

(1955) 11 BOM CK 0046
In the Bombay High Court
Case No : Criminal Appeal No. 995 of 1955

State	Vs	APPELLANT
C.N. Raman		RESPONDENT

Date of Decision : 10-11-1955

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 8(1)
Civil Procedure Code, 1908 (CPC) — Section 2(2), 47, 96
Limitation Act, 1908 — Article 155, 29(2), 5
Press (Objectionable Matter) Act, 1951 — Section 10, 11, 12, 13, 14

Citation : AIR 1956 Bom 447 : (1956) 58 BOMLR 295 : (1956) CriLJ 864

Hon'ble Judges : Vyas, J;Shah, J

Bench : Division Bench

Advocate : Advocate General and Govt. Pleader, for the Appellant; S.G. Patwardhan, for the Respondent

Judgement

Shah, J.—This is an appeal filed against an order dismissing an application for an order u/s 4 Press (Objectionable Matter) Act, 1951. The application was filed in the Court of Session, Greater Bombay by the Commissioner of Police, on 19-10-1954, u/s 16, Press (Objectionable Matter) Act, 1951, for an order demanding security from the respondent tinder Section 4 of the Act."

The learned principal Judge who tried the case held that impugned publications did not offend the terms of Section 3 of the Act. He Held that the publication was not "grossly indecent or obscene" within the meaning of Section 3(vi) of the Act. The learned principal Judge therefore dismissed the application. An appeal has been filed against the order of dismissal of the application by the Commissioner of Police.

2. On behalf of the respondent several preliminary objections have been raised against the maintainability of the appeal. Mr. Patwardhan contended that the Commissioner of Police was not competent to appeal to this Court because he has not been specially authorised in that behalf by notification issued by the

State Government.

He further contended that the printing press belonging to the respondent "is" not being used at this date for printing or publishing any objectionable matter, & even If this Court takes a view different from the view taken by the Court of first instance, it has no jurisdiction to pass an order demanding security u/s 4. Finally it was contended that the appeal filed is barred by the law of limitation.

3. NOW the right to prefer an appeal is conferred by Section 23 of the Act upon the competent authority or any other person aggrieved by an order passed by a Sessions Judge under Sections 4, 5, 7 and 8. A competent authority is defined in Section 2(c) of the Act as meaning "any officer empowered in this behalf by a general or special order of the State Government".

By a notification issued by the Government of Bombay on 1-2-1953, the Commissioner of Police for Greater Bombay and the District Magistrate of each district are empowered to exercise the powers of a competent authority under Sections 4, 5, Sub-section (2) of Section 6, Sections 7, 8 and 17 of the Act within their respective jurisdictions.

Relying upon this notification Mr. Patwardhan Contended that when, the State Government has not expressly conferred upon the Commissioner of Police the power of a competent authority to prefer an appeal u/s 23, the appeal filed by the Commissioner of Police must be regarded as incompetent

We are unable to accept that contention. It is undisputed that the Commissioner of Police is by the notification, made a competent authority. It was the Commissioner of Police who filed the application u/s 4 of the Act to the Court of Session against the respondent and the appeal has been pre-ferred by the Commissioner of police.

The Commissioner of Police being a competent authority the right to prefer an appeal must, in our judgment, be regarded as having been conferred upon him by the Legislature and no additional power is required to be conferred upon him by a notification before he can exercise that right. The first contention must, therefore, fail.

4. It is true that before security Can be demanded from the keeper of a printing press the Sessions Judge must be satisfied that the press is used for the purpose of printing or publishing any newspaper, news-sheet, book or other document contain ins objectionable matter.

Evidently the satisfaction of the Sessions Judge must be with reference to the date on which the application is made and not at the time when he passed the final order The expression "is used" must relate to a time proximate to the time at which the application has been preferred.

Mr. Patwardhan concedes that when the Court of Session is requested to ban an order u/s 4, that Court has to satisfy itself that at or about the time when the

application was filed u/s 4 the printing press was used for printing or publishing objectionable matter.

An appeal filed against the Order is nothing but a rehearing of the application u/s 4 and if the Court of Session when hearing an application u/s 4 is entitled to satisfy itself whether at a time reasonably proximate to the date when the application was filed, the printing press was used for printing or publishing objectionable matter, we see no reason for holding that the High Court hearing an appeal from an order dismissing an application u/s 4 must satisfy itself that at the time when it passed an order demanding security the printing press is used for printing or publishing objectionable matter. In our judgment, the second contention also must fail.

