APPELLATE CRIMINAL.

Before Rankin C. J. and Pearson J.

NEELRATAN GANGULI

v.

EMPEROR.*

1932
Nov. 17.

Limitation—S. 39(2) of the Emergency Powers Ordinance of 1932, if controlled by s. 5 of the Indian Limitation Act of 1908—Possession of arms, when comes under s. 20 of the Indian Arms Act of 1878—Indian Arms Act (XI of 1878), ss. 19(f), 20—Indian Limitation Act (IX of 1908), ss. 5, 29—Emergency Powers Ordinance (II of 1932), ss. 34, 39 (2), 52.

The Emergency Powers Ordinance, II of 1932, is a special law within the meaning of section 29 of the Indian Limitation Act. Section 5 of that Act has no application to an appeal under section 39 of that Ordinance.

In re *Mittor Moideen Hajee* (1) followed.

Section 29 of the Limitation Act does not prohibit any special law making section 5 applicable to it, but in the Emergency Powers Ordinance of 1932, there is no provision indicating the intention that the court should have the power given by section 5.

CRIMINAL APPEAL.

The material facts appear from the judgment of the Court.

The Deputy Legal Remembrancer, Khundkar (with him, *Nirmalchandra Chakrabarti* and *Phaneendramohan Sanyal*) for the Crown. There is a preliminary objection. This appeal was not preferred within seven days from the date of the conviction as required by section 39 (*2*) of Ordinance II of 1932. The order of conviction was passed on the 5th February, 1932, and the appeal was not filed till the 28th March, 1932. This Court has no power to extend the period prescribed by this special provision of a special law. Being special law, it attracts the operation of section 29, sub-section (*2*), clause (*b*) of the Indian Limitation Act. So section 5 of that Act cannot apply to this case. If the special law itself provides that section 5 of the

*Criminal Appeal, No. 279 of 1932, against the order of Kshettranath Mukherji, Special Magistrate of Hooghly, dated Feb. 5, 1932.

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Limitation Act will apply, the time can be extended, but not only is there no such express provision, but there is no indication anywhere in the Ordinance of any such intention. In re *Mittor Moideen Hajee* (1). Comparison of section 39 with section 34 of the Ordinance, which deals with appeals from decisions of Special Judges, will throw light on this question. There the ordinary provisions of the Indian Limitation Act have been made applicable.

Santoshkumar Basu (at the request of the Court). Ordinance II of 1932 is not at all a special law within the meaning of section 29 of the Indian Limitation Act.

Throughout the Ordinance, the ordinary law, namely, the Criminal Procedure Code is made applicable, subject to certain modifications. Section 2 of Ordinance II of 1932. In any case, even if section 5 of the Indian Limitation Act does not apply, this Court has ample power to interfere under section 107 of the Government of the India Act.

[The facts of the case were then discussed.]

RANKIN C. J. In this case, the accused Neelratan Ganguli has preferred the appeal from jail against the conviction and sentence passed upon him by a special magistrate in the district of Hooghly acting under section 39(*1*) of Ordinance II of 1932. The case was one, in which the charges were laid under section 19(*f*) and section 20 of the Indian Arms Act. There were two accused originally and the case against them was that this accused, Neelratan, had handed over to Upen Bhumij, *alias* Upen Singh, a revolver and, afterwards, to Upen's wife some cartridges in order that those might be concealed and kept on his behalf. Both the accused persons made confessions, the confessions being recorded on the 17th January, 1932. One of the accused was made an approver and the case in the end was held to be amply proved by the magistrate. The magistrate found, as regard the

(1) (1922) 71 Ind. Cas. 217; [1923] A. I. R. (Mad.) 95.

present accused, who gave his name and the occupation as that of a Congress Worker, that he used to live in the Congress office and that his meals were supplied by different persons of the village Majdah; and the magistrate thought that the accused acquired great influence over the villagers, so much so that when the Sub-Inspector in charge of the case came to investigate into it he found great difficulty in getting witnesses to sign their names in the search list.

