

**In Re: Viswanathan Chettiar**

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**SooperKanoon Citation :** [sooperkanoon.com/788487](http://sooperkanoon.com/788487)

**Court :** Chennai

**Decided On :** Sep-23-1956

**Reported in :** AIR1957Mad300; 1957CriLJ519

**Judge :** Basheer Ahmed Sayeed, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 417(4); Limitation Act, 1908 - Sections 5 and 29(2)

**Appeal No. :** S.R. Nos. 21577, 21578 and 24834 of 1956

**Appellant :** In Re: Viswanathan Chettiar

**Advocate for Pet/Ap. :** A.S. Sivakamminathan, Adv.

**Judgement :**

**Basheer Ahmed Sayeed, J.**

1. The point that arises for consideration here is whether the application for special leave from the order of acquittal for which a period of sixty days has been prescribed under Section 417(4), Criminal P.C., excludes the application of Section 5 of the Limitation Act if there is delay in filing such an application within the period of sixty days, The office has pointed out in its note that Section 29(2) of the Limitation Act would apply to the case and therefore Section 5 would not be available to the complainant when he is out of time. But Section 29(2) comes into

operation only when the special law prescribes a period different from the period prescribed by the first schedule to the Limitation Act. In this case of special leave against acquittal the schedule to the Limitation Act does not prescribe any period at all. Such being the case only where there is difference between the period prescribed by this schedule and the period prescribed by the special law would Section 29(2) be applicable. So far as the present case is concerned, there is no such difference between the period prescribed by the law of limitation and the Criminal P.C. For the first time it appears that under Section 417(4) a period of sixty days has been prescribed for filing an application for special leave against acquittal. Section 1, Sub-section (2) of the Criminal P.C. makes all laws applicable to the Criminal P.C. including the law of limitation and nothing could prevent the appellant from taking advantage of Section 5 of the Limitation Act.

2. The question then is whether the complainant has satisfied that there was sufficient cause for the delay in filing the special leave application. It transpires in this case that there was just a delay of one day after the reopening of the Court before which the application should have been filed. Ordinarily one day's delay is always excused and In this case I am satisfied there is sufficient cause shown for the delay. So this delay will be excused.

3. Post the appeal for admission.

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