



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF APRIL, 2020

BEFORE

THE HON'BLE MR.JUSTICE K.N. PHANEENDRA

CRL.A. NO.1355/2012

BETWEEN:

SMT. SAROJA NARASIMHAN
W/O NARASIMHAN

... APPELLANT

(BY SRI. S.H. PRASHANTH, ADVOCATE)

AND:

SMT. VIJAYA SHARMA
W/O NAGABUSHAN SHARMA

... RESPONDENT

(BY SRI. S. PRAHLAD, ADVOCATE FOR
M/S RAO PRASAD AND COMPANY)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 387(4) CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 3.9.2012 PASSED BY THE XIII ADDITIONAL C.M.M., BENGALURU IN C.C.NO.16879/2009 - ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 138 OF NEGOTIABLE INSTRUMENTS ACT.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 13.12.2019 COMING ON FOR '**PRONOUNCEMENT OF ORDER ON IA NO.1/2013 AND IA NO.1/2012**, THIS DAY **K.N. PHANEENDRA, J.** DELIVERED THE FOLLOWING:

ORDER ON IA NO.1/2013 & IA NO.1/2012

The learned counsel for the appellant has filed IA No.1/2012 u/s.5 of the Limitation Act for condonation of delay in filing the appeal and IA No.1/2013 for Special Leave application under Section 378(5) of Cr.PC.

2. Though the matter has been heard on the above said IAs., a serious legal question has been raised with regard to application of the Limitation Act, so far as the appeals filed u/s.378(4) of Cr.PC. on the ground that Section 378(4) and (5) are the Special provisions provided for preferring the appeal and it is a self contended enactment which provides separate and independent limitation for preferring the appeal. Therefore, the provisions of Limitation Act, in general Sections 4 to 24 Cr.PC. and in particular Section 5 of the Limitation Act, are impliedly excluded from application. Therefore, this court has taken up the above said point to be thrashed out as to ascertain whether the Indian Limitation Act is applicable for the appeals filed u/s.378(4) of Cr.PC. in spite of the said provision provide itself a limitation for preferring the appeal.

3. We have heard the arguments of the learned counsels appearing in various criminal appeals assisting the court for disposal of this IA in this particular appeal.

4. We have heard Sri P. Surana, Sri Satish Bandari, Sri S.H. Prashanth, Sri Sunil Rao, Sri S.P. Kulkarni and Sri P.B. Abhijith, who have argued the case before this court for and against basing various rulings of Hon'ble Apex court and other High Courts.

5. Sri. P.Surana has strenuously contended that if the provision u/s.378 of Cr.PC. is in contrast to Section 372 of Cr.PC. is considered, the scheme of the appeals are different u/s.378 of Cr.PC.. Section 378(4) and (5) prescribe a Special Leave to be filed by a private complaint, who has filed a private complaint in which the accused has been acquitted and the complaint filed a Criminal Appeal u/s.378(4) Cr.PC. He further contends that the provision u/s.378(5) Cr.PC. itself pre-supposes that, it should be obtained within a specified period if it is filed by a public servant u/s.378(3) of Cr.PC. there is less impact because only '**leave**' has to be obtained not a '**Special Leave**'. So

far as such private complaints are concerned, the rigor is more and impact is more on the society. Therefore, the law has prescribed that he has to obtain a Special Leave within a particular period of time. Therefore, the intention of the legislature is very much clear that they want to put an end to the private litigations as far as possible and as early as possible. Therefore, when Section 378(5) of Cr.PC. prescribes a special period of limitation, it expressly and impliedly excludes the application of the Limitation Act. He further contended that the proceedings u/s.138 of Negotiable Instruments Act is a quasi criminal in nature and preferring of an appeal is not a right but it is only a qualified right, subject to the discretion of the court to grant Special Leave. Acquittal is considered distinctly from conviction judgments. Therefore, after relying upon various decisions, which I am going to quote later, the learned counsel submitted that the application deserves to be rejected, holding that Section 5 of the Limitation Act is not applicable, to the applications filed under section 378(5) beyond the period prescribed under that section.

6. The various other counsels as noted above have argued in favour of the application of the Limitation Act to the appeals preferred u/s.378(4) and Special Leave is sought u/s.378(5) of Cr.PC. It is contended that in view of Section 29 of the Indian Limitation Act compared to old and new Act, new Act specifically says that there should be an express exclusion of the provisions of the Indian Limitation Act by the special statute itself, if there is no specific exclusion, then Indian Limitation Act particularly Sections 4 to 24 are applicable to all the other enactments where though there is special provision is made specifying the period of limitation to appeals and applications. Therefore, it is contended that even though the provision u/s.378(5) of Cr.PC. provides a period of limitation of 60 days, the provision did not expressly exclude the application of the Indian Limitation Act. Therefore, Limitation Act is applicable. They also contended that express exclusion should not be in any manner interpreted so as to defeat the valuable right of the parties. Section 372 of Cr.PC. is the principle provision which enables the victim to prefer an appeal which is recognized as statutory right. However, it is

extended u/s.378(4) and (5) of Cr.PC. that if it is a private complaint and the victim in the private complaint in case of an acquittal of the accused can prefer an appeal u/s.378(4) and (5) of Cr.PC. Therefore, the principle enunciated under the provision 372 Cr.PC. is very well applicable to consider that it is a statutory right of appeal given to the victim either u/s.372 or u/s.378(4) and (5) of Cr.PC. Therefore, as a matter of right, appeal can be preferred. If such right is recognized under the law, it should not be defeated by prescribing any procedural barricades. Therefore, if the provisions u/s.378(4) and (5) of Cr.PC. which did not specifically excluded the application of Limitation Act, in such an eventuality and in view of Section 29(2) of the Limitation Act, the provisions of Sections 4 to 24 of the Indian Limitation Act are applicable.

