, it was only the State Government which could come up in appeal from an order of acquittal. The section, thus, provides for an appeal by the State Government, as also by the complainant in a case instituted upon a complaint, provided that special leave of the Court is obtained. So far as appeal by the State Government is concerned, s. 417 itself does not provide for any period of limitation. The period of limitation for such an appeal is laid down in Art. 157 of the Limitation Act. Previous to the amendment of 1955, the period of limitation for such an appeal by the State Government was six months, which was reduced to three months by the Act XXVI of 1955 with effect from January 1, 1956. Hence, so far as an appeal by the State Government is concerned, the period of limitation thus reduced is a part of the general law of limitation and is amenable to the operation of s. 5 of the Limitation Act. But the provisions of sub-s. (3) and (4) of s. 417 are in the nature of 'special provisions' introduced for the first time by the Amending Act XXVI of 1955. Sub-section (4), in terms, is very precise and mandatory, prohibiting the High Court from entertaining any application for special leave to appeal from an order of acquittal after the expiry of 60 days from the date of such an order. On a perusal of the bare provisions of the section and the history of the law on the subject, two things are clear; namely, (1) that the legislature thought it expedient in the interest of justice and public policy that the period of six months allowed to the State Government to appeal from an order of acquittal should be curtailed by half, thus evincing its clear intention to cut short the duration of the litigation which had already resulted in an order of acquittal; and (2) that in certain cases the High Court should have the power of granting special leave to a complainant, as distinguished from the State Government, to come up in appeal from an order of acquittal, but at the same time indicating in clear and unambiguous terms that such an application must be made within 60

days from the date of the order of acquittal. This rule of 60 days bar of time has been specifically provided for in the section itself, unlike the general rule of limitation applicable to an appeal against acquittal, at the instance of the State Government. In our opinion, therefore, the position is clear that so far as appeal by the State Government is concerned, the law of limitation is the general law laid down in the Limitation Act (Art. 157) to which s. 5 would apply by its own force. But in so far as an appeal by a private prosecutor is concerned, the legislature was astute to specifically lay down that the foundation for such an appeal should be laid within 60 days from the date of the order of acquittal. In that sense, this rule of 60 days bar is a special law, that is to say, a rule of limitation which is specially provided for in the Code itself, which does not ordinarily provide for a period of limitation for appeals or applications. It is the general law of limitation, as laid down in the Limitation Act, which governs appeals ordinarily preferable under the Code, *vide* Arts. 150, 154, 155 and 157. To such appeals the provisions of s. 5 would apply.

It has been observed in some of the cases decided by the High Courts that the Code is not a special or a local law within the meaning of s. 29(2) of the Limitation Act, that is to say, so far as the entire Code is concerned, because it is a general law laying down procedure, generally, for the trial of criminal cases. But the specific question with which we are here concerned is whether the provision contained in s. 417(4) of the Code is a special law. The whole Code is indeed a general law regulating the procedure in criminal trials generally, but it may contain provisions specifying a bar of time for particular class of cases which are of a special character. For example, a Land Revenue Code may be a general law regulating the relationship between the revenue-payer and the revenue-receiver or the rent-payer and the rent-receiver. It is a general law in the sense that it lays down the general rule governing such relationship, but it may contain special provisions relating to bar of time, in specified cases, different from the general law of limitation. Such a law will be a 'special law' with reference to the law generally governing the subject-matter of that kind of re-

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lationship. A 'special law', therefore, means a law enacted for special cases, in special circumstances, in contradistinction to the general rules of the law laid down, as applicable generally to all cases with which the general law deals. In that sense, the Code is a general law regulating the procedure for the trial of criminal cases, generally; but if it lays down any bar of time in respect of special cases in special circumstances like those contemplated by s. 417(3) & (4), read together, it will be a special law contained within the general law. As the Limitation Act has not defined 'special law', it is neither necessary nor expedient to attempt a definition. Thus, the Limitation Act is a general law laying down the general rules of limitation applicable to all cases dealt with by the Act; but there may be instances of a special law of limitation laid down in other statutes, though not dealing generally with the law of limitation. For example, rules framed under Defence of India Act, *vide S. M. Thakur v. The State of Bihar*⁽¹⁾; *Canara Bank Ltd. v. The Warden Insurance Co.*⁽²⁾ dealing with the special rule of limitation laid down in the Bombay Land Requisition Act (Bom. XXXIII of 1948). These are mere instances of special laws within the meaning of s. 29(2) of the Limitation Act. Once it is held that the special rule of limitation laid down in sub-s. (4) of s. 417 of the Code is a 'special law' of limitation, governing appeals by private prosecutors, there is no difficulty in coming to the conclusion that s. 5 of the Limitation Act is wholly out of the way, in view of s. 29(2)(b) of the Limitation Act.

But the question is whether it can be said that even though the provisions of s. 417(4) are a 'special law', they prescribe a different period of limitation from that prescribed by the First Schedule of the Limitation Act, because s. 29(2) applies where there is a difference between the period prescribed by the Limitation Act and that prescribed by the special law. It is said that the Limitation Act does not prescribe any period of limitation for an application for special leave to appeal from an order of acquittal at the instance of a private prosecutor. In the first instance, the Limitation Act, Art. 157, has prescribed the rule of limitation

(1) I.L.R. 30 Pat. 126.

