

## APPELLATE CRIMINAL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

## QUEEN-EMPRESS

against

LINGAYA.\*

1886.  
Feb. 19, 20.

*Limitation Act, s. 12, sch. II, art. 154—Criminal Procedure Code, ss. 419, 420—  
Appeal by prisoner—Limitation—Time necessary to obtain copy of judgment—  
Presentation of petition to officer in charge of jail.*

In computing the period of limitation prescribed for an appeal from a sentence of a Criminal Court by art. 154 of sch. II of the Indian Limitation Act, 1877, the time taken in forwarding an application by a prisoner for a copy of the judgment and in transmitting the same from the Court to the jail must be excluded.

In the case of such appeals, presentation of the petition of appeal to the officer in charge of the jail is, for the purpose of the Limitation Act, equivalent to presentation to the Court.

THIS was a case referred to the High Court, under s. 438 of the Code of Criminal Procedure, by J. Grose, District Magistrate of Nellore.

The facts necessary, for the purpose of this report, appear from the judgment of the Court.

Counsel were not instructed.

The judgment of the Court (Muttusámi Ayyar and Brandt, JJ.) was delivered by

BRANDT, J.—Two questions present themselves for determination—

- (1) Whether the time taken in forwarding applications for copies on behalf of intending appellants in jail and in transmission of such copies to the jail, as well as the time occupied in actual preparation of copies in the office of the Court by which the judgment or order was passed, is to be included in "the time requisite for obtaining a copy" within the meaning of s. 12 of the Limitation Act.
- (2) Whether, for the purpose of computing the period of limitation for appeals under the Code of Criminal Procedure to any Court other than a High Court (Limitation Act, sch. II, art. 154), time is to be calculated, in the case of appeals preferred by appellants in

\* Criminal Revision Case 681 of 1885.

jail, to date of presentation of the appeal to the officer in charge of the jail, or to date of presentation to the Court to which the appeal lies.

As to the first question, the answer must be in the affirmative : the intention is to exclude the time taken up in obtaining the copy otherwise than through the appellant's *lâches* ; and in the case of persons in jail, the officer in charge of the jail must be regarded as representing, for the purpose in hand, the Court establishment, which, in the case of appellants not in jail, is responsible for preparation and delivery of copies. Under the Jail Code convicts can obtain through the officer in charge of the jail copies of judgments and orders required by them with a view to presentation of their appeals, free of charge, and the said officer is responsible for forwarding such applications and for receiving and delivering to the applicants the copies when received.

But from the time when the copy is delivered to the applicant, the latter is responsible for presentation of his appeal, with the copy of the sentence or order appealed against, either to the Superintendent of the jail, or to the Court, at his option.

And we are of opinion that, under the provisions of s. 420, Criminal Procedure Code, presentation of the petition of appeal by an appellant in jail to the officer in charge of the jail is equivalent to presentation to the Court so far as the requirements of the Limitation Act are concerned.

Section 419 provides that " every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader ;" s. 420, that in the case of an appellant in jail " he may present his petition of appeal to the officer in charge of the jail, who shall thereupon forward it to the proper Appellate Court ;" and s. 421 that " on receiving the petition and copy under s. 419 or s. 420 the Appellate Court shall peruse the same " and proceed as thereinafter prescribed.

In the case in which this reference is made, the appeal would then appear to have been presented in time, and should therefore have been received and disposed of. The sentence has, it appears, expired, but if the appellant desires it, the appeal should now be admitted and disposed of in due course.