7. They have also cited various rulings in this context. In the light of the above said submissions, first I would like to examine the provisions which contained in the Cr.PC. and the Limitation Act which are referable to preferring of an appeal, and application of the Indian Limitation Act, and thereafter, I would like to consider various decisions cited in

order to ascertain the principles laid down in those cases so as to arrive at a proper and correct conclusions as to whether Sections 4 to 24 is also applicable to the appeals filed by the private complaints against the judgment of acquittal u/s.378(4) and (5) of Cr.PC.

8. Of course, Sections 372 and 378 Cr.PC. are the relevant provisions which requires to be considered by this court before comparing Section 378 of Cr.PC. with that of Section 417(4) of old Cr.PC. and with other provisions of Cr.PC. Section 372 of Cr.PC. reads thus:

"372. No appeal to lie unless otherwise provided – *No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:*

(Provided that the victim shall have right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.)"

9. On plain reading of this particular provision, it empowers irrespective of the bar contained in the Section, victim has a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation and such appeal shall lie to the court of which the appeal ordinarily lies against an order of conviction of such court. This clearly indicates that there is a bar u/s.372 of Cr.PC. that no appeal shall lie from any judgment or order of a criminal court except provided by this code or by any law for the time being in force. That means if any other provision is available in the Code itself, then a party has got a right to prefer such an appeal before any court which is specifically provided in the Act or Code or to the court which an appeal ordinarily lies. However, if no other provision is available under this code or any other law for the time being in force, only in such an eventuality, the victim has got a right to prefer an appeal under this provision against the order acquitting the accused or for imposing inadequate sentence or inadequate compensation.

10. Of course, the provisions under the Cr.PC. provides various provisions for preferring of an appeal. Chapter XXIX of Cr.PC. refers to various provisions provided under Cr.PC. enabling the parties to prefer an appeal or specifically mentioning where the appeal lies and no appeals for various offences. Briefly stated Section 373 of Cr.PC. provides an – *"Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour"*. Section 374 provides provisions for – *"Appeals from convictions"* rendered by the various courts. Section 375 specifically says that – *"No appeal in certain cases when accused pleads guilty"*. Section 376 also prescribes – *"No appeals in petty cases"*. Section 377 is a specific provision which enables the State Government i.e., – *"Appeal by the State Government against sentence"*. The Government may in any case of conviction of a trial held by any court other than High Court can prefer an appeal to the Court of Session or to the High Court as the case may be. Section 378 is the specific provision which refers to appeal against acquittals which we are presently concerned when the said provision which requires a detailed discussion by

this court. Section 379 again refers to – “*Appeal against conviction by High Court in certain cases*” where the High Court in an appeal reverse an order of acquittal, the appeal lies to the Supreme Court. Section 380 refers to – “*Special right of appeal in certain cases*”. Section 381 and 382 are the two provisions which refers to – “*Appeal to Court of Session how heard*” and “*Petition of appeal*” can be filed and appeal how it is to be heard by the court of Sessions. Section 383 refers to the – “*Procedure when appellant in jail*” and 384 refers to – “*Summary dismissal of appeal*”. Other provisions in the Code from Sections 385 to 394 are the procedural aspects that has to be followed by the Appellate Courts after the appeals are preferred under the provisions as noted above.

11. Now, coming to the relevant provision i.e., Section 378 of Cr.PC. for easy understanding, I feel it just and necessary to extract the provision of Section 378 of Cr.PC. which reads thus:

"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) –

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court (not being an order under clause (a)) or an order of acquittal passed by the Court of Session in revision.)

(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, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal –

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision]

(3) [No appeal to the High Court] 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 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 supplied)

12. On plain reading of the above said provision, so far as this case is concerned, the provision u/s.378(4) and (5) of the Code are to be necessarily considered with other provisions in the Cr.PC., in order to ascertain whether the application of Limitation Act is expressly or impliedly excluded.

13. Section 378(5) of the Code specifically says that if a private person, who has filed a complaint under Section 2(d) of Code before the trial Court, on the basis of a private complaint wherein the accused is acquitted, an appeal does not lie before the High Court u/s.372, but the appeal lie u/s.378(4) of Cr.PC. The rider put u/s.378(5) is that in order to entertain the appeal Special Leave has to be sought. But under sub clause (5) that Special Leave Application has to be filed within 60 days computed from the date of the order of acquittal that means only statutory periods which can be excluded like the taking of the certified copy of the order or the day on which the court is closed, in such circumstances, only such period has allowed by law can be extended as per the plain reading of the above said

provision. Further added to that, if this particular provision is read, Section 378 as a whole, there is no indication that the provision of Limitation Act is expressly excluded. Therefore, this court has to ascertain whether on the basis of other surrounding circumstances, the application of the Limitation Act is impliedly excluded for extension of any further time after lapse of 60 days as contemplated u/s.378(5) of Cr.PC. Therefore, the court has to see what exactly, the Limitation Act says with regard to the application of the Limitation Act so far as the other enactments are concerned where the other special enactments specifically prescribe the period of limitation otherwise than the period prescribed by the Limitation Act. Therefore, it goes without saying that the Limitation Act is the general enactment which prescribes the period of limitation in spite of all contingencies with reference to filing a suit, appeal, revision, review petition or petitions, applications etc., if the other statutes whether it is a general statute like Cr.PC. or a special statute, if the limitation for the above said contingencies is fixed by the special enactment itself, whether even in spite of the special

enactment fixing the period of limitation, still the Limitation Act is whether applicable or the application of the Limitation Act is automatically altogether expressly or impliedly excluded has to be considered by this court.

