
(1998) 11 GUJ CK 0009
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Amanullakhan Bhurekhan Pathan and Another

RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378, 417
General Clauses Act, 1897 — Section 8, 8(1)

Citation : (1999) 1 GLR 368

Hon'ble Judges : S.M. Soni, J;Arunkumar Kantilal Trivedi, J

Bench : Division Bench

Judgement

S.M. Soni, J.—Heard learned A.P.P. Mr. K.T. Dave for the applicant-State, Mr. B.N. Raval, learned Advocate for respondent No. 1 and Mr. Z.N. Shaikh, learned Advocate for respondent No. 2.

2. The State has filed this application for condonation of delay of 86 days in filing an application for leave to prefer an appeal against the order of acquittal passed by the learned Special Judge, Dist. Kaira, at Nadiad in Special Case No. 4 of 1993 decided on 18th October, 1997.

3. Before we consider whether there is sufficient cause for delay in filing this application for leave to appeal, it is necessary to note whether any period of limitation is prescribed either in the Limitation Act or in Code of Criminal Procedure, 1973 ("The New Code" for short) to prefer an application for leave to appeal? As in the present matter, the case is instituted on police report. Originally, in the old Code, i.e., Code of Criminal Procedure, 1898 ("old Code" for short), Sub-sections (1) and (2) of Section 417 provided for appeal from an order of acquittal passed in a case instituted on police report. On repeal of the same, there is a similar provision in Sub-sections (1) and (2) of Section 378 of the new Code. Difference made in the said provision between the two Code, i.e., repealed and new one is that in the old Code, it was not necessary to obtain leave of the High Court to prefer an appeal, while in the new Code, Sub-section (3) of Section 378 which was not there in Section 417 of the old Code, provides

that, no appeal under Sub-sections (1) and (2) of Section 378 shall be entertained except with the leave of the High Court. Thus, in view of the new Code, no appeal against an order of acquittal passed in a case instituted on police report shall be entertained except with the leave of the High Court. Thus, leave of the High Court is a condition precedent to entertain an appeal. If the leave is refused by the High Court, appeal cannot be entertained. If the leave is granted, appeal can be entertained. Sub-section (3) of Section 417 of the old Code provided for special leave to appeal in cases instituted on complaint and for such leave application, period of limitation is prescribed in Sub-section (4) of the old Code itself and on grant of such special leave, period of limitation is prescribed in Clause (b) of Article 114 of the Limitation Act. On regarding Article 114 of the Limitation Act, there is no provision found for limitation for filing an application for leave to prefer an appeal against an order of acquittal passed in cases instituted on police report. No such period of limitation is also prescribed in Section 378 of the new Code also. Provision for obtaining leave to prefer an appeal against an order of acquittal in cases instituted on police report, is newly introduced in Section 378 of the Code which was absent in Section 417 of the old Code. No period of limitation for such leave is prescribed either in new Code or in Limitation Act. Therefore, in our opinion, so far as the period of limitation for such application to obtain leave to prefer an appeal against an order of acquittal passed in case instituted on police report, would be covered under Article 137 of the Limitation Act which is for other application for which no period of limitation is provided elsewhere in said division. In this view of the matter, period of limitation for filing an application for leave to prefer an appeal against an order of acquittal passed in case instituted on police report would be three years and after such a permission is granted, appeal can be entertained and that appeal is required to be filed within period which in our opinion is also not provided either in the Limitation Act or the new Code. Clause (a) of Article 114 of the Limitation Act provides for period of 90 days for an appeal and that period is to commence from the date of the order appealed from. In the new Code, a new provisions is enacted and added whereby an appeal against an order of acquittal shall not be entertained except with the leave of the High Court.

4. Question is whether in the new Code, Clause (a) of Article 114 of the Limitation Act could be read in view of the provision of Section 8 of the General Clauses Act? Section 8 of the General Clauses Act reads as under:

8. Construction of the references to repealed enactments:

(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August 1947, any Act of Parliament of the United Kingdom repealed and re-enacted with or without modification, any

provision of a former enactment, then references in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

5. The object of the General Clauses Act appears to be to preserve and maintain the legality of things done under the previous Act when changes are made in law unless a different intention appears. Here, right to prefer an appeal against an order of acquittal passed in cases instituted on police report was absolute and not qualified under the old Code, but the same is qualified in the new Code by introducing the provision vide Sub-section (3) of Section 378 of the new Code and it becomes necessary to obtain leave of the High Court to make the appeal entertainable. Thus, in our opinion, Section 8(1) would have no application to such case where re-enacted law has introduced provision to control absolute right to appeal, which was absent in the repealed old Code. In the present case, in the new Code, Legislature has introduced a provision to obtain leave of the High Court without which the appeal would not be entertained. While in the old Code, there was no provision for obtaining such leave. Thus, under the old Code, an appeal against the order of acquittal passed in a case instituted on police report could be filed straightaway without any leave and therefore, there was no provision of limitation prescribed for an application for leave of the High Court to prefer an appeal. In Limitation Act, Article 137 is a residuary provision, when no period of limitation is provided elsewhere in third division of that Act. The period prescribed therein is three years from when the right to apply accrues. Thus, in our opinion, period of limitation to file an application would be three years and on grant of such leave, an appeal is required to be filed or if already filed, could be entertained and that may now be read as 90 days from the date of the order appealed from. That order from which an appeal is required to be filed would be operative to file an appeal only after the leave is granted by the High Court. So, the date of order of acquittal would remain dormant till the leave is granted by the High Court and from that date of grant of leave, the period of limitation would commence as the appeal that may be filed could be entertained. It will be absurd to read that no period of limitation is prescribed for an appeal from order of acquittal under Sub-sections (1) and (2) of Section 378. On passing an order of acquittal by the Court in the case instituted on police report, right to appeal arises to the State under Sub-sections (1) and (2) of Section 378, but in view of the provision of Sub-section (3) of Section 378, that appeal can only be entertained after the leave is granted. Such leave is a condition precedent to entertain appeal and can be obtained within a period of 3 years.