At the trial, the present accused stated, in his examination under section 342 of the Code of Criminal Procedure, that his confession was true; and he set up the case that he had found this revolver and the cartridges wrapped up in a piece of cloth near a railway station some four years ago, that he kept them buried and that, at the time alleged, he went to Upen's *bârhi* and made over to him the revolver and the cartridges wrapped in a piece of cloth. The accused disputed certain evidence to the effect that the cartridges as distinct from the revolver had been handed over to the wife of Upen; but that is the evidence. On being asked if he wanted to say anything else, he said :—

I don't want to say anything else. I want heavy punishment for "freedom first ".

In his memorandum of appeal to this Court, the appellant, having been sentenced to seven years' rigorous imprisonment, says :—

I am guilty. The sentence passed upon me under section 20 of the Indian Arms Act has been heavy. I, therefore, pray that your Lordships may be graciously pleased to reduce my sentence.

The sentence which has been inflicted by the magistrate is the extreme sentence permissible under section 20 of the Indian Arms Act. The magistrate gives as his reasons for this that there are no extenuating circumstances in the accused's favour and that when his statement was taken under section 342 of the Code of Criminal Procedure he showed a very defiant attitude and boldly challenged the court to pass a heavy sentence and said "freedom first".

In these circumstances, we find that the sentence having been passed on the 5th of February, 1932, the

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appeal was not lodged from jail until the 28th of March following, whereas by section 39 of Ordinance II of 1932, which was a very recent Ordinance, having come into force in the beginning of the present year, a distinct provision is made that an appeal in such a case as this shall be brought within seven days. Accordingly, when this matter was examined first in the office, it was referred to me and the question of admission was sent to be dealt with by the Criminal Bench. The Criminal Bench, however, did not hear any argument or decide any question so far as I know, but the learned Judges recorded the order :

> This appeal will be heard on the question of sentence only. Let the record be sent for and the usual notices issue.

That order was made on the 20th April, 1932. The matter of the appeal, therefore, comes before this Court as an Admitted Appeal and it will appear that all questions of law are open both to the prosecution and to the defence.

We have, accordingly, directed our attention, in the first place, to the question whether we are debarred from entertaining this appeal by any provision of law. In support of the contention that we are so debarred, the argument is as follows : By section 29 of the Limitation Act it is provided that,—

> Where any special law prescribes for any appeal 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.

Accordingly, while the provision of the Ordinance is that the appeal shall be brought within a certain time, *prima facie* that attracts the operation of section 3 of the Limitation Act which contains a provision against the Court entertaining the appeal. It is necessary, however, in this case, to pursue the provisions of section 29 of the Act somewhat further. That section goes on to provide that, for the purpose of determining the period of limitation, certain provisions of the Limitation Act shall apply only in so far as and to the extent to which they are not expressly excluded by the special law; and further

that "the remaining provisions of this Act shall not "apply". Now, section 5 of the Limitation Act is not one of the provisions which are to apply in the absence of something to the contrary. It is one of the sections to which the concluding clause is applicable, namely, "the remaining provisions of this Act shall not "apply". It is clear enough I think and it is conceded by the learned Deputy Legal Remembrancer that the provision means "shall not apply by virtue of the "Indian Limitation Act", and is not a provision prohibiting any special law making the sections applicable or any special law according to the intention of which such a section as section 5 can be deemed to be applicable. It means that, so far as the Limitation Act is concerned, the section is not to be deemed to be one which is to be applied to the special law. There is authority both in the Patna High Court and in this High Court for that proposition but, as it is not contested, I shall not further deal with it.