14. In the above said backdrop, the court has to examine some of the provisions under the Indian Limitation Act.

15. Section 3 of the Indian Limitation Act says that it prescribes the bar of limitation which reads as follows:

"Bar of Limitation - (1) Subject to the provisions contained in sections 4 to 24(inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act -

(a) a suit is instituted -

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the

court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted -

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

16. This particular provision refers to the application of Section 4 to 24 of the Limitation Act, for a suit, appeal and application, which are filed after the prescribed period of limitation. Though the limitation is fixed, under the Limitation Act, under various provisions, the extension of Limitation Act also to be entertained by the court u/s.5 of the Indian Limitation Act. Section 5 is a general provision which in fact gives discretion to the court as to under what circumstances, even if the period of limitation is expired and under what circumstances, the court can extend the said period of limitation by condonation of delay.

The said Section 5 of the Act reads as follows:

"5. Extension of prescribed period in certain cases – any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation – The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

17. On plain reading and understanding of the above said provision, which refers to appeal or any application, the same may be admitted even after the period prescribed under the Limitation Act, if the party file the appeal or the application satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period, the explanation also shows that the fact that the appellant or the applicant was misled by any order or judgment of the High Court in ascertaining or continuing

the period prescribed may be sufficient because within the meaning of this Section. Therefore, the application prescribed under this particular provision is the application other than the application under any of the provisions of Order XXI of CPC, 1908. Therefore, all other applications whether under any Criminal Law or a Civil Law, within prescribe separate period of limitation within such prescribed time, such application has to be filed, if such application is filed after the prescribed period, then u/s.5 of Limitation Act, the court gets jurisdiction to condone the delay and extend the period of limitation and entertain such application or appeal as the case may be.

18. In the light of the above said provision, particularly in this particular case, I am dealing with the application filed for seeking special leave to entertain the appeal u/s.378(5) of Cr.PC. Therefore, the said application definitely fall under the category of nomenclature of application as found in Section 5 of the Limitation Act. But the question is whether Section 5 of the Act can be made applicable for extension of time to allow the application filed

for granting special leave in turn in order to entertain the appeal filed u/s.378(4) of Cr.PC.

19. In this background, Section 29 of Limitation Act also play a dominant role, which is referable to the limitation prescribed otherwise than the Limitation Act in any other statute. Section 29(2) of the Act, 1963 which is relevant is to be considered and the same reads thus:

"29. Savings – (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872)

(1) XXXXXXXXXX

(2) Where any special or local law prescribes 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 local law."

(Emphasis supplied)

20. On meaningful understanding of this provision which says that, where any other special law or local law [like Cr.PC. which is particularly dealt with in this particular case] prescribes for any suit, appeal or application, a period of limitation, otherwise than the period prescribed by the schedule under the Limitation Act, then the provisions of sub Section (3) shall apply as if such period, the period prescribed by the schedule. Therefore, for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law, then the provisions contained in Sections 4 to 24 shall apply only so far as and to the extent to which they are not expressly excluded by such special law or local law. Therefore, it is clear from the above said provision that though the special law prescribes any special period of limitation, as prescribed in sub section (5) of Section 378 for filing a special leave application unless the said provision or the special enactment expressly excludes the application of the Limitation Act, in such an eventuality, Sections 4 to 24 of the Limitation Act are made applicable. Therefore, the court

has to examine whether the special statute even considering the criminal procedure code as a special statute and Section 378(5) as a special provision prescribe the period of limitation so far as the special leave applications are concerned, whether the application of Section 5 of the Limitation Act is expressly or impliedly excluded, is to be looked into by this court.

21. The earlier provision of Section 29 is also to be taken into consideration as to what is the difference between the earlier enactment of Section 29 with the present enactment. Section 29 of the old Limitation Act 1908 also to be borne in mind in order to ascertain the difference between the old Act and the new Act. Section 29(2) of the old Act reads as follows:

"29. [(1) Nothing in this Act shall affect section 25 of IX of 1872 the Indian Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefore 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 the Act shall not apply.]”

22. On literally interpreting the above said provision, it clearly discloses that if any special law prescribes any separate period of limitation for any suit, appeal or application, in such an eventuality the said provisions should be read in consonance with Section 3 to consider that such period were also prescribed there for in the schedule. So far as the application of the Limitation Act is concerned, Section 29(2)(a)(b) of the Act specifically says that Sections 4, 9 to 18 and 22 of the Act shall apply only in so far as to the extent to which they are not expressly excluded by such special law or local law and all other remaining provisions of the Act shall not apply. Therefore, it clears all the doubt that the Limitation Act itself irrespective of the period of exclusion of any of the provisions of the Limitation Act by

the special law, the limitation Act itself specifically excluded the application of Section 5 of the Limitation Act. So far as the provisions u/ss.4, 9 to 18 or 22 are made applicable where there is no express exclusion by the Special law. That means once the separate and special period of limitation is fixed by the Special or Local law, under the old limitation Act, Section 5 was not at all made applicable for condonation of delay in filing a suit, preferring an appeal or filing an application before the courts.

23. As contrasted from the present Section i.e., under the amended Limitation Act, as I have already discussed, the said Act has excluded the application of Sections 4 to 24 if there is any express exclusion by such Special law or local law. Therefore, Section 5 is also included as Sections 4 to 24 includes Section 5 of the Act. Therefore, Section 5 is not applicable if the provisions contained in Sections 4 to 24 or any provision between these two provisions are expressly excluded by the special law or local law, in such an eventuality, only the special law is strictly applicable and Limitation Act is not applicable.

24. Section 417 of Cr.PC. under the old Act also to be borne in mind before adverting to some of the decisions in this regard. Section 417 of Cr.PC. 1898 reads as follows:

"417. (1) Subject to the provisions of sub-section(5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the 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, the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

(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.

(4) 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.

