



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.10.2024

PRONOUNCED ON : 30.10.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.A.Nos.1224 & 1225 of 2024

Union of India represented by its
Inspector of Police,
National Investigation Agency,
No.10, Millers Road,
Purasaiwakkam, Chennai 600 010.
(RC.No.42/2022/NIA/DIL)

... Appellant
in both Crl.Appeals

Vs.

1.Abdul Razaak

... Respondent
in Crl.A.No.1224/2024

2.A.Kyzer

... Respondent
in Crl.A.No.1225/2024



CRL.A.Nos.1224 & 1225 of 2024

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Prayer in Crl.A.No.1224/2024: Criminal Appeal filed under Section 21 (4) of National Investigation Agency Act, 2008, to set aside the order passed by the Learned Special Judge for NIA Cases (Special Court for Bomb Blast Cases), Ponnammallee in Crl.M.P.No.1565 of 2023 dated 20.10.2023.

Prayer in Crl.A.No.1225/2024: Criminal Appeal filed under Section 21 (4) of National Investigation Agency Act, 2008, to set aside the order passed by the Learned Special Judge for NIA Cases (Special Court for Bomb Blast Cases), Ponnammallee in Crl.M.P.No.1566 of 2023 dated 20.10.2023.

For Appellant : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.R.Karthikeyan
Special Public Prosecutor
[For National Investigation Agency]
(in both Crl.As)

For Respondents : Mr.I.Abdul Basith
(in both Crl.As)



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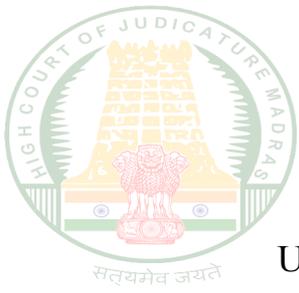
COMMON JUDGMENT

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S.M.SUBRAMANIAM, J.

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Under assail in the present criminal appeals are the order dated 20th October, 2023 passed in Crl.M.P.Nos.1565 and 1566 of 2023 in RC.No.42/2022/NIA /DLI.

I. BRIEF FACTS OF THE CASE:

2. The bail order was passed in favour of accused persons A15 and A18 respectively based on the order passed by this Court in the case of ***Barakathullah vs. National Investigation Agency***², dated 19.10.2023. The said judgment passed by the Division Bench of this Court was challenged before the Hon'ble Supreme Court of India by the National Investigation Agency and by judgment dated 22.05.2023 in CRL.A.Nos.2715 to 2719 of 2024, the Hon'ble Supreme Court was pleased to set aside the order of this Court dated 19.10.2023. As such, the order on the basis which the Trial Court has granted bail to the accused persons A15 and A18 herein were set aside by the Hon'ble Supreme Court subsequently. Thus, it necessitate the National Investigation Agency to prefer the present appeals with a delay. The reasons are stated to condone the delay in filing the criminal appeals falls beyond the control of the National Investigation Agency and therefore, the delay is to be condoned.

². CRL.A.Nos.98, 114 and 116 of 2023

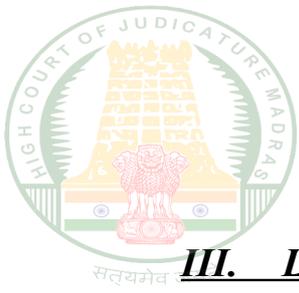


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II. BACKGROUND ON THE CRIMINAL APPEALS FILED:

3. The appellant is the Union of India represented by the Inspector of Police, National Investigation Agency (NIA), Chennai. The respondents are the accused persons A15 and A18. The respondents filed bail petitions under Section 439 of Criminal Procedure Code read with Section 43D of Unlawful Activities (Prevention) Act, 1967 [hereinafter referred as 'UA(P) Act']. The bail petitions were allowed on conditions. Aggrieved by the bail order, the National Investigation Agency preferred these criminal appeals under Section 21(5) of the National Investigation Agency Act, 2008 [hereinafter referred as 'NIA Act']. The appeals are numbered subject to maintainability, since there is a delay in filing the criminal appeals by the appellant.

4. The respondents raised a preliminary objection regarding maintainability, mainly on the ground that the limitation as prescribed under Section 21(5) of the NIA Act is applicable to the prosecution side and the present appeals filed beyond the period of limitation is not maintainable.



III. LIMITATION PRESCRIBED FOR APPEALS UNDER SECTION 21(5) OF THE NIA ACT AND THE ISSUES RAISED:

5. It is brought to the notice of this Court that with reference to preferring an appeal under Section 21(5) of the NIA Act, the delay in filing an appeal was condoned by this Court, if the appeal is preferred by an accused person. However, appeals filed by the prosecution is dismissed on the ground of delay, in view of ratio laid down in the case of *Buhari @ Kichan Buhari vs. State Represented by the Additional Deputy Superintendent of Police*¹.