5. The order which is challenged in this appeal was passed by the Sessions Judge on 6-1-1955, and this appeal was preferred by the competent authority on 9-8-1955. The appeal has evidently been filed more than sixty days after the date on which the order was passed.

The Advocate-General who appears on behalf of the competent authority contends that this Court is competent to condone the delay in filing the appeal u/s 5, Limitation Act. He further contends that in this case the delay should be condoned because an appeal had previously been filed by the State against the order and it was regarded as incompetent on an objection raised by the respondent.

If we were of the view that Section 5, Limitation Act applies to this appeal, we would have condoned the delay in filing the appeal. But in our judgment we have no jurisdiction to condone the delay in presenting this appeal because Section 5, Limitation Act does not apply to appeals u/s 23, Press (Objectionable Matter) Act.

The Press (Objectionable Matter) Act, 1951, is a special statute. It confers upon persons aggrieved by an order passed under the Act a right of appeal to this Court u/s 23 and the period of limitation prescribed for presenting the appeal is sixty days from the date of the order. Section 29 Sub-section (2), Limitation Act, in so far as the sub-section is material, provides

"Where any special or local law prescribes for any appeal 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 therefore in that schedule, and for the purpose of determining any period of limitation prescribed for any appeal 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."

It is possible to read Sub-section (2) of Section 29 in two ways where a special law prescribed a period of limitation different from the period of limitation which is expressly provided by the Limitation Act, Section 3 and the provisions of the

Limitation Act specified in Clause (a) shall apply and the remaining provisions of that Act shall not apply.

The Sub-section may also be read as meaning: Where a period of limitation for a suit, appeal or Application is prescribed by a special law and even if no provision is made in that behalf by the Limitation Act, Section 3 and the provisions of the Limitation Act specified in Clause (a) shall apply and the remaining provisions of that Act shall not apply.

Now, this Court has held in -- The Canara Bank Ltd. Vs. The Warden Insurance Co. Ltd., , that Section 5, Limitation Act does not apply to an appeal u/s 8(3), Bombay Land Requisition Act, 1948 and therefore the Court of appeal has no power to condone delay in filing an appeal against an order made by a special officer u/s 8(1), Bombay Land Requisition Act,

In that case by the Bombay Land Requisition Act the special officer appointed in that behalf is entitled to ascertain compensation payable in respect of requisitioned premises and a right of appeal to this Court is conferred upon the person aggrieved by the order of the special officer.

The Limitation Act does not prescribe a period of limitation for appeal to the High Court against the Order of a Special Officer under the Bombay Land Requisition Act. It was held in "Canara Bank's case (A)", that the expression "a period of limitation different from the period prescribed therefore by the first schedule" includes cases where there is no period of limitation prescribed by the Limitation Act for the particular proceeding. The learned Chief Justice who delivered the judgment of the Court observed:

"The contention of Mr. Adarkar is that Sub-section (2) only applies when you find a period of limitation laid down in the first schedule and a special law alters or modifies that period, and inasmuch as the Limitation Act does not provide for a period of limitation in respect of an appeal from a special officer to the High Court, Section 29(2) has no application to this particular special law. In our opinion that is not the correct interpretation to put upon the language used by the Legislature viz.: a period of limitation different from the period prescribed therefore by the first schedule." The period of limitation may be different under two different circumstances. It may be different if it modifies or alters the period of limitation fixed by the first schedule to the Limitation Act.

It may also be different in the sense that it departs from the period of limitation fixed for various appeals under the Limitation Act. If the first schedule to the Limitation Act omits laying down any period of limitation for a particular appeal and special law provides a period of limitation then to that extent the special law is different from the Limitation Act.

6. In our view those observations apply to the present case. The Limitation Act does not prescribe as we have already stated a period of limitation for appeal u/s 23, Press (Objectionable Matter) Act 1951 but the period of limitation is

prescribed by Section 23, Press (Objectionable Matter) Act, 1951.

The learned Advocate-General contended that the period for filing an appeal against the order u/s 4, Press (Objectionable Matter) Act, if prescribed by Article 155, Limitation Act, that Article prescribed a period of 60 days from the date of sentence or order appealed from all appeals under the Code of Criminal Procedure to the High Court except in cases provided for by Articles 150 and 157. The Advocate-General contended that the proceedings under the Press (Objectionable Matter) Act are heard by the Court of Session, that the procedure of hearing is by Section 25 of the Act, the procedure prescribed by the Code of Criminal Procedure and the Court of Session being a Court constituted under the Code of Criminal Procedure this appeal must be regarded as one under Article 155, Limitation Act and the period of limitation prescribed by Section 23 and the period prescribed under Article 155 being the same, Section 29 (2), Limitation Act has no application.