25. A comparison of Section 378 with the old Section 417 of the Code shows that whilst under the old Section, there is no application for Leave to appeal had to be made by the State Government or the Central Government, now, by virtue of Section 378(3), the State Government or the Central Government have to obtain leave of the High Court before their appeal could be entertained. Sub section (4) of Section 378 [which is presently, we are concerned] is identical to sub section 3 of Section 417 of Cr.PC., Thus, a complainant desirous of filing an appeal against acquittal must still obtain Special Leave. Thus, Section 378 makes a distinction between an appeal filed by the State Government or the Central Government who only need to obtain "leave", and an appeal by a complainant needs to obtain "Special leave". The limitation provided in sub Section (5) is only in respect of applications under sub section (5) i.e., application for Special Leave to appeal by a complainant [Private complaint]. A complainant may be either a public servant or a private party. If the complainant is a public servant, then the period of limitation for an application for special

leave is six months. If the complainant is a private party then the period of limitation for an application for special leave is sixty days. The period of six months or 60 days do not apply to the appeals by the State Government under sub section (1) or the Central Government under sub section (2). Appeals by State Government or Central Government continue to be governed by Article 114(a) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of the order appealed from. It is needless to state, if there is a delay in filing an appeal by the State Government or the Central Government it would be open to them to file an application u/s.5 of the Limitation Act for condonation of such delay. That period can be extended if the court is satisfied that there was sufficient cause for not preferring the appeal within the period of 90 days. However, such application for condonation of delay in filing special leave application, if it exceeds the period prescribed therein, whether application u/s.5 of the Act can be filed as the period of limitation of **six months** or **60 days** is specially prescribed under the Act is the question that requires to be considered by this court.

26. Now, in this background, I would like to examine the various decisions right from the beginning so far as this aspect is concerned.

27. In **1957 Cri.LJ 923** between ***Putchalar Alli Venkata Subbareddo and Duvvuru Papireddi and another***, the court has held after analyzing the special law and local law holding that Cr.PC., is not a special law. Therefore, Section 29(2) of the Limitation Act, 1908 is applicable so far as the special leave to appeal u/s.417 (3) and (4) of Cr.PC., is concerned, on the ground that Section 5 of the Limitation Act has not been specifically excluded by the special law.

28. In another ruling reported in **AIR 1964 SC 260** in the case of ***Kaushalya Rani Vs. Gopal Singh***, wherein the Hon'ble Apex Court has considered the application of Section 5 of the Limitation Act so far as the appeals filed u/s.417(3) and (4) of Cr.PC., 1898. The Supreme Court in fact held that Section 417(4) & (5) are the special law within the meaning of Section 29(2) of the Limitation Act. There is no special period of limitation prescribed by the Limitation

Act for the appeals filed u/s.417(3) & (4), but a special period of limitation is provided for the special leave applications u/s.417(4) itself. Thus, there is a difference between Limitation Act and the period recognized u/s.417(4) of the Court. Therefore, the court held that no application under sub Section (3) for grant of special leave to appeal from the order of acquittal shall be entertained by the High Court after the expiry of 60 days from the date of order of acquittal.

29. In the case reported in **AIR 1965 KERALA 31** between ***Health Inspector, Badagara Municipality and Puzhakkal Kelappan***, wherein the High Court of Kerala while dealing with the provisions of Section 417(3) & (4) of Cr.PC., has held that application for leave to appeal against acquittal by private complainant and limitation provided under section (4), after discussing in detail the court held that the Limitation Act is applicable.

30. In a case reported in **AIR 1968 PUNJAB AND HARYANA 352**, between ***Parsano and Hazara Singh***, the court after discussing the provisions of Section 417(3) &

(4) and Section 5 of the Limitation Act read with Section 29(2) of the Indian Limitation Act, held that in view of sub section (2) of Section 29, there is no express exclusion of application of Section 5 of the Limitation Act to get the delay condoned by satisfying the court is not altered. Therefore, Section 5 of the Limitation Act held to be applicable.

31. There comes in the year 1974, the Supreme Court while dealing with the similar aspect with respect to some other enactment, reported in **AIR 1974 SC 480** between ***Hukumdev Narain Yadav. And Lalit Narain Mishra***, wherein the Hon'ble Apex Court has considered Section 81 of the Representation of the People Act with respect to Election Petition and also with reference to Section 10 of General Clauses Act and also considering Section 29(2) and Section 5 of the Limitation Act categorically held that there was an express reference to such provisions in Special law not necessary. Therefore, Section 5 does not apply to Election Petition under the Representation of the People Act. Therefore, the specific special period of limitation is prescribed under the said Act, impliedly excludes the provisions of Limitation Act.

32. In the case reported in **AIR 1976 SC 105**, between **Mangu Ram and Corporation of Delhi**, wherein the Hon'ble Apex Court also discussed with regard to Section 417(3) & (4) application and Section 5 of the Limitation Act, the Hon'ble Apex Court considering the effect of the amended Limitation Act and under Section 29, after discussing in detail and also referring to Kousalya Rani's case as noted supra, the court has specifically observed that-

"Where an application for special leave to appeal from an order of acquittal is filed after coming into force of the Limitation Act, 1963 Section 5 would be applicable to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of 60 days prescribed under sub Section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of 60 days, the High Court would have the power to entertain it.

33. The Hon'ble Apex Court has also observed in the said case that mere provision of period of limitation howsoever peremptory or imperative language is used even

then, it is not sufficient to displace the applicability of Section 5. Therefore, irresistible conclusion is that in a case where an application for special leave to appeal from an order of acquittal is filed after coming into force of Limitation Act 1963. Section 5 would be available to the applicant if he can show that he had sufficient cause for not preferring the application within the time limit of 60 days prescribed under sub section (4) of Section 417 of the Code.