(2) I.L.R. [1952] Bom. 1083.

in respect of appeals against acquittal at the instance of the State. Hence, it may be said that there is no limitation prescribed by the Limitation Act for an appeal against an order of acquittal at the instance of a private prosecutor. Thus, there is a difference between the Limitation Act and the rule laid down in s.417(4) of the code in respect of limitation affecting such an application. Section 29(2) is supplemental in its character in so far as it provides for the application of s. 3 to such cases as would not come within its purview but for this provision. And for the purposes of determining any period of limitation prescribed by any special law, it has made the provisions of the Limitation Act, referred in cl. (a) of sub-section (2) of section 29 applicable to such cases to the extent to which they are not expressly excluded by such special or local law, and cl. (b) of that sub-section expressly lays it down that the remaining provisions of the Limitation Act shall not apply to cases governed by any special or local law. In our opinion, therefore, the provisions of the Code, supplemented by the provisions of s. 29(2) of the Limitation Act, make it clear that s. 5 of the Limitation Act would not apply to an application for special leave to appeal under s. 417(3) of the Code.

That is our conclusion based on the interpretation of the statutes in question. But the High Courts of Allahabad, Andhra Pradesh and Madras have taken the contrary view. On the other hand, earlier decisions of the Allahabad High Court and the Bombay High Court, to be presently noticed, have taken the view that what we have indicated is the correct view of the legal position.

A Division Bench of the Allahabad High Court, in the case of *Mohammad Ibrahim v. Gopi Lal* ⁽¹⁾ had taken the view that the words of sub.s. (4) of s. 417 make it clear that the application under sub.s. (3) must be made within 60 days of the order of acquittal, and that the High Court had no power to extend the period of limitation, and s. 5 of the Limitation Act did not apply to such cases. They based their conclusion entirely on the wording of sub. ss. (3) and (4) of s. 417 of the Code. That Bench decision of the Allahabad High Court was overruled by a Full Bench of that Court in *Rajjan Lal v. State* ⁽²⁾. The three Hon'ble Judges con-

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(1) A.I.R. (1958 All 691).

(2) I.L.R. [1960] 2 All. 761.

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stituting the full bench, in separate but concurring judgments, took the view that the Code was not a local or a special law and that s. 5 of the Limitation Act was applicable to an application under s. 417(3) of the Code.

In the Andhra Pradesh High Court a Division Bench was of the same opinion as had been held by the Full Bench of the Allahabad High Court, but the decision was *obiter* because the Court dismissed the petition on the ground that the order of acquittal had been passed before the Amending Act XXVI of 1955 came into force, so that the order of acquittal was not amenable to an appeal at the instance of the private prosecutor.

A Single Judge of the Andhra Pradesh High Court took the view that s. 5 was applicable to applications for special leave under s. 417(4).

In the Madras High Court, a Single Judge decided the case of *Viswanathan Chettiar. in re* ⁽¹⁾ and held that "section 1, sub-section (2) of the Criminal Procedure Code makes all laws applicable to Criminal Procedure Code including the Law of Limitation and nothing could prevent the appellant from taking advantage of section 5 of the Limitation Act." He also held that there was no difference between the period prescribed by the law of limitation and the Criminal Procedure Code. Both these observations do not appear to be correct.

Another Single Judge of the Madras High Court decided in the case of *Coimbatore Municipality v. K. L. Narayanan* ⁽²⁾ that s. 5 of the Limitation Act could be availed of by the private prosecutor, but the learned Judge did not base his decision on the reasoning of the previous judgment of that Court but preferred to follow the reasoning adopted by the Andhra Pradesh High Court in *P. V. Subbareddi v. D. Papireddi* ⁽³⁾ and *in re Parchuri Adeshamma* ⁽⁴⁾.

In our opinion, the view taken by the Full Bench of the Bombay High Court in the case of *Anjanabai v. Yeshwantrao Daulatrao Dudhe* ⁽⁵⁾ is the correct one. In that case it was

(1) (1957) 1 M.L.J. 150.

(2) A.I.R. [1958] Mad. 416.

(3) A.I.R. [1957] And. Pra. 406.

(4) A.I.R. [1958] And. Pra. 230.

(5) I.L.R. [1961] Bom. 135.

held that the provisions of s. 417(4) were a 'special law' within the meaning of s. 29(2) of the Limitation Act. In that case, the High Court has dealt with the decisions of the different High Courts on the question and with the reasonings for those decisions. As we agree with the conclusions of the High Court of Bombay, we do not think it necessary to repeat the observations made therein, bearing on the reasons given by the High Courts of Allahabad, Andhra Pradesh and Madras for coming to contrary conclusions.

For the reasons given above, we hold that the view taken by the High Court of Punjab is entirely correct. The appeal is accordingly dismissed.

Appeal dismissed.

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v.

THE STATE OF UTTAR PRADESH

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N. WANCHOO,
J. C. SHAH AND RAGHUBAR DAYAL, JJ.)

United Provinces Municipalities Act, 1916 (No. II of 1916), ss. 298, 299(1) and bye-law cl. 3(a)—“Market” meaning of—Whether bye-law ultra vires.

The appellant-accused was charged with committing the offence under s. 299(1) of the United Provinces Municipalities Act, read with cl. 3(a) of the relevant bye-laws framed by Respondent No. 2. The case against the appellant was that he was running a market within the municipal area in which vegetables, fruits, fish and grains were sold. It was alleged that he was bound to take a licence for the aforesaid market under cl. 3(a) of the relevant bye-laws and since he had failed to do so, he had committed a breach of the said bye-laws. He was tried by the Tehsildar of Tanda on the said charge. The Tehsildar acquitted him. The Tehsildar held that he was running only a grain market and Respondent No. 2 (the Municipality) had no power to make bye-laws for the running of a purely grain market and so the impugned bye-laws were *ultra vires*. On appeal, the High Court set aside the order of acquittal and convicted the appellant under s. 299(1) of the Act read with cl. 3(a) of the relevant bye-laws. It has been

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