

**The State Vs. D.N. Bhuyan**

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**Court :** Guwahati

**Decided On :** Apr-21-1983

**Judge :** K. Lahiri and T.C. Das, JJ.

**Appellant :** The State

**Respondent :** D.N. Bhuyan

**Judgement :**

**K. Lahiri, J.**

1. 'It is sometimes more important to emphasise the of obvious than to elucidate the obscure' lamented Justice Oliver Wendell Holmes. The answers to the questions posed in these cases are obvious but it has become necessary to elucidate the obvious answers. The primary question is the precise period of limitation for preferring an appeal from an order of acquittal in a case investigated by the Delhi Special Police Establishment for short 'the Delhi Police', constituted under the Delhi Special Police Establishment Act, 1946. The obvious answer to this question is 90 days from the date of the order. However, we have been invited to give a reasoned decision for reaching the conclusion. The subsidiary question is whether the appellants-petitioners have made out a case for extension of the prescribed period of limitation under Section 5 of the Limitation Act, 1963.

2. These are applications under Section 5 of the Limitation Act, 1963 for extension of the prescribed period, of limitation. The allegations against the accused are that

he had defalcated a large amount of money while serving as the cashier of the Director General of Assam Rifles, Shillong. The charges framed against the accused were under Sections 409 and 477A of the I.P.C. and under Section 5 of the Prevention of Corruption. Act. The case was investigated by 'the Delhi Police' (CBI). who having completed the investigation submitted charge-sheets in 3 cases which were registered as Special CBI Cases Nos. 1 of 1975, 3 of 1975 and 4 of 1975. Special CBI Case No. 1 of 1975 was tried separately from which stems Criminal Appeal No. 4 of 1983 whereas Special CBI Cases Nos. 3 of 1975 and 4 of 1975 were tried together and by a common judgment and order the learned Special Judge, Shillong, acquitted the accused. Two appeals have been preferred against the orders of acquittal passed on 12-7-1982. The appellants filed application for obtaining the certified copies of the judgment and order on 27-7-1982, deposited the requisite stamps and folios on the date notified (27-7-1982), the copies were made ready on 1-10-1982 and received on the same date. The appeals and the connected applications for leave to appeal have been filed on Monday, Dec. 20, 1982, under Section 378 of the Cr. P. C. 'the Code' for short. The appellants also filed two applications under Section 5 of the Limitation Act, 1963 for condonation of the delay in filing the appeals. It has been stated in the petitions that on obtaining the copies of the judgment the records of the cases were sent to the Central Bureau of Investigation, New Delhi who had investigated the case, they decided, to file the appeals from the orders of acquittal by their letter dated 9-12-1982 and forwarded the records of the case to the Government of Meghalaya requesting the State to file the appeals. The records of the case including the certified copies of the judgments were sent by air packet from Delhi to the CBI office at Shillong, which reached the office in the evening of Dec. 10, 1982. As 11-12-1982 and 12-12-1982 were holidays, the records could, be delivered by the CBI Shillong, to the Government of Meghalaya on 13-12-1982 and in the evening of the 13th, decisions were taken by the State Government to prefer the appeals who instructed the Public Prosecutor, Meghalaya to file the appeals to this High Court. Mr. A. Sarma, Public Prosecutor, Meghalaya, submits that his office is at the principal seat of the High Court at Gauhati so, the records had to be sent to Gauhati from Shillong. They were received by him on Dec. 15, 1982. He has stated that he had to go through the records carefully, prepare the