34. In another decision reported in **MANU/UP/0388/1981** between ***State Vs. Chhinga & Others***, wherein again the court considering the new Limitation Act, 1963, Section 29(2) and Section 3 and also the provision u/s.378 of new code of criminal procedure and after giving careful consideration, it is said that Section 378 is a special law for appeals prescribing the limitation on its own. In view of Section 29(2), Section 5 of the Limitation Act is applicable for condonation of delay in filing the application for special leave, as the said provision is not expressly excluded.

35. In another decision reported in **(2001) 10 SCC 372** between ***State (Delhi Administration) and Dharampal***, wherein the Hon'ble Apex Court while dealing with Section 378(5), at Head Note 'C' has observed that Section 5 of the Limitation Act is applicable to the application for special leave filed by the complainant filed by a public servant or a private party but not to appeal by State Government or the Central Government and their appeals are governed by Article 114(a) of the Limitation Act and period of 90 days is applicable for the purpose of preferring the appeals.

36. In another decision reported in **(2004) 11 SCC 456** between ***L.S. Synthetics Ltd., and Fairgrowth Financial Services Ltd.***, wherein the Hon'ble Apex Court again dealing with Section 29(2) held that special statute providing for special or no period of limitation, then it must receive a liberal and broader construction – intent and purport of parliament enacting the said Act must be given its full effect, but in construing a special statute providing for limitation, consideration of plea of hardship is irrelevant.

The Limitation Act 1963 is applicable only in relation to certain applications and not to all the applications despite the fact that the words "other proceedings" were added in the long title of the Act in 1963, the provisions of the 1963 Act are not applicable to the proceedings before bodies other than courts, such as a quasi judicial tribunal or even an executive authority. The act primarily applies to the civil proceedings or some special criminal proceedings. Even in a Tribunal, where the Code of Civil Procedure or Code of Criminal procedure is applicable, the Limitation Act, 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application due to suo motu exercise of powers by the Court. Even no period of limitation is prescribed in relation to a writ proceedings.

37. Though the above said ruling is not strictly applicable. But the applicability of Limitation Act so far as the judicial courts are concerned is very well recognized.

38. In another decision reported in **AIR 2004 SC 3068** between ***Gopal Sardar and Karuna Saradar***

wherein, the Hon'ble Apex Court while dealing with the West Bengal Land Reforms Act, Section 8 of the Limitation Act, 1963, Section 29(2) and Article 97 of the Limitation Act, while considering the Right of pre-emption, held that Section 5 of the Limitation Act does not apply because (i) the proceedings u/s.8 of the West Bengal Act are in nature of suit and (ii) West Bengal Act is self contained code making provision for application of Section 5 of the Limitation Act or its principles expressly and specifically to other proceedings i.e., appeals, revisions etc., but not to proceedings under Section 8. Therefore, the Hon'ble Apex Court observed that the period of limitation including the provision of Section 5 of the Limitation Act is provided in a special enactment or provision, in such an eventuality, it amounts to exclusion of the provisions of the Limitation Act, has to be inferred in order to exclude the application of Section 5 of the Limitation Act.

39. What emerges from this decision is that the legislature's intentional consciousness in expressly or impliedly excluding the application of the provision of

Limitation Act has to be considered by the courts dealing with the other provisions in the same enactment.

40. In **AIR 2005 SCW 3076** between ***Fairgrowth Investments Ltd., and The Custodian*** the Hon'ble Apex Court while dealing with Section 4(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, (41 of 1992) and Objection to notification u/s.3(2); filing of u/s.4(2), objection to the notification to be filed within a particular period of time. The Hon'ble Apex Court has further observed that Section 4(2) of the Act requires a person objecting to a notification issued under sub section (2) of Section 3 of the Act to file a petition raising such objection within 30 days from the issuance of such notification. The Apex Court observed that, the words used are unequivocal and unqualified and there is no scope for reading in to the power of Court to dispense the application of Limitation Act, on the basis of any principle of interpretation of statutory provisions. Ultimately, the Hon'ble Apex Court after considering various decisions, has come to the conclusion that Section 5 of the Limitation Act is applicable.

41. In a case reported in **(2009) 5 SCC 791** between ***The Commissioner of Customs and Central Excise and Hongo India Pvt.Ltd., and another*** wherein the Hon'ble Apex Court while dealing with Section 35-H of the Central Excise Act, with reference to applicability of Section 5 of the Limitation Act, 1963. It was held that Appeal and Reference to High Court should be made within 180 days from the date of communication of the decision or order. Time limit prescribed for making reference to the High Court is absolute and un-extendable by court u/s.5 of the Limitation Act, 1963 because the remedy is provided in the Act itself by granting a further clause empowering the High Court to condone delay after 180 days that means Section 35 provides 60 days time in addition to the same, the Commissioner has power to condone the delay upto 30 days if sufficient cause is shown likewise Section 35-B provides 90 days' for filing appeal to the appellate Tribunal and sub-Section (5) therein enables the Appellate Tribunal to condone the delay irrespective of the number of days, if sufficient cause is shown. Likewise Section 35 (EE) which provides 90 days' time for filing revision by the Central

Government and, proviso to the same enables the revisional authority to condone the delay for a further period of 90 days, if sufficient cause is shown, whereas in the case of Appeal to the High Court u/s.35-G and reference to the High Court u/s.35-H of the Act, total period of 180 days has been provided for availing remedy of appeal and the reference. However, there is no further clause empowering the High Court to condone the delay after the period of 180 days. Therefore, the Hon'ble Apex Court held that when period of limitation even for condonation of delay is also provided under the special enactment, it amounts to expressly excluding the application of Section 5 of the Limitation Act.