6. The question before us is whether Section 378 of the Code contemplates for any period of limitation for filing an application for leave to appeal by the State against the order of acquittal as required under Sub-section (3) of Section 378 of the Code. In our opinion, period of limitation contemplated in Sub-section (5) Section 378 of the Code is provided for application for leave to appeal in cases instituted upon complaints. But the whole of the Section 378 of the Code has not prescribed any period of limitation for leave to file an appeal against the order of

acquittal in cases other than instituted upon the complaints.

7. An endeavour has been made by the learned Advocates for the respondents relying on judgment of the Patna High Court in the case of *The State of Bihar Vs. Ram Naresh Singh and Others*, , that period of limitation for an application for leave to appeal against the order of acquittal is 90 days as the case would be covered under Clause (a) of Article 114 of the Limitation Act, 1963. In our opinion, this judgment is of no help or assistance to the respondents as the relevant observation for our purpose from Para 6 of that judgment reads as under:

There is no period of limitation prescribed for presenting application for grant of leave to appeal under Sub-section (3) from an order of acquittal passed in a case instituted other than upon the complaint. Hence, application for leave to appeal from an order of acquittal passed in a case instituted other than upon a complaint may be presented within the period of limitation for presenting such an appeal.

8. In the said decision, the learned Judge has held that there is no period of limitation prescribed for presenting an application for grant of leave to appeal while in the subsequent sentence, it is said that, in view of that fact, an application may be presented within the period of limitation for presenting such an application and this is attracted by the provision of Clause (a) of Article 114 of the Limitation Act. With respect, we do not agree with the view of the learned Judge as Article 137 is specifically inserted in Limitation Act for cases which are not covered either under Articles of the Limitation Act or where period of limitation is not prescribed in any other statutes.

9. Mr. Raval has also relied on a judgment of the Apex Court in the case of *State of Rajasthan Vs. Ramdeen and Others*, . There, the main question which was paused before the Court appears to be whether a composite application for leave to appeal and the memo of appeal could be filed or not and the answer given is in the affirmative by the Apex Court. In the said matter before the Supreme Court, there was no question as to within what period of limitation, an application for leave to appeal against the order of acquittal is required to be filed. In the said case before the Supreme Court, there was a delay in filing the appeal memo after grant of the leave. Thus, in our opinion, this Supreme Court judgment relied on by the learned Advocate is of no assistance to him.

10. Teamed Advocate Mr. Shaikh has relied on a judgment of the Supreme Court in the case of *The Assistant Registrar of Companies, West Bengal Vs. Standard Paint Works (P) Ltd. and Others*, . This judgment also, in our opinion, is of no assistance to the respondent, as in the said case, the appeal was filed against the order of acquittal instituted upon a complaint. Thus, there was no question before the Supreme Court that as to what is the period of limitation prescribed for filing an application for leave to appeal against the order of acquittal passed in a case other than filed on complaint.

11. As no period of limitation is prescribed for filing an appeal against the order of acquittal, one can say that it should have been filed within a reasonable period and what is the reasonable period, in our opinion, particularly in criminal cases, would vary from case to case. In the facts and circumstances of the present case, according to the prosecution, there is a delay of 80 days in filing an application for leave. In view of Clause (a) of Article 114 of the Limitation Act, the period of limitation to file an appeal is prescribed as 90 days. According to the respondents, there is a delay of 115 days giving credit of 60 days of period of limitation. When there is no period of limitation prescribed for filing such an application, in our opinion, an application for condonation of delay is not necessary because contention regarding bar of limitation could be raised by the party at the time of hearing of appeal, if the same is admitted after grant of leave. However, we keep this question open for the respondents to argue at the time of hearing of the appeal.

12. We have taken similar view in Misc. Criminal Application No. 1067 of 1998 in Criminal Appeal No. 194 of 1998 decided on 6th November 1998. We are, therefore, of the view that the application for condonation of delay is not necessary and need not be entertained. Office is directed to place application for leave to appeal along with the appeal for admission hearing.

13. Application stands disposed of accordingly.

The request of the learned Advocate Mr. Raval to defer operation of this order is refused.