memorandum of appeals, get them typed, which took about 3/4 days. The appeals were ready by the 19th of December, 1982 which was a Sunday. So he filed them on December 20, 1982. Mr. Sarma, learned Public Prosecutor submits that the last date for filing the appeals would have expired on 11-12-1982, that is, 90 days from the date of order of acquittal, but it took 67 days for obtaining the certified copies of the judgment and order. Therefore, according to Mr. Sarma, the last date for filing the appeals is 16th of December, 1982. There was a delay in filing the appeals by about 3/4 days. The said, period was taken by him to prepare the memoranda of appeals after going through voluminous documents and evidence. There cannot be any second opinion that in the cases large number of documents were exhibited and number of witnesses were examined by the prosecution, Mr. Kataki, Learned counsel for the accused-petitioner does not dispute that there was no sufficient ground for condoning the delay of 3/4 days taken by learned Public Prosecutor in preparing the appeals and filing them. It has not been disputed that 67 days were taken for the delivery of certified copies of the impugned judgment and orders. However, Mr. Kataki contends that the period of limitation is 60 days from the date of order of acquittal, so even after giving allowance of the period for taking certified copies of the judgment, the last date for filing the appeals and/or application for leave to appeal expired on 16-11-1982. According to the learned Counsel there was a delay of 35 days in presenting the appeals. Learned counsel submits that there is no explanation as what happened between 15-11-1982 to 6-12-1982. Mr. Sarma, learned Public Prosecutor submits that during that period the records were under examination by the C. B. I. New Delhi, It may be stated here that neither in the petition r.or during the course of argument the opposite party ever questioned that the period taken by learned Public Prosecutor, Meghalaya, from 15th to 19th of December, 1982 in preparing the appeals and the connected applications was untrue, incorrect or that those could not be a sufficient cause for condoning the delay for the said period of 3/4 days. We are also of the opinion that the period which was taken for preparing the appeals and the connected applications was a reasonable period to prepare both the appeals which involved close scrutiny of the evidence, documentary as well as oral. The main contest is whether the period of limitation for filing such an appeal is 60 days or 90 days. If the period of limitation for preferring the appeals is 60 days, the appeals are out of

time and the question of condonation of delay does not arise. But, if the period of limitation is 90 days, the appeals and the applications are within the period of limitation. Therefore the bone of contention is whether the period of limitation for preferring such appeals is 90 days or not. It is the common case of the parties that the criminal cases were not complaint cases but were Government report cases. Admittedly, the cases were investigated by 'the Delhi Police' (CBI). In order to determine the question, let us scrutinise the provisions of Section 378 of 'the Code', which we extract hereinbelow:

### 378. Appeal in case of acquittal -

(1) Save as otherwise provided in Sub-section (2) and subject to the provisions of Sub-sections (3) and (5), the State Government may in any case, direct the Public Prosecutor to present an appeal to High Court from an original or appellate order of acquittal passed by any court other than a High Court.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946(25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of Sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under Sub-section (1) or Sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal the, the complainant may present such an appeal to the High Court.

(5) 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, sixty days in every

other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-section (1) or under Sub-section (2).

(Emphasis added)

3. It will be seen that the provisions of the Section are enabling in nature which confer the right of appeal. It also prescribes the persons or authorities competent to prefer the appeals and provides for the period of limitation for obtaining leave. Sub-section (1) of Section 378 of the Code empowers the State Government to prefer appeals from the order of acquittal 'in any case', that is, in Government report cases as well as in complaint cases. However, we find two limitations - (I) the power is controlled, by Sub-section (2) and (II) the power is conditioned upon the provision of Sub-section (5) as well. We have no manner of doubt that the State Government is competent to prefer an appeal against acquittal 'in any case'. In the instant case the State of Meghalaya has preferred the appeals through their Public Prosecutor. The appeals have been preferred from the order of acquittal passed by 'Court other than a High Court', Sub-section (2) lays down that if an order of acquittal is passed in a case in which the offence has been investigated by 'the Delhi Police' or by any other agency empowered, to make investigation into an offence under any Central Act other than 'the Code', the Central Government 'may also' direct the Public Prosecutor to present the appeal, but the power is subject to the provisions of Sub-section (3), i.e. an appeal can be entertained only with the leave of the High Court. It follows, therefore, that in a case investigated by 'the Delhi Police,' an appeal from an order of acquittal may be preferred by the State Government or by the Central Government, and, no appeal shall be entertained except with the leave of the High Court. These are the limitations. In so far as the period of limitation for preferring such appeals, no period of limitation has been laid down under 'the Code'. So we are to turn to Article 114 of Limitation Act, 1963 which provides the period of limitation as 90 days from the date of the order of acquittal. In the result we have no hesitation in concluding that the period of limitation for such an appeal is 90 days.