42. In another decision reported in **2015 CRL.LJ. 2772** between ***Saj Properties Pvt.Ltd., and Virender Dagar*** wherein, it was held for Leave to file Appeal, Petition - condonation of delay, that when there is no express exclusion of application of Section 5 of the Limitation Act to Qua Leave Petition. Therefore, Section 5 of the Limitation Act would be applicable to leave petition to seek condonation of delay even after excluding the time consumed in preparation and supply of certified copy and

the period of time where the courts are closed etc., if there is any delay on sufficient ground.

43. In another decision reported in **(2016) 6 SCC 157** between ***Pankajakshi (dead) through legal representatives and others And Chandrika and Others.***

In this particular case, the Hon'ble Apex Court has considered Section 29(2) of the Limitation Act and held that, the words – “Expressly excluded” must be contained in Special or local law as distinguished in Section 4(1) of CPC. Therefore, while dealing with Section 4(1) of the Code, 1908, the court held that there must be “specific provision to the contrary” must be contained in Civil Procedure Code, 1908 itself and not in any other law so as to exclude the application of the Code.

44. In another decision reported in **AIR 2017 SC 383** between ***M/s.Patel Brothers And State of Assam and Others,*** wherein the Hon'ble Apex Court while dealing with Sections 81 and 84 of VAT Act, with reference to Section 5 and 29(2) of the Limitation Act, held that the provisions of Section 5 of the Limitation Act not applicable to

the proceedings u/s.81(1) of the said Act. When the Hon'ble Apex Court has observed that Section 81 of the VAT Act prescribes a limitation period of 60 days within which the revision petition is to be preferred to the High Court in the said case, there was a delay of 345 days in filing the revision. The application was filed u/s.5 of the Limitation Act seeking condonation of delay for such delay, the High Court would have dismissed the application for condonation of delay holding that the provisions of Section 5 of the Limitation Act are not applicable.

45. The Hon'ble Apex Court has observed that, the High Court has referred to Section 84 of the VAT Act which makes the provision u/s.4 and 12 of the Limitation Act, 1963 only applicable to such provisions. On the basis of that, it was held by the High Court that since Sections 4 & 12 of Limitation Act, 1963 were made specially applicable. Therefore, by necessary implication, Section 5 of the Limitation Act stands excluded.

46. In another decision reported in **AIR 2018 SC 807** and between ***Bengal Chemists and druggists***

Association and Kalyan Chowdhury wherein the Hon'ble Apex Court while dealing with Section 421(3) of the act and proviso to Section 433 with reference to Section 5 of the Limitation Act. The court observes that a special period of limitation is prescribed under the particular enactments. i.e., the appeal against an order of tribunal filed 9 days after the expiry of 45 days limitation period and further period of 45 days was also expired. Therefore, considering that the special provision contained in Section 421(3) Proviso, which is peremptory in nature and Section 5 is in built in the enactment itself to condone the delay. Therefore, the delay application cannot be entertained.

47. The Hon'ble Apex Court also observed that Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this court within 60 days from the date of communication of the decision or the order of the tribunal. Proviso to section 125 empowers this court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing an appeal within the initial period of 60 days. This shows that the period of limitation

prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act. The use of the expression "within a further period not exceeding 60 days" in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is totally 120 days. There is no provision in the Act, under which this court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days." Therefore, the application filed u/s. 5 of the Limitation Act was rejected.

48. In another decision reported in **AIR 2018 SC 5013** between ***P.Radha Bai and Others And A.P. Ashok Kumar and another*** wherein the Hon'ble Apex Court while referring to the Arbitration and Conciliation Act, Sections 34(3) of the Limitation Act has again held that the limitation prescribed under the Act also empowers the court to condone the delay to some extent under the said provision. Therefore, when the Limitation Act itself provides power to the court to condone the delay after the limitation period is prescribed under the Act, it amounts to expressly excluding

the application u/s.5 of the Limitation Act. Therefore, in such circumstances, the Limitation Act is not applicable.

49. The meticulous examination and meaningful understanding of the legislative intent and also the observations and principles laid down in the above said rulings, the ultimate legal aspect that arises for consideration of this court is that whether the special statute i.e., Cr.PC. u/s.378(4) and (5) have expressly or impliedly excluded the application of Section 5 of the Limitation Act. Ultimately, it would be a question of interpretation of the special or local law in question with that of the provisions under the Limitation Act.

50. Before adverting to the above said question to be answered, we must bear in mind, the general principles with regard to the right of appeal recognized under the statute which should be very jealously safeguarded by the courts. The court should bear in mind when right is recognized that should not be in any manner allowed to be frustrated on the ground of technicalities particularly delay and the court should not become handicapped in order to advance

substantial justice and in order to safeguard the rights, liabilities recognized under the statute unless the statute itself prohibits the court doing that exercise. The correctness of the judgment or an order of acquittal by preferring an appeal to the High Court is conferred upon the victim, even it gone to the extent of providing such right to the LRs. and others as defined u/s.2(wa) of Cr.PC. under the proviso to Section 372. The rider is only that they have to obtain leave of the High Court under the said provision and special leave under the provisions of sub-sections (4) and (5) of 378 of Cr.PC. Therefore, it is settled principle of law that right to an appeal is a statutory right or a creature of statute and no other right to file an appeal can be recognized and dehorse a statute. Therefore, though Section 378 (4) and (5) right to appeal is created under the statute otherwise than that no appeal can be filed unless it is clearly expressed in the terms of a statute. The rights created under the substantive laws are called as substantive rights and not merely a matter of procedure. Once the right of appeal is vested, which can be exercised when the adverse judgment is pronounced. Such right is governed by

substantive law and how it has to be exercised are governed by procedural laws. Therefore, exercising right in a particular manner by following certain procedures should always take the back seat and the substantive right of a person occupies the front seat. Hence, the court should also bear in mind that, there is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to prefer an appeal under the statute. An appeal is the right to enter a superior court and invoking its aid and interposition to redress the error of the trial courts. In an appeal, the main question to be considered by the appellate court is whether the order of the court from which the appeal is brought was right or erroneous, illegal or irregular. Thus, the right of appeal and consideration of that right is a paramount compared to the procedure for hearing the appeal. Therefore, the courts must be fair enough to ascertain the workability of the appeals as provided both under substantive laws and procedural laws.

