
(1984) 09 AHC CK 0040
In the Allahabad High Court

State of U.P.

APPELLANT

Vs

Bhura and Others

RESPONDENT

Date of Decision : 11-09-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Limitation Act, 1963 — Section 5

Railway Property (Unlawful Possession) Act, 1966 — Section 2, 3

Citation : (1985) CriLJ 536

Hon'ble Judges : R.A. Misra, J

Bench : Single Bench

Judgement

R.A. Misra, J.—The State has moved this application u/s 378 of the Cr.P.C. on 1st Jan. 1983 for leave to appeal against the order of acquittal passed on 24th June 82. The Stamp Reporter has reported that the application as well as appeal were within time up to 22nd Sept. 82 and are thus beyond time by 101 days. The learned Counsel for the State has made a two-fold submission. His first contention is that the application and appeal are within time because the appeal arises out of a case instituted upon a complaint by a public servant, so the period of limitation prescribed, is six months and thus the appeal is within time. His second submission is that in case the period of limitation is taken to be sixty days then the delay is explained by the affidavit filed in support of the application u/s 5 of Limitation Act and the same should be condoned.

2. The application for leave to appeal as well as the memorandum of appeal have been filed on 1st June 1983 when the court reopened after the winter vacations. It would, therefore, be just in time in case the period of limitation is taken to be six months. The key question which arises for determination, therefore, is whether the order of acquittal has been passed in a case instituted upon complaint by a public servant.

3. The respondents in the instant case have been prosecuted u/s 3 of the Railway Property (Unlawful Possession) Act 1966 on the basis of complaint Exh.Ka. 17

lodged by Sri Mana Singh S. I.R.P.F., Manipur. It has been contended by the learned Counsel for the State that in view of the nature of the provisions of Railway Property Unlawful Possession Act 1966, cases instituted thereunder are not on a police report but on a complaint by a public servant attracting Section 378(5) Cr.P.C. and as such the period of limitation is six months. It would be fruitful at this stage to reproduce Sub-section (5) of Section 378 Cr.P.C. It reads as below :

No application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and 60 days in every other case computed from the date of that order of acquittal.

It, therefore, leaves no room for doubt that the period of limitation for moving application for grant of special leave to appeal from an order of acquittal in a case instituted on complaint by public servant is six months and the present application would be well within time if it is held that the case arises out of a complaint instituted by a public servant.

4. Section 3(a) of the Railway Property Unlawful Possession Act provides imprisonment for a term which may extend to five years or a fine or both and in view of the quantum of sentence the offence appears to be cognizable but Section 5 of the Act lays down that notwithstanding anything contained in the Cr.P.C. an offence under this Act shall not be cognizable. It has thus been specifically provided in the Act itself that offences punishable under the Act shall not be cognizable. I therefore have no hesitation in arriving at the conclusion that the offences punishable under the Railway Property (Unlawful Possession) Act 1966 are not cognizable. It is therefore, clear that in the instant case the complaint filed by the Sub-Inspector u/s 3 of the Act was of a non-cognizable offence.

5. The fact that the Sub-Inspector who instituted the complaint is a public servant is not questionable. The complainant here is undoubtedly a Police Officer and the complaint has been filed by him as a Police Officer. Section 2(d) defines complaint in following words :

"Complaint" means any allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person, whether known or unknown has committed an offence, but does not include a Police report.

Explanation - A report made by a Police Officer in a case which discloses after, investigation, the commission of a non-cognizable offence shall be deemed to be a complaint and the Police Officer by whom such report is made shall be deemed to be the complainant.

The explanation added to the definition of complaint makes it clear that any report by a Police Officer regarding the commission of non-cognizable offence shall be deemed to be a complaint and the Police Officer shall be deemed to be

the complainant. In the instant case the complaint or report made by the Police Officer discloses the commission of a non-cognizable offence as discussed above. Hence the report of the Police Officer shall be deemed to be a complaint and the police officer the complainant. It therefore leaves no room for doubt that the case out of which the present appeal arises has been instituted upon a complaint by a public servant.

6. Hence the period of limitation for moving application for grant of special leave to appeal is six months as provided under Sub- section (5) of Section 378 Cr.P.C. The application is thus just in time and I fully agree with the first submission made by learned Counsel for the State. It is not necessary to discuss the second submission for condoning the delay because as held above the application is just in time. The report of Stamp Reporter is incorrect and is hereby set aside. The application and appeal are within time. Let them be listed for orders and admission.