4. In support we find that the Supreme Court in *State of Rajasthan v. Ramdeen* : 1977 CriLJ997 , has held that the period of limitation for preferring an appeal under Section 378(1) read with Sub-section (3) is 90 days from the date of the order of acquittal. In view of Section 8 of the General Clauses Act, 1897, it cannot be disputed that Article 114 of the Limitation Act is applicable and the period of limitation as prescribed therein is 90 days from the date of the order of acquittal. In *Ramdeen* (supra) the State preferred an appeal which was of a composite nature, containing prayer for leave to entertain the appeal as well. Their Lordships held that it was not necessary to file an application asking for leave separately and the appeal containing the prayer for leave to appeal was quite proper and just. We extract the relevant observations of the Supreme Court which confirm the view that we have just taken.

8. The matter will, therefore, have to be decided in terms of Section 378(1) and (3) of the Code of Criminal Procedure, 1973. Section 378(1), so far as it is material for our purpose, provides that the State Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal. Sub-section (3) of that section provides that such an appeal shall not be entertained, except with the leave of the High Court. Under law it will be perfectly in order if a composite application is made giving the necessary facts and circumstances of the case along with the grounds which may be urged in the appeal with a prayer for leave to entertain the appeal. It is not necessary as a matter of law, that an application for leave to entertain the appeal should be lodged first and only after grant of leave by the High Court an appeal may be preferred against the order of acquittal. If such a procedure is adopted as above, it is likely, as it has happened in this case, the appeal may be time-barred if the High Court takes more than ninety days for disposal of the application for leave. The possibility that the High Court may always in such cases condone the delay on application filed before it does not in law, solve the legal issue. The right conferred by Section 378(1), Cr. P. C. upon the State to prefer an appeal against acquittal will be jeopardised if such a procedure is adopted, for in certain cases it may so happen that the High Court may refuse to exercise its discretion to condone the delay. The right conferred under the section cannot be put in peril by an interpretation of Section 378, Cr. P. C. which is likely to affect adversely or even

perhaps to destroy that right.

9. Besides, under Article 114 of the Limitation Act, in an appeal from an order of acquittal by the State, the period of limitation is ninety days from the date of the order appealed from, whereas in an appeal from an order of acquittal, in any case instituted upon complaint, the period is thirty days from the date of the grant of special leave. Thus there is a clear distinction between the two types of appeals with regard to terminus a quo under Article 114. It is, therefore, not necessary to wait until the grant of leave by the High Court to present a memorandum of appeal against acquittal at the instance of the State. Thus, appeal can be filed by the State within ninety days from the date of the order of acquittal and a prayer may be included in that appeal for entertaining the appeal under Sub-section (3) of Section 378, Cr. P. C. If the leave sought for is not granted by the High Court the appeal is not entertained and stands dismissed.

10. We are, therefore, clearly of opinion that, the application for leave to appeal, which was made by the State in this case, is equivalent to a memorandum of appeal under Section 378(1) read with Sub-section (3) of that section of the Code of Criminal Procedure, 1973. The fact that the application mentioned Section 378(3) is not decisive of the true character of the application which to all intents and purposes was a memorandum of appeal. There was, therefore, no need for presentation of a second, petition of appeal nor for an application for condonation of delay in this case. The petition of appeal was filed, within time and the High Court committed an error of law in dismissing the same as time-barred.

5. In *Khemraj v. State of Madhya Pradesh* : 1976 CriLJ192 the criminal case was investigated by the Delhi Special Police Establishment and the State Government directed the Public Prosecutor to present the appeal from the order of acquittal. In interpreting the provision of Section 470(2) of the Criminal Procedure Code, 1898 it was held that the appeal could be preferred either by the Central Government or by the State Government. Their Lordships held that the appeal preferred by the State Government in the case investigated by the Delhi Special Police Establishment was competent. Accordingly we hold that the appeals preferred by the State Government in the instant cases are competent.