51. In this back ground, the courts should also bear in mind that the rules or procedure like application to be filed for condonation of delay under Limitation Act are not

meant to totally destroy the rights of the parties recognized under substantive laws. The riders under the procedural law are only meant to see that the parties do not resort to dilatory tactics. In such an eventuality, only the strict rule of procedure has to be adopted. But, if the court is of the opinion that the parties very promptly seek their remedy without adopting any dilatory tactics too reasonably and genuinely prevented from exercising their substantive right, in such an eventuality, adopting of strict procedure may not be advisable. Therefore, the object of providing legal remedy is to repair the damage caused by reason of legal injury.

52. Of course, the law of limitation fixes a life span for such legal remedy for the redress of the legal injuries so suffered. Of course, time is very precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. Therefore, the life span must be fixed for each remedy. Such life span should also be interpreted in such a manner it would definitely advance substantial justice rather than disturbs the right created

under a statute. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* i.e., it is for the general welfare that a limitation period be put to litigation. Therefore, Rules of Limitation are not meant to destroy the rights of the parties but to regulate the dilatory tactics that may be ventured by the parties to curb such persons who approaches the court with unclean hands. Therefore, the total idea is that, every legal remedy must be kept alive for a legislatively fixed period of time subject to other provisions given for relaxation of fixed period of time by exercising the discretion of the court considering the genuineness of the reasons provided for such condonation of delay.

53. It is true that the maxim *vigilantibus non dormientibus jura subveniunt* i.e., law assists those who are vigilant and not those who sleep over their rights is strictly applicable, but, even a vigilant litigant some time may prone to commit mistakes. Those mistakes may be beyond his control. Therefore, the general principle is that –‘to err is human’ is more a practical notion of human behaviour than

an abstract philosophy. Therefore, sometimes, unintentional lapse on the part of a litigant should not normally close the doors of the judicature permanently where still there exists right vested with such person. Therefore, the ultimate effort of the court should not be one of finding means to pull down the doors of the court but to advance the justice substantially even considering all other procedural laws.

54. In this background, in almost all the substantive laws where the rights, liabilities and disabilities are recognized and the procedural laws connected with those laws, definitely enshrined jealously safeguarding the substantial rights.

55. In the above said backdrop, the court has to examine the real controversy in this particular case.

56. Now, the court has to examine the special law i.e., Section 378(4) & (5) of Cr.PC., whether it expressly or impliedly excludes the application of Limitation Act Sections 4 to 24. Under the old Limitation Act, which I have already referred to above, there was a specific exclusion of

application of Section 5 of the Limitation Act. But, under the new Act, such provision is not available but the new act says that if the special law or the law otherwise than the Limitation Act, which prescribes any period of limitation on its own, in such an eventuality, such limitation should be treated as the limitation prescribed u/s.3 of the Indian Limitation Act. However, Section 29(2) also says that if the other provisions of the Limitation Act i.e., Sections 4 to 24, if not specifically excluded by the special law, in such an eventuality, the provisions of Sections 4 to 24 can be very well invoked even under the special law to extend the period of limitation on the grounds recognized under the provisions of the Limitation Act.

57. In the light of the above said legal mandate, as could be seen from Section 378 of Cr.PC. and any of the provisions under the Cr.PC. as we have already defined which prescribes a special period of limitation, in contrast with the Limitation Act, but there is no express exclusion of the provisions of the Limitation Act. Express exclusion of the words used in the legal parlance means, it specifically says that there must be specific wordings in the special

statute or a special provision stating that, the application of the provisions of the Limitation Act or any particular provision of the Limitation Act, is '**Expressly**' excluded. Otherwise, the court has to examine whether by means of other circumstances, the court can infer such an exclusion. Plainly said that the above said provision Section 378 does not expressly exclude the provisions of Limitation Act, as no such specific or synonymous words are used. Therefore, I have to examine whether by means of other implications such exclusion can be inferred by the court.

58. The implied exclusion can be inferred by the court in two specific circumstances. (1) If the special provision is provided under the Act itself empowering or giving discretion to the court to condone the delay even after the appeal, applications are filed beyond the period of limitation fixed by the special statute; (2) Secondly, if on perusal of the special statute itself, if the special statute whether as provided the period of limitation and also further period giving discretion to the court to condone such delay. In other provisions of the same statute, but excluding a particular provision in such an eventuality also, the court

can draw such inference. Now, I will examine the above said two aspects one by one.

59. The Hon'ble Apex Court in the case of ***Commissioner of Sales Tax UP, Lucknow and Parga ... Kanpur*** reported in **AIR 1975 SC 1039**, while dealing with the question of limitation, in relation to revision filed beyond time prescribed by Section 10 of UP Sales Tax Act, 1948 has made an observation that –

*"The principle that emerges is that if the legislature in a special statute, prescribes a certain period of limitation for filing a particular application thereunder provides in clear terms that for such period sufficient cause being shown may be extended, in the maximum, only upto a specified time limit and no further - then the Tribunal concerned has no jurisdiction to treat within the period of limitation, application filed before it beyond which minimum time limit specified in the statute by excluding the time spent in prosecuting an act, fall and due diligence u/s.14(2) of the Limitation Act. this particular principle is also can be gathered in a decision already referred to reported in **(2009) 5 SCC 791** between **the***

Commissioner of Customs and Central Excise and Hongo India Private Ltd., and another, which I have already referred to in detail.”