On behalf of the appellant, Mr. Basu, who, at the Court's request, has been so good as to support the appeal and has done so with great care and ability, puts forward two contentions. He says, first of all, that the Ordinance is not a special law and he says, in the second place, that there is enough in section 52 of the Ordinance to entitle this Court to say that the special law intends that section 5 should be applied to an appeal such as the present. I cannot doubt that, for the purposes of section 29 of the Limitation Act, Ordinance II of 1932 is a special law. It contains provision for setting up certain special criminal courts. It is true that these courts have jurisdiction not only over offences created by the Ordinance, but, it would seem, over offences of any kind, provided they are committed in certain circumstances; but I cannot doubt that none-the-less it is a special law and it seems to me clear that, when the Ordinance contents itself by saying that the appeal shall be presented within seven days, it does so because of the provision already made by the Indian

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Limitation Act in section 29, which attracts the operation of section 3 and makes that period of time effective as the period of limitation.

The next question is whether we can say that, in the special law itself, there can be discerned any intention that the court should have the power given by section 5 of the Indian Limitation Act. This question involves a careful examination of the Ordinance and certain sections of the Ordinance have been brought to our notice as having a possible bearing upon this question. It is to be noticed, for example, that, in section 45, where provision is made for an appeal from a Court set up as a summary court to a tribunal called a special judge, there is a provision that the appeal shall be presented within seven days from the date of the sentence followed by a provision that the special judge shall follow the same procedure and have the same powers as an appellate court follows and has under the Code, that is, the Code of Criminal Procedure. It is also to be observed that, in dealing with the question of an appeal from a special judge, section 34 of the Ordinance makes a provision to the effect that the provisions of the Indian Limitation Act are to apply as if it were an appeal under the Code from a sentence passed by a Court of Sessions. So, it would appear that in the case of an appeal from a special judge, the ordinary law of limitation is to be applied. but, to decide which of the provisions of the ordinary law is applicable to the new tribunal it is prescribed that the new tribunal is to be deemed a Court of Sessions.

The matter before us, however, depends upon the provisions of section 39 of the Ordinance. This is another class of appeal provided by the Ordinance, namely, an appeal from a special magistrate. An appeal is provided in such a case as the present to the High Court and it is followed by a provision that it is to be presented within seven days. Nothing, however, is said as regards the powers of the High Court in that section. Section 52, however, is a very general section applicable to all special criminal

courts, that is to say, all the courts which are set up by Chapter IV of the Ordinance from the highest to the lowest.. It says :—

> The provisions of the Code and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Ordinance, shall apply to all matters connected with, arising from or consequent upon, a trial by special criminal courts constituted under this Ordinance.

The question is whether, by virtue of that general provision, we are entitled to say, in the face of the concluding words of section 29 of the Indian Limitation Act, that the Ordinance itself contemplates and provides that the High Court, in this case, shall exercise the power of dispensation for sufficient cause, which is contained in section 5 of the Limitation Act. In my opinion, it is impossible to attribute this meaning or this result to the very general provision of section 52 of the Ordinance. In the first place, it is very difficult to see that the phrase "the provisions of "any other law for the time being, in force in so far "as they may be applicable" could have any such effect in view of section 29 of the Limitation Act as to introduce section 5. But, apart from this question, the provision as to limitation contained in the second sub-section of section 39 of the Ordinance is a specific provision, the consequences of which are provided for as a matter of limitation by section 29 of the Limitation Act. These have been prescribed or provided for in advance. A wholly general provision could not be read as interfering with this specific provision with regard to limitation. *Generalia specialibus non derogant* is a maxim which is clearly applicable to section 52 if it is urged that section 39(2) of the Ordinance is to be controlled by section 5 of the Indian Limitation Act. In these circumstances, I arrive upon this question at the same result as was arrived at by the Madras High Court in the case of *Mittor Moideen Hajee* (1). It is certainly somewhat alarming that limitation for so short a period as seven days should not be one over which the High Court in

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a proper case should have any power of control or dispensation but it is necessary to base our construction of the Ordinance and of the Limitation Act upon principle and it is not possible for us on the ground of hardship to give another meaning to the Ordinance.

In these circumstances, it would serve no purpose as regards this appeal to direct any enquiry whether this particular accused had any sufficient cause for not preferring his appeal in time. In view of what he said at the conclusion of his trial, it may or may not be probable that the delay was due to a sufficient cause; but that is a matter which it is not now necessary for us to decide.