We are unable to accept this contention. Article 155 prescribed the period of limitation for certain appeals under the Code of Criminal Procedure. It can only apply to appeals which are permitted to be filed by the Code of Criminal Procedure and not otherwise. The appeal filed in the present case having been filed u/s 23, Press (Objectionable Matter) Act, 1951 and not under the Code of Criminal Procedure in our judgment, Article 155, Limitation Act does not apply thereto.

The fact that the period prescribed for filing appeals to the High Court under Article 155 is the same as the period prescribed u/s 23, Press (Objectionable Matter) Act, 1951 does not exclude the operation of Section 29 (2), Limitation Act.

The learned Advocate-General relied upon the judgment of the Madras High Court, "M. Venkatra-manaya v. T. Venkat Subbayya" AIR 1946 Mad 351 (B), in support of his contention that where an appeal lies to the High Court from an order of a Tribunal exercising jurisdiction under a special law and the period prescribed for such appeal is not different from the period prescribed by the Limitation Act for appeal to the High Court from the decision of that Tribunal in the exercise of its ordinary jurisdiction Section 29 (2), Limitation Act does not apply.

That was a case in which by Act 4 of 1938 the District Munsifs were empowered to give relief by adjustment of the debts to certain debtors but by the Act as originally framed no right was given to litigants to prefer appeals against the decisions of District Munsifs. It appears that the Court of the District Munsif of Bhimawaram was resorted to by the debtor for relief under" the provisions of the Act and the application was dismissed and the revision application was preferred to the High Court against the order of dismissal.

Before the revenue application was heard the Legislature amended Mauras Act 4 of 1938 and conferred a right of appeal against certain orders passed by a

District Munsif under the Act. Section 25(a) which was added by the amending Act provided that certain orders passed under the principal Act were subject to appeal as if they were orders following u/s 47, Civil P. C.

Relying upon the provisions an appeal was preferred by the debtor against the Order of the District" Munsif to the Court of the Subordinate judge and an application was made for condonation of delay in filing the appeal. The appellate Court refused to condone the delay holding that the provision of Section 5, Limitation Act did not apply, the appeal being governed by Section 29 (2), Limitation Act

The High Court of Madras set aside the decision of the appellate Court and held that the appeal was not governed by the provision of Section 29(2) and Section 5, Limitation Act applied thereto. In that case the order made by the District Munsif was by tile amending Act made appealable as if it was an order passed u/ s 47, Civil P. C.

An order u/s 47. Civil P. C. is a decree within the meaning of Section 2(2), Civil P. C. and by Section 96, Civil P. C. it is appealable. The Legislature did not by Madras Act 4 of 1938 prescribe any period of limitation for appeal against the order passed by the Munsif. It only conferred the right of appeal against orders passed by the District Munsif by making them appealable as if they were decrees under the Code of Civil Procedure.

As a special law did not prescribe a period of limitation for an appeal from an order of the Munsif passed under Act 4 of 1938 the period of limitation prescribed by the Limitation Act applied to the appeal. Mr. Wadsworth J. who delivered the judgment of the Court observed "in Section 25 newly introduced into this Act, though the right of appeal is given, no period of limitation different from the period prescribed by Schdule I, Limitation Act, is indi-cated. Therefore the provisions of Section 29(2) have no application so as to exclude the provision of Section 5, Limitation Act from being applied to appeals under the special law".

It is clear from the observations made by the learned Judge that the Legislature had conferred by a special law a right of appeal and had not prescribed a period of limitation for filing the appeal. Section 29(2), Limitation Act did not apply. In other words the appeals from orders passed under Madras Act 4 of 1938 were governed by the Limitation Act and in the absence of an express provision, Section 5, Limitation Act applied to those appeals,

In our judgment the case relied is not an authority for the proposition submitted by the Advocate-General. Undoubtedly there has been a drafting lacuna in the Press (Objectionable Matter) Act, 1951. It is unfortunate that Section 5, Limitation Act has not been made applicable to appeals under that Act. We invite tie attention of the Legislature to this lacuna.

As, however, the appeal "is not filed within the period prescribed by Section 23 of the Act, we have no jurisdiction to entertain the appeal. The appeal therefore

fails and is dismissed.

7. Appeal dismissed.