60. The same principle is also enunciated in another decision which I have already referred to reported in **AIR 2018 SC 807** between ***Bengal Chemists and Druggists & Kalyan Chowdhury***. In the above said case, though the period of limitation for filing Application, Revision, Appeal etc., are prescribed, a further period is also fixed by the statute giving discretion to the court to condone such delay as fixed by the statute and it specifically excludes the discretion of the court to condone the delay except that further period of limitation fixed by the statute. Therefore, it clearly discloses that if two limitation periods are fixed one limitation period fixing the period of limitation for the purpose of filing appeal, revision, review, applications etc., and another further period of limitation giving discretion to the courts to condone the delay, in such circumstance, it virtually amounts to substitution of Section 5 of the Limitation Act in the special statute itself empowering the court to condone only such delay as fixed by the statute.

61. In the above said background, if the provision of Section 378(4) and (5) particularly sub clause (5) the said provision is examined, it prescribes the period of limitation of 60 days only for the purpose of filing an application for special leave. No further period of limitation is fixed giving any discretion to the court to condone such delay of any period more than 60 days as fixed by the statute. Therefore, it clearly goes to show that the court cannot infer even an implied exclusion of the provisions of the Limitation Act if we read Section 378 in proper perspective.

62. The next important point is that whether on analysis of the entire special statute itself, whether implied exclusion can be inferred to the effect that application of Limitation Act is excluded so far as Section 378 (4) and (5) alone is concerned. This has to be thrashed out by examining the other provisions of the Cr.PC. So far as the appeals and applications are concerned, on thorough examination, under the special statute in respect of the various other provisions relating to filing of appeals under Chapter XXIX of the Code and revisions though specific

provisions are made with reference to fixing the period of limitation to file Appeals, Revisions, Applications etc., but, in none of the said provisions, the application of Section 5 of the Limitation Act is not specially made applicable nor the said provisions are expressly excluded. Therefore, when the other provisions of Cr.PC. does not exclude the application of Section 5 of the Limitation Act nor it is made that Section 5 is made applicable to other provisions specifically excluding Section 378 of Cr.PC. Therefore, the court cannot infer that the application of the Limitation Act in view of section 29(2) and inturn the application of Sections 4 to 24 of the Limitation Act are specifically expressed or impliedly excluded for provision u/s.378 (5) of Cr.PC.

63. Therefore, in my opinion, neither the provisions of the Indian Limitation Act has specifically or expressly excluded nor there is any indication in the special statute itself that the provisions of Limitation Act are impliedly excluded.

64. For the above said reasons, I am of the considered opinion that the provisions of the Limitation Act

as enunciated u/s.29(2) of the Indian Limitation Act can be very well pressed into service and inturn it can be unequivocally said that the provisions of Limitation Act from Sections 4 to 24 are very well applicable for the purpose of condoning the delay in filing the application under sub sections (4) and (5) of Section 378 of Cr.PC. for Special Leave to prefer an appeal filed after the period of limitation fixed under that provision, if sufficient ground are made out as contemplated under section 5 of the Limitation Act.

65. Now, coming to the contents of IA Nos.1 of 2012 and 1 of 2013 in this particular case.

66. As I have already held that Section 5 of the Limitation Act in all force applicable to the appeals filed u/s.378(4) of Cr.PC. Now, I have to consider IA No.1/2013 on merits which is filed for granting of Special Leave to prefer an appeal and IA No.1/2012 for condonation of delay in filing Special Leave application.

67. As there is some delay in preferring the appeal, an application is filed for condonation of delay as per IA No.1/2012. There is a delay of 34 days in preferring the

appeal. It is explained in the affidavit filed in support of the application that the impugned judgment was passed on 3.9.2012 thereafter, they applied for certified copy of the order and they have taken the copy on 14.09.2012. As the appellant being a lady, she was required to travel for her medical checkup, she was also under the impression that the time prescribed for filing an appeal is about 90 days. However, she secured the documents from her counsel and thereafter, she has approached the counsel in the High Court in order to prefer the appeal. Then only she came to know the time fixed for preferring the appeal with Special Leave application as 60 days. There was bonafide misconception and mis-understanding of law in this contention and she has undergone medical checkup and thereafter came to the counsel at High Court and filed the appeal. This application has not been contested by other side by filing any objections to the same. Therefore, though there is delay of 34 days, in my opinion, the same is not deliberate and intentional delay. On perusal of the judgment of the trial Court, the trial Court has acquitted the accused for the offence punishable u/s.138 of the Negotiable Instruments

Act, on the main ground that the cheque was not said to have been issued for legally recoverable debt and the court has accepted the contention of the accused and held that the accused respondent has proved by means of preponderance of probabilities with reference to existence of debt or liability, the same has to be tested by this court as to whether the said observation made by the trial Court is proper and correct. Therefore, I feel it just and necessary to grant Special Leave to prefer an appeal by condoning delay.

With the above said reasons, I pass the following:

ORDER

(a) The legal question raised in this case as to whether the provisions of Limitation Act, particularly Sections 4 to 24 are applicable to the applications filed u/s.378(4) & (5) of the Act, is answered in the '**Affirmative**' holding that the provisions of Sections 4 to 24 of the Limitation Act are applicable for the applications filed u/s.378(4) and (5) of Cr.PC.

(b) IA No.1/2013 filed for Special Leave and IA No.1/2012 filed for condonation of delay of 34 days in filing the Special Leave application are hereby allowed. Consequently, the appeal is admitted. The records of the trial Court has already been received. Therefore, the appeal has to be listed for final hearing.

Accordingly, office to list the appeal for final hearing.

**Sd/-
JUDGE**

PL*