

**(1957) 01 AHC CK 0047**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Application No. 14 of 1957

Abdul Ali Abdul Rahman

APPELLANT

Vs

Mst. Jannat and Others

RESPONDENT

**Date of Decision :** 11-01-1957

**Acts Referred:**

Constitution of India, 1950 — Article 14

Criminal Procedure Code, 1898 (CrPC) — Section 417

**Citation :** AIR 1957 All 552 : (1957) CriLJ 917

**Hon'ble Judges :** Oak, J

**Bench :** Single Bench

**Advocate :** Syed Sadiq Ali, for the Appellant; Kamla Nandan, A.G.A., for the Respondent

**Final Decision :** Dismissed

## Judgement

1. This is an application for permission to file an appeal against an order of acquittal. The order of acquittal is dated 22-8-1956. Under Sub-section (4) of Section 417, Cr. P. C., the period of limitation for filing an application for special leave is sixty days from the date of the order of acquittal. So the present application for leave is barred by time.

2. Mr. Sadiq Ali appearing for the complainant-applicant has urged that the provisions of Sub-sections (3) and (4) of Section 417, Cr. P. C., are unconstitutional inasmuch as they violate the principle of Article 14 which enunciates the principle of equality before law.

""The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.""

It has been pointed out that, Section 417, Cr. P. C., makes different provisions for appeals against acquittals according as whether the appellant is the State Government or a private complainant. Sub-section (1) of Section 417 provides for appeals by the State Government against orders of acquittal. Under Article

157 of the Limitation Act the period of limitation for such appeals is six months from the date of the order of acquittal. On the other hand under Sub-section (4) of Section 417, Cr. P. C., the period of limitation for an application for special leave is only sixty days from the date of the order of acquittal. Mr. Sadiq Ali, therefore, contended that these provisions involve unconstitutional discrimination as against private complainants.

The various sub-sections of Section 417, Cr. P. C. clearly make different provisions for appeals by the State Government and appeals by a private complainant. The question is whether such difference violates Article 14 of the Constitution. Courts have always recognised that, in spite of Article 14 of the Constitution, reasonable classification is permissible. We have, therefore, to consider whether the classification is permissible. We have, therefore, to consider whether the classification introduced by Section 417, Cr. P. C. is reasonable.

3. Formerly, appeals by private complainants against orders of acquittal were not permitted under the Code of Criminal Procedure at all. The provision for such appeals by private complainants is new. Formerly, only the State Government could file an appeal against an order of acquittal. This position remained for several years after the commencement of the Constitution. I am not aware of any decision, holding that, the provision of Sub-section (1) of Section 417, Cr. P. C. was unconstitutional on the ground that the section did not permit private complainants to file appeals against orders of acquittal.

4. In criminal law the State is on a special footing. In theory all criminal prosecutions are in the name of the State. In practice the State does not engage its counsel in petty cases involving non-cognizable offences. But it is not correct to say that the State is in no way interested in such criminal cases. Chapter XXXVIII of the Code of Criminal Procedure deals with Public Prosecutors. Section 492 empowers the State Government to appoint Public Prosecutors.

Section 493 lays down that a Public Prosecutor may plead in all Courts in cases under his charge. Pleaders privately instructed have to be under the direction of the Public Prosecutor. Section 494 deals with withdrawal by the Public Prosecutor from prosecution. It is laid down in Section 494 that the accused has to be discharged as a result of such withdrawal from prosecution. The scope of Section 494 is not limited to a particular class of cases. These provisions indicate that the State is vitally interested in all criminal cases.

5. Although Sub-section (1) of Section 417, Cr. P. C. enables the State Government to file appeals against orders of acquittal, in practice the State Government files appeals in only a small percentage of cases of acquittal. It is expected that a State Government will file such an appeal only when it is expedient in public interest. On the other hand there is danger of frivolous appeals by private complainants against orders of acquittal. The State represents society as a whole. On the other hand a private complainant is mainly concerned with his personal interest.

Very often a private complainant is actuated by feelings of revenge. The State Government is expected to file appeals in the interest of society as a whole. There is no such obligation on a private complainant. For this reason the Legislature has given more latitude to the State Government for filing appeals against acquittals. The recent amendment of the Code has permitted appeals by private complainants to a limited extent. The Legislature must have been aware that there is danger of Courts being flooded by appeals by private complainants in frivolous cases.

In order to stop such frivolous appeals, the Legislature has laid down that a private complainant must obtain special leave from a High Court for filing an appeal against an acquittal. Considering the special position held by the State in criminal jurisprudence, the Legislature was justified in placing the State on a special footing as regards appeals against acquittals. So the various provisions of Section 417, Cr. P. C., for appeals by the State Government and appeals by private complainants can be justified on the principle of reasonable classification. I, therefore, hold that the various provisions of Section 417, Cr. P. C., do not offend against Article 14 of the Constitution.

6. The application for leave being barred by time, it is dismissed.