

**Health Inspector, Badagara Municipality Vs. Puzhakkal Kelappan**

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**Court :** Kerala

**Decided On :** Jun-19-1964

**Reported in :** AIR1965Ker31; 1965CriLJ42

**Judge :** P. Govinda Menon, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 417(3)(4); [Limitation Act, 1963](#) - Sections 4 to 24 and 29

**Appeal No. :** Criminal Misc. Petn. Nos. 73 and 74 of 1964

**Appellant :** Health Inspector, Badagara Municipality

**Respondent :** Puzhakkal Kelappan

**Advocate for Def. :** Mohammed Naha and; M. Narayana Menon, Advs.

**Advocate for Pet/Ap. :** V. Balakrishna Eradi and; K.P.C. Menon, Advs.

**Disposition :** Petition allowed

**Judgement :**

ORDER

P. Govinda Menon, J.

1. Cr. M. P. 73 of 1964 is a petition under Section 417(3), Cri. P. C., for special leave to appeal against the order of acquittal. The petition has been presented admittedly after the period prescribed and a petition Cr. M. P. 74 of 1964 is filed under Section 5 of the Limitation Act to condone the delay in filing the petition. It is alleged that the delay was occasioned purely because of a bona fide mistake committed by the Advocate for the petitioner.

2. The question that arises for decision is whether the provisions of Section 5 of the Limitation Act would apply to an application for special leave to appeal from an order of acquittal under Sub-section (3) to Section 417, Cri. P. C. There was divergence of opinion about the matter among the various High Courts. But in the case in Kaushalya Rani v. Gopal Singh, (AIR 1964 SC 260) the Supreme Court held that the provisions contained in Section 417(3) supplemented by the provisions of Section 29(2) of the Limitation Act would make it clear that Section 5 of the Limitation Act would not apply to an application for special leave. It was stated that the bar of time prescribed in Sub-section (4) of Section 417 is a special law with in the meaning of Section 29(2) of the Limitation Act and that therefore Section 5 of the Limitation Act would not be available for condoning the delay for filing the application for special leave. Learned counsel for the petitioner has drawn my attention to the amended provisions of the Limitation Act 1963 and pointed out that the amended Section 29 makes applicable Sections 4 - 24 of the Act to all proceedings under special and local law unless their applicability is specifically excluded. There is no exclusion in this case, and, therefore, after the coming into force of the new

Act on 1-1-1964 Section 5 of the Limitation Act will be applicable to special laws, also. Learned counsel for the respondent concedes that in view of the amendment. Section 5 would now apply to applications under Section 417(3). But his argument is that from the moment the sixty days period is over he gets a vested right and that valuable right cannot be defeated by an intervening legislation. It may be noted that in this case the sixty days period expired only subsequent to the coming into force of the new Limitation Act 1963 and hence there is no force in the submission made.

Further, the extension of the provisions of Section 5 of the Limitation Act cannot be considered to be a new enactment prescribing a new period of limitation. The application filed beyond 60 days as required by Section 417(3) is certainly beyond time. But what has been done is to remove the rigour of the law by extending the provisions of Section 5 of the Limitation Act to these applications. The procedure of Court has been amended enabling the Court to excuse the delay in such applications for proper reasons. No doubt, the general rule is that every statute which takes away or impairs vested lights acquired under the previously existing law must be presumed to be intended not to have retrospective operation, but this presumption is not applicable to enactments affecting procedure or practice for no one has a vested right in procedure and practice. Alterations in procedure, therefore, are always held to be retrospective unless a good reason to the contrary is forthcoming. The real lest appears to me to be whether the new rule is essentially an alteration of the procedure of the Court or one of rule of limitation. I am of opinion that the change really amounts to one of procedure and that there can be no vested right in it and Section 5 would apply in this case. On the merits the petition is not opposed by the learned counsel for the respondent.

3. The delay is, therefore, condoned and leave is granted.

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