

Dharmu Vs. Zalam

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Court : Himachal Pradesh

Decided On : Nov-30-1971

Reported in : 1972CriLJ1462

Judge : M.H. Beg, C.J. and; D.B. Lal, J.

Appellant : Dharmu

Respondent : Zalam

Judgement :

M.H. Beg, C.J.

1. This is an application for grant of special leave to file an appeal under Section 417 (3). Cr. P.C. against an order of acquittal by the Magistrate First Class, Mandi. The complainant-applicant had alleged that on 22nd August, 1969 at about 9 a. m. the accused Zalam Sineh and certain other persons entered the house of the complainant and demolished the house and carried away some utensils, pans, a plough, and other implements of husbandry. It appears that the complainant was not sure of the number of persons who had taken part in such an occurrence, so that he included persons who had to be discharged. Even with regard to the five opposite parties, against whom charges under Sections 441/ 380 and 147, I, P.C. were preferred, the learned Magistrate did not frame any charge at all under Sections 451/380 I. P.C. as he thought that the evidence did not justify any such charges. The only charge framed against the five opposite parties was one under

Section 147. I. P.C.

After having examined the evidence carefully, the learned Magistrate came to the conclusion that there has been considerable litigation between the complainant and the opposite parties in a Civil Court. It also appeared that there was an injunction against the complainant prohibiting him from entering the land on which the alleged house stands. There is no doubt that the complainant applicant had admitted that he was residing in another house, which he had constructed about 20 or 25 years ago. His own witnesses admitted that they came to the spot after the occurrence. It was not quite clear from the judgment whether the injunction was in respect of the disputed house or with regard to some other house in which the applicant had been living. Nevertheless, it is clear that, so far as any occurrence for which a charge under Section 147 could be made out the prosecution witnesses admitted that they came to the spot, where the incident is said to have taken place, after the occurrence was over. Thus, the learned Magistrate had rightly acquitted the opposite parties. This, however, would not prevent the complainant from bringing in a civil suit against persons who could be shown to have taken away or to be in possession of any of his properties as a result of the alleged occurrence, if it took place at all.

2. We have examined the merits of the case, as there was some uncertainty whether an application under Section 417 (4). Cr. P.C. would lie after the period of 60 days provided for such an application by Section 417 (3). Cr. P.C. The relevant provisions may be reproduced:

Section 417 (3): 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 complainant may present such an appeal to the High Court,' Section 417 (4). lays down: 'No application under Sub-section (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

3. The contention on behalf of the opposite parties is that applying the ratio decided of *Kaushalva Rani v. Gopal Singh* : [1964]4SCR982 . It was clear that

Section 5. Limitation Act does not apply at all to applications under Section 417 (3). Cr. P.C. in view of the clear language of the Section 417 (4). Cr. P.C. as this was 'Special law' providing for a special period of limitation. It was also pointed out that Section 417 (4). Cr. P, C. expressly prohibits entertainment of an application under Section 417 (3). for grant of special leave after the expiry of 60 days.

4. We may observe that Kaushalva Rani's case : [1964]4SCR982 , (supra) relates to the law as it stood under the Limitation Act of 1908. which was somewhat different from the provisions of the Limitation Act of 1963. Under the Limitation Act of 1908. Section 29 Sub-section (2) read as follows:

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law:

(a) the provisions contained in Section 4 Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law: and

(b) the remaining provisions of this Act shall not apply.

5. The amended law. as found in the Limitation Act of 1963. lays down:

Where any special or local law pre-scribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit appeal or application by any special or local law the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which they are not expressly excluded by such special or Ideal law.

6. It is clear, from a comparison of the provisions of Section 29 Sub-section (2) under the amended law with the unlamented law dealt with in Kaushalva Rani's

case : [1964]4SCR982 (supra), that there is a clear change converting a specific prohibition against application of Section 5 of the Limitation Act into an implied application of it to applications for which a special law prescribes a period of limitation. There is no doubt that Section 417 Sub-section (4). Cr. P.C. lays down a special period of limitation by a special law as held by the Supreme Court in Kaushalva Rani's case : [1964]4SCR982 . Nevertheless, under the law as it stands after the amendment of 1963: the exclusion of Section 5. Limitation Act, has to be express by such special or local law and not implied.

7. The real question, therefore, is whether the express words used in Section 417 Sub-section (4) can amount to an express exclusion of Section 5. Limitation Act. as required by Section 29, Sub-section (2) under the amended law. or. it only lays down' a certain period of limitation without expressly excluding the application under Section 5. Limitation Act We think that, for an express exclusion, there must be at least a reference to the provision or principle which is expressly excluded. We find no such mention in Section 417 (4). Cr. P.C. We. therefore, prefer to take the view that this provision merely prescribes a period of limitation without an express exclusion of the application of Section 5. Limitation Act.

8. The view we have taken is supported by the decision in Lala Ram v. Hari Ram : 1970 CriLJ1014 . where Kaushalva Rani's case : [1964]4SCR982 was considered. It was held there that Kaushalva Rani's case : [1964]4SCR982 and the decision of the Bombay High Court in Anjanabai Yeshwant Rao v. Yeshwantrao Daulatrao : AIR1961 Bom154 do no more than to decide that a special period of limitation has been laid down by special law by reason of Section 417 Sub-section (4). Cr. P.C. Consequently their Lordships applied the provisions of Section 12. Sub-section (2). Limitation Act for computing the period of limitation. Now Section 12 and Section 5 belong to the category of Sections 4 to 24 mentioned together in Section 29 Sub-section (2) of the Limitation Act of 1963. Therefore, applying the same principles of interpretation, we think that Section 5 of the Limitation Act would also apply as it is not expressly excluded by the provisions of Section 417. Sub-section (4). Cr. P.C.

9. Hence, although we could admit this application under Section 417 (3) Cr. P. C by condoning the delay under Section 5, Limitation Act. vet. as we find no substance in the merits of the case.' we dismiss this application.

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