
(1977) 03 AHC CK 0005
In the Allahabad High Court
Case No : Criminal Appeal No. 319 of 1973

Nagar Palika

APPELLANT

Vs

Janki Prasad

RESPONDENT

Date of Decision : 30-03-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 247, 417(3), 417(4)
Limitation Act, 1908 — Section 14, 15, 29, 5
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Uttar Pradesh Municipalities Act, 1916 — Section 186, 211, 307

Citation : (1977) AWC 718

Hon'ble Judges : S.K. Kaul, J

Bench : Single Bench

Judgement

S.K. Kaul, J.—Nagar Palika Rae Bareli filed an appeal against order of Sub-Divisional Magistrate, Dalmau, Rae Bareli dated 21-9-1972 on the basis of which he had acquitted the Respondent and had dismissed the complaint u/s 247 of the Code of Criminal Procedure.

2. A complaint was moved by Nagar Palika Rae Bareli through the Executive Officer Nagar Palika Rae Bareli in the court of the Magistrate on 21-3-1973 with a prayer that the Respondent may be charged under Sections 186, 211 and 307 of the U.P. Municipalities Act. Three persons were mentioned in the complaint as witnesses, namely, Ram Krishna Srivastava Overseer, Ashrar Khan Safai Hawaldar and Engineer Incharge Rohtak and Hissar Company Rae Bareli. A notice dated 16-7-71 was also mentioned as documentary evidence. The Magistrate took cognizance of this complaint and summoned the accused for 24-4-1972. The accused moved an application on 9-6-1972 with a prayer that he may be given another date for appearance as he was medically unfit. He filed a medical certificate in that behalf. The exemption was allowed till 12-7-1972. On 12-7-1972 again the accused moved for exemption and prayed for another date for appearance on the ground of illness which was backed by certificate. The Magistrate gave twenty days to the accused. On 9-8-1972 again the accused

Respondent moved an application that he may be permitted to appear on 9-8-1972 and this prayer was allowed. On 30-8-1972 an application was moved by Krishnapal Singh, Land management Clerk, that he had been authorised to appear for Nagar Palika. The Magistrate ordered that a copy of the authority letter should be placed on record. It appears that the next date fixed for appearance of the accused was 6-9-72, the case having been transferred to the court of Sub-Divisional Magistrate Dalmau. On this date the Nagar Palika was represented by a counsel. Some arguments were heard and the case was fixed for 18-9-1972 for orders. On 18-9-1972 the counsel for the Nagar Palika as well as the Pairokar were present so was the accused. 21-9-1972 was fixed for orders. On this date the learned Magistrate passed the impugned order primarily on the ground that since the complainant was absent on the earlier date, the complaint had to be dismissed and the accused had to be acquitted. A preliminary objection was taken up before me by the learned Counsel for the Respondent that the present appeal was barred by limitation and that the learned Judge who had condoned the delay had no jurisdiction to condone the delay inasmuch as provisions of Sections 5, 14 and 15 of the Limitation Act did not apply to this special provision contained in the Code of Criminal Procedure wherein such an application for leave to appeal has to be moved within sixty days. I think this preliminary objection is untenable. The Indian Limitation Act was amended in 1963 and Section 29 Sub-section (2) was enacted as follows:

(2) Where any special or local law...special or local law.

Previously before amendment Section 29 Clause (2)(a) and (b) read as follows:

* * * * It is therefore, clear that previous to this amendment Section 5 was excluded from application to a period of limitation that was prescribed to a special or local law for moving an application. The change in law was noted by the Supreme Court in the case of Vidyacharan Shukla Vs. Khubchand Baghel and Others, . The majority view discussed at page 1111 was that:

This observation clearly supports the position that Section 29(2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for a limitation proceeding under the Limitation Act.

3. I, therefore hold that in the instant case the Act provides a period of limitation different from that prescribed therefore by the First Schedule to the Limitation Act and, therefore, it is governed by Section 29(2) of the said Act.

4. Even if my view on the construction of the first limb of Section 29 of the Limitation Act were wrong it would not help the Appellant, for this case squarely falls within the scope of the second limb of the Section. For convenience I restate the relevant part of the section:

...and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law.

Similarly in another case of Lala Ram Vs. Hari Ram, the Supreme Court holds note of the case Kaushalya Rani Vs. Gopal Singh, as well as the Full Bench decision of the Bombay High Court Anjanabai Yeshwant Rao Vs. Yeshwantrao Daulatrao Dudhe, then observed at page 1096:

* * * *

5. The learned Counsel also suggests that word "entertain" which occurs in Section 417(4) means "to deal with or hear" and in this connection he relies on the judgment of this Court in Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, . It seems to us that in this context "entertain" means file or received by the court and it has no reference to the actual hearing of the application for leave to appeal otherwise the result would be that in many cases applications for leave to appeal would be barred because the applications have not been put" up for hearing before the High Court within 60 days of the order of acquittal.

6. in the result we hold that the application u/s 417(3) to the High Court was within time.

In fact the legislature was conscious of the fact that previous to 1963 the provisions of Section 5 were excluded from then application to special law or local Act where a specific limitation was provided. That is why when amendment in 1963 of the Limitation Act was made a specific provision was made in Sub-section (2) applying provisions of Section 4 - 24 both inclusive to applications of the "present nature. There can, therefore, be no doubt that after this amendment made in the Indian Limitation Act, it was open to this Court to take help of Sections 5, 14 and 15 of the Indian Limitation Act to condone delay. The learned Counsel urged before me that it was not proper on the part of the learned Judge to have condoned the delay specially behind the back of the Respondent and that in the instant case delay should not have been condoned. I am not impressed by these arguments. It is true that a discretion has to be exercised judicially while condoning the delay but then once a discretion has been exercised and it was open to the learned Judge to exercise such a discretion which vested in him by virtue of application of Section 5, 14 and 15 of the Indian Limitation Act to the present case, it is too late a stage to argue that such a discretion was not properly exercised specially when no prejudice can be said to have been caused to the present who can argue to the matter on merits. His right to argue on merits of the case are not jeopardised. In fact if the doors had been shut vis-a-vis the Appellant substantial injustice would have been caused in case he can show that his appeal was good in facts and law. That being so, I do not find any force in this preliminary objection and reject the same.

7. Coming to the second question of correctness or otherwise of the orders passed by the trial court, it is significant to note that the trial court notified absence of the complainant on earlier dates and that was not proper. Once the complainant was exempted from appearance on earlier dates it could be implied

that by implication that the Magistrate had condoned personal attendance of the complainant. It was not proper in these circumstances for the Magistrate to harp back upon the absence of the complainant for the purposes of dismissing the complaint. I am supported in this view by an observation of this Court reported in Vishvanath v. State 1969 AWR 417. Coming to the other point there is a Bench Decision of this Court reported in 1964 AWR 699 Bhagwati Sahai v. Smt. Bina Jha wherein it was clearly mentioned that dismissal of complaint and acquittal of accused merely on ground of non-appearance of complainant would defeat the very ends of justice. I have also in two decisions in Criminal Appeal No. 318 of 1973 and 317 of 1973 on facts similar to the present one held that the order of the Magistrate was illegal and manifestly erroneous. That being so, I would quash the order of the Magistrate passed in this case on 21-9-1972 and remand the case to be tried afresh in accordance with law by a Magistrate other than the one who passed the above mentioned order. File of the trial court must be transmitted to the trial court within one month from today positively so that the trial may be proceeded expeditiously.