6. Mr. P. C. Katak, learned Counsel for the accused-opposite party has relied on the provision of Section 378(5) of 'the Code' and contended that no leave could be granted beyond, the period of 60 days except in the case where 'the complainant is a public servant'. Mr. Katak submits that the provisions of Sub-section (1) clearly lay down that the Sub-section is subject to the provisions contained in Sub-section (5) which lays down that an application for grant of 'special leave' cannot 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 the order of acquittal. In short the submission is that leave to appeal under Sub-section (3) is also subject to the provisions of Sub-section (5).

7. In our opinion four classes of cases are envisaged in Section 378 of 'the Code' - First, the Government report cases; Secondly, cases investigated by the Delhi Special Police Establishment or by any other agency referred to in Sub-section (2); Thirdly, complaint cases in which public servant is the complainant; and Fourthly, any other complaint case. In Government report cases and cases referred in Sub-section (2) no 'special leave' need be asked, for whereas in complaint cases 'special leave' must be obtained when the State Government prefers an appeal. In a Govt. report case or in a case covered by Sub-section (2) 'special leave' is (not?) required, However. 'Special leave' is necessary where an order of acquittal has been passed in a case instituted upon complaint. While obtaining such 'special leave' in a complaint case the period of limitation for grant of special leave is 6 months where the complainant is a public servant. However, if the complainant is not a public servant, he must apply for special leave within 60 days from the date of the order of acquittal. Therefore, if in a complaint case the State files an appeal against the order of acquittal, which it is competent to file, it must obtain special leave within the period prescribed by and under Sub-section (5). We are of the firm opinion that the expression 'every other case' contained in Sub-section (5) refers only to the complaint cases covered by Sub-section (4). If the complainant himself applies for a special leave, the period of limitation for obtaining the leave must be that prescribed in Sub-section (5). Therefore, if the complainant himself files the appeal against an order of acquittal and/or the State prefers such an appeal in a complaint case, which it is competent to prefer under Sub-section (1), the complainant or the State must obtain 'special leave' within the prescribed, period

contained in Sub-section (5). These questions are too obvious. A perusal of Sub-section (6) would make the position clearer. Sub-section (6) lays down that if the complainant himself applies for leave to appeal from an order of acquittal and the leave is refused, no appeal from the order of acquittal shall lie either under Sub-section (1) or Sub-section (2). Therefore, Sub-sections (4) and (5) are limited to complaint cases. The limitation shall be applicable even when the State Government or the Central Government files appeal against an order of acquittal in a complaint case. In the result, we conclude that in these cases where the investigations were made by the Delhi Special Police Establishment and when the State Government has preferred the appeals against the orders of acquittal, the period of limitation for preferring the appeals is 90 days. In these cases 'no special leave' is required, and, the provisions of Sub-section (5) are not attracted.

8. For the foregoing reasons we hold that the period of limitation for filing application for 'special leave' to appeal under Sub-section (5) governs only the complaint cases where the applicant for a special leave is the complainant and or the State Government or the Central Government. However, the provisions of Sub-section (5) are not attracted where an appeal from an order of acquittal is made under Sub-section (3) in a case instituted otherwise than by the complainant. The period of limitation for preferring such an appeal is 90 days, as provided in Article 114 of the Limitation Act, 1963. The period of limitation in the instant appeals is 90 days. As such, we hold that the period of limitation in these cases expired on December, 15/16, 1982. However, we are satisfied that 3/4 days taken by learned Public Prosecutor for preparing the memoranda of appeals along with the supporting applications, was sufficient cause for extending the prescribed period of limitation under Section 5 of the Limitation Act, 1963. We condone the delay as there existed sufficient cause for not preferring the appeals within the period of limitation.

9. In the result the petitions are allowed. The delay in presenting the appeals are condoned. Let the appeals come up for admission in due course.