

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Rånade.

QUEEN-EMPRESS v. NAGESHA'PPA PA'I.*

1895.

June 17.

Criminal Procedure—Salt Act XII of 1882—Limitation prescribed for charging with offence—Fraud in concealing date of offence—Limitation Act (XV of 1877), Sec. 18, not applicable to criminal proceedings—Revisional jurisdiction of High Court—Power to interfere with interlocutory orders of Subordinate Courts.

The High Court can interfere with an interlocutory order passed by a Magistrate.

Abdool Kádir Khán v. The Magistrate of Purneah(1) and *Choudi Pershad v. Abdur Rahman*(2) followed.

The provisions of section 18 of the Limitation Act of 1877 do not apply to criminal cases, and the peremptory terms of section 11(3) of the Indian Salt Act (XII of 1882) are not affected by that section.

On the 13th December, 1894, the accused was charged by the Customs authorities before the Second Class Magistrate of Khánápur in the Belgaum District with having on the 29th December, 1893, and the 2nd January, 1894, clandestinely removed salt without paying the customs duty.

The accused pleaded that the complaint having been made more than six months after the date of the offence by section 11 of the General Salt Act XII of 1882 ought not to be admitted.

The Magistrate overruled this plea and held that the complaint was in time, observing :—

“I hold that the case is not barred by the provisions of section 11, if it be proved that there has been a fraud by which the prosecution were kept in ignorance of the occurrence of the alleged offence.”

Summonses were directed to be issued and a day appointed for the hearing. The accused applied to the High Court in its revisional jurisdiction to reverse this order of the Magistrate.

*Criminal Application for Revision, No. 91 of 1895.

(1) 20 Cal. W. R., Cri., 23.

(2) I. L. R., 22 Cal., 131.

(3) Section 11 of Act XII of 1882.—A charge of an offence under section 9 or under section 11 of the Indian Customs Act, 1875, shall not be entertained except on the complaint of an Assistant Commissioner or other Salt-Revenue Officer not inferior in rank to a Sub-Inspector, and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the Second Class,

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Ganpatráo Shivráo Mulgáokar for the accused:—The order against which this application is made was, no doubt, an interlocutory order, but the High Court may nevertheless interfere in its revisional jurisdiction—*Chandí Pershad v. Abdur Rahman*⁽¹⁾.

The charge was made too late—section 11 of Act XII of 1882. The Magistrate has applied the rules laid down in section 18 of the Limitation Act (XV of 1877), but those rules are not applicable to a criminal charge: see section 6 of the Limitation Act and see also *Queen-Empress v. Ajudhia Singh*⁽²⁾.

Ráo Sáheb Vá suder J. Kirtikar, Government Pleader, for the Crown:—This case is still pending in the Magistrate's Court, and this Court cannot interfere at this stage of the proceedings. Section 439 of the Criminal Procedure Code (Act X of 1882) is not applicable to interlocutory orders.

The next question is whether the present prosecution is under Act XII of 1882, which, no doubt, provides in section 11 the period within which a prosecution under the Act should be commenced. The complaint in this case does not allege that the prosecution is under that Act. If this be a case under the Bombay Salt Act II of 1890, the objection on the score of limitation fails. Even if Act XII of 1882 were held applicable to the present case, there being a finding that fraud was used in keeping the prosecution in ignorance of the offence committed, limitation would run only from the time of the discovery of the offence. The rules in the Limitation Act on this point apply to criminal cases; see *Guráchárya v. The President of the Belgaum Town Municipalities*⁽³⁾. The English law also recognises this principle. See *Brutton v. Vestry of St. George's, Hanover Square*⁽⁴⁾.

JARDINE, J.:—This being one of the rare instances of interference in revision with an interlocutory order, we confine our decision to the naked point of law argued. We are of opinion that a complaint of a criminal offence is not a suit or application within the meaning of section 18 of the Limitation Act of 1877: and that the peremptory terms of section 11 of Act XII of 1882

(1) I. L. R., 22 Cal., 131.

(2) I. L. R., 8 Bom., 529.

(3) I. L. R., 10 All., 350.

(4) L. R., 13 Eq., 339.

are not affected by that section. We return the case to the trying Magistrate for disposal according to law.

RÁNADE, J.:—This is an application for revision of an order passed in an interlocutory stage of an enquiry into a complaint made in respect of an offence under the Salt Act. The complaint was made more than six months after the alleged offence was committed, and the accused raised the defence that the prosecution was barred under section 11 of the General Salt Act XII of 1882, which laid down a period of six months within which all prosecutions under that Act should be instituted. The Magistrate overruled this plea, and held that the complaint was in time, as limitation only commenced to run from the time when the fraud was discovered and became known to the complainant, which was within six months previous to the complaint. The applicant before us contends that the Magistrate was in error in importing the general law of limitation into the consideration of a special law. As the point was one of some importance, we directed that notice should be issued to the District Magistrate with a view that he might instruct the Government Pleader to appear and support the order of the Magistrate. A preliminary objection was raised by the Government Pleader that as the proceedings before the Magistrate were still pending, this Court could not interfere with an order passed by the Magistrate in an interlocutory stage. The words used in section 435, Criminal Procedure Code, are, however, very general, and empower the High Court to send for the record of a case not only when it wishes to satisfy itself about the correctness of any finding, sentence or order, but also as to the regularity of any proceedings in Subordinate Courts. In *Abdool Kádir Khan v. The Magistrate of Purneah*⁽¹⁾ the High Court of Calcutta expressly ruled that it had jurisdiction to revise interlocutory orders. This power was again exercised by the same Court in respect of an illegal municipal prosecution—*Chandi Pershad v. Abdur Rahman*⁽²⁾. We follow these decisions and overrule this preliminary objection urged by the Government Pleader. As regards the principal question, how far the general provisions of the Limitation Act (XV of 1877)