Mr. Basu, in the interest of the accused, has asked us to examine into this case under the general power of superintendence which was given in certain terms by section 15 of the High Courts Act of 1861 and in rather different terms by the Government of India Act, section 107. He has invited us to interfere on several grounds. He has thrown a doubt upon the right of the particular special magistrate to deal with the case in view of the fact that the first magistrate who dealt with it said that, as he had heard the confessions of the accused and certain other persons connected with it, he would prefer that some other magistrate, with a more open mind, should deal with the matter. It is, therefore, said that, by virtue of section 51 of the Ordinance, this magistrate has no jurisdiction to deal with the case. As regards that, I am of opinion that that contention has no foundation. It is quite unnecessary to read section 51 as meaning anything such as is suggested. It is not possible to argue that, in such a case, if a magistrate, for good reasons, does not wish to try a case or is unable to try it, the case may not be tried by some other magistrate. The first magistrate, in this case, apart from taking cognizance of the case, did not take any part in the trial. The change was entirely in the interest of the

accused and in the interest of maintaining an attitude, not only of absolute lack of prejudice but manifest lack of prejudice to the accused.

Then it has been suggested that we should interfere, because, while the accused was found guilty under section 19 (*f*) of the Indian Arms Act, he was not guilty under section 20. I can only say that it seems to me to be a plain case under section 20. Section 19 (*f*) deals with the mere question of having in possession or under control a weapon. A person may commit a breach of the law, so far as that is concerned, without being guilty of anything much worse than negligence or inattention. But section 20 provides a heavier penalty in cases of possession where there is an element of concealment. As regards that, the accused himself does not complain that he is not guilty. He did not do so in the trial court and he has not done so in his memorandum of appeal to us. I am bound to say that in this matter, on the facts disclosed, I agree with the lower court that he is guilty under section 20. Here is a man who, according to his own statement in open court, and certainly according to the evidence, was in possession of a revolver and cartridges. He gave the revolver to somebody for the purpose of keeping it concealed. It is evident that his possession of this revolver was at any rate in some way connected with his political opinions, because he asked for a heavy punishment and said "freedom first"; and it is a little difficult to see what this could have to do with the case, unless he was a person who was committing a breach of the Arms Act in connection with his political activities. I cannot say that it is in any way evident to me that there is any necessity for minimising the gravity of the offence. One can see easily enough what was quite likely to happen. If a person of such political opinions, as are in some way connected with a revolver, was keeping the revolver concealed in the custody of a friend, then there is a high probability that sooner or later this revolver would be found to have been used by somebody—

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very probably by somebody of the age of 16 or 17. It is very necessary, at the present time, when there is clear evidence of a revolver being kept in connection with political movements, that the offence, when it is made plain, should be visited with a severe punishment. The accused said nothing to the trial magistrate to show that he was in any way repentant. He appears to be a person, who did his very best by bravado to adopt a contumacious attitude as long as he could. In these circumstances, the Special Magistrate thought that the maximum sentence prescribed by the law for offences under section 20 would be appropriate. I am bound to say that I see no reason for this Court to disagree with him. It is a heavy sentence even for an offence under section 20 and it is the maximum sentence, but it is very necessary that the powers of the court should be employed in putting down these very dangerous crimes of possession and concealment of arms. I cannot think that there is anything in this case calling for interference by this Court and I should be of the same opinion whether this matter came before us in appeal or in revision.

On the merits, therefore, the appeal to section 107 of the Government of India Act does not, in this case, avail the accused at all. I desire to say nothing in the present judgment about the meaning of the word "superintendence" as it occurs in section 107 of the Government of India Act and section 15 of the Act of 1861. When necessary, it may be a proper thing to examine the decision so as to come to some conclusion as to the way in which the ultimate powers of the High Court under these sections should be regarded. It is not necessary at the present instance to do so and I prefer to wait till it becomes necessary, before laying down any principle.

The result is that the appeal is dismissed.

PEARSON J. I agree.

Appeal dismissed.

A. C. R. C.