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can be imported so as to extend the scope of the provision of a special law like the Salt Act, we feel satisfied that the view taken by the trying Magistrate is not correct. The only authority in our reports relied upon appears to be the decision of this Court in *Gurácharya v. The President of the Belgaum Town Municipality*⁽¹⁾; but it is not in point, as it related to a civil suit, and not to a criminal prosecution. Section 6 of Act XV of 1877 expressly relates to periods of limitation laid down for suits, appeals, or applications, and this last word has been interpreted in this place, as also in article 178, as referring only to civil applications—*Vithal Janárdhan v. Vithojiráo Putlajiráo*⁽²⁾; *Kylása Gounlan v. Ramasámi Ayyar*⁽³⁾; *In the matter of the petition of Ishan Chunder Roy*⁽⁴⁾. The same interpretation must be placed on the word “application” in section 18 of Act XV of 1877. The decisions which, therefore, relate to civil proceedings can have no application in the present case. In regard to these decisions themselves, it may be noted that they are not altogether in accord, but certain general principles may be gathered from them which have no bearing on criminal prosecutions. It appears, for instance, that under the older Acts XIV of 1859 and IX of 1871, the provisions of these general laws were held not to affect special or local laws—*Puran Chunder Ghose v. Mutty Lalí*⁽⁵⁾; *Syed Mohidin v. Hussen Sáheb*⁽⁶⁾. Since Act XV of 1877 was passed, this restriction is confined only to the particular period fixed by local or special laws; and the general provisions are held to apply to suits, &c., under local laws—*Gurácharya v. The President of the Belgaum Town Municipality*⁽⁷⁾; *Kullayáppa v. Lakshmiipathi*⁽⁸⁾; *Nijabutoolla and others v. Wazir Ali*⁽⁹⁾; *Erajabi v. Mayan*⁽¹⁰⁾; *Khetter Mohun v. Dinabashy*⁽¹¹⁾; *Behari Íoll Mookerji v. Mungolnáth Mookerji*⁽¹²⁾; *Golap Chand v. Krishto Chunder*⁽¹³⁾. Moreover, when a statute is complete by itself (such as the Registration Act or Bengal Rent Law) the general law of

(1) I. L. R., 8 Bom., 529.

(2) I. L. R., 6 Bom., 586.

(3) I. L. R., 4 Mad., 372.

(4) I. L. R., 6 Cal., 707.

(5) I. L. R., 4 Cal., 50.

(6) 8 Mad. H. C. Rep., 44.

(7) I. L. R., 8 Bom., 529.

(8) I. L. R., 12 Mad., 467.

(9) I. L. R., 8 Cal., 910.

(10) I. L. R., 9 Mad., 118.

(11) I. L. R., 10 Cal., 265.

(12) I. L. R., 5 Cal., 110.

(13) *Ibid.*, 314.

limitation, may not be read along with it, or be incorporated with it—*Veeramma v. Abbiah*⁽¹⁾; *Nagendra Nath v. Mathura Mohan*⁽²⁾. None of these principles have any relation to criminal proceedings. The principles on which rules of limitation are framed have no natural application to prosecutions which are, in theory at least, instituted by the Crown. The general law of limitation and its schedules are chiefly intended for civil matters. Of course for the greater protection of subjects certain periods are laid down in special laws for prosecutions to be instituted under them; but these special periods are not those which are contemplated by parts 2 and 3 of the general law. The Allahabad High Court has expressly ruled that rules of limitation are foreign to the administration of criminal justice, and that it is only by express statutory provisions that such rules can be made applicable to criminal proceedings—*Queen-Empress v. Ajudhia Singh*⁽³⁾. This ruling was passed in respect of the six months' limitation laid down in section 195 of the Criminal Procedure Code for sanctions to prosecute. The same reason applies to the provision of the Salt Act with which we are more immediately concerned.

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Holding these views, we feel satisfied that the Magistrate was in error in deciding that the prosecution in this case, being admittedly instituted more than six months after the alleged offence, was not barred by section 11 of Act XII of 1882.

We expressly limit our decision to the particular question of law raised before us. If the complainant can proceed under any other local or general law, this order will not interfere with his liberty of action.

*Case returned to the trying Magistrate
for disposal according to law.*

(1) I. L. R., 18 Mad., 99.

(2) I. L. R., 18 Cal., 368.

(3) I. L. R., 10 All., 350.