6. Learned Additional Solicitor General of India appearing on behalf of the National Investigation Agency (NIA) would submit that the discrimination caused in the matter of preferring an appeal by the accused and the prosecution would result in serious consequences and cause prejudice to the interest of the 'State'. The period of limitation contemplated under Section 21(5) of the NIA Act is to be implemented in *stricto sensu*, since the High Court in the absence of challenging the constitutional validity of the provision cannot read down the provision by entertaining an appeal filed by

1. 2024-1-L.W.(CrI) 189



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the accused to condone the delay and reject the appeal, if any filed by the prosecution on the ground of delay. If at all the delay is to be condoned in respect of an appeal preferred by an accused, benefit is to be extended to the prosecution also.

7. The contradictions and creation of two classes of persons namely accused and prosecution for preferring an appeal resulted in miscarriage of justice as the prosecution alone is deprived of getting the delay condoned in the event of preferring an appeal beyond the period of limitation contemplated under Section 21(5) of the NIA Act.

8. In the context of the above differential approach in the matter of condoning delay by the High Court under Section 21(5) of the NIA Act, it became necessary to consider the issues elaborately.

9. The first question to be determined is, whether the period of limitation contemplated under Section 21(5) of the NIA Act can be interpreted differently, one in favour of the accused and another against the prosecution in preferring appeals?

10. Another question is, whether NIA Act confer powers on the High



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Court to condone the delay, if any delay in preferring an appeal under Section 21(5) of the NIA Act arises?

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11. The judgment relied on in ***Buhari @ Kichan Buhari's*** case cited *supra* provides the benefit of condonation only to the accused and not to the prosecution. The discrimination caused, whether legal or otherwise is to be examined with reference to the legal principles and the judgments on the subject.

12. The contention of the appellant is that there cannot be any discrimination between the accused and the prosecution in the matter of preferring an appeal under Section 21 of the NIA Act. Therefore, the judgment in ***Buhari @ Kichan Buhari's*** case cited *supra* is not a good law and *per incuriam* in the sense, it is running counter to the legal principles settled by the Hon'ble Supreme Court of India in dealing with the period of limitation prescribed under special enactments.

13. In ***Buhari @ Kichan Buhari's*** case cited *supra* two different criteria are fixed for condoning the delay for preferring an appeal, which necessitate this Court to consider the issues and to find out whether the said



judgment is *per incuriam* and running counter to the judgment of the Hon'ble Supreme Court of India in the matter of period of limitation contemplated for preferring appeals under special enactments.

IV. POINTS FOR CONSIDERATION:

14. Whether the criminal appeals filed beyond the period prescribed under Section 21(5) of the NIA Act is maintainable or not?

15. Section 21(5) of the NIA Act provides that “Every appeal under this Section shall be preferred within a period of 30 days from the date of judgment, sentence or order appealed from”.

(a) Provided that the High Court may entertain an appeal after the expiry of the said period of 30 days if its is satisfied that the appellant had sufficient cause for nor preferring the appeal within the period of 30 days.

(b) Provided further that, no appeal shall be entertained after the expiry of the period of 90 days.

16. Whether delay can be condoned by the High Court / the Appellate Court beyond the period of limitation as provided under Section 21(5) of the NIA Act and the considerations made by other High Courts across the



Country?

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17. Whether the judgment relied on by the appellant / prosecution in ***Buhari @ Kichan Buhari's*** case cited *supra* is a good law, *per incuriam* or running counter to the legal position settled by the Hon'ble Supreme Court of India, so that this Bench can independently arrive a conclusion regarding the issues raised to condone the delay, if any criminal appeal has been filed beyond the period of limitation as contemplated under Section 21(5) of NIA Act?

V. SECTION 29(2) OF LIMITATION ACT, 1963:

18. Section 29(2) of the Limitation Act, 1963 provides that where any special or local law prescribed 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 purposes of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, and the provisions contained in Sections 4 to 24 shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law.



WEB COPY19. As such, when a Special Law is in place and the right of appeal is conferred under the Special Law, and the period of limitation for filing such appeal is also provided under the special law, then it is only the said special that will govern. The provisions of the Limitation Act would not apply.

20. The issue with regard to Section 21(5) of NIA Act itself has come up for consideration before different High Courts. The Division Bench of the Kerala High Court in the case of *Nasir Ahamed vs. National Investigating Agency*³, has held the High Court does not have power to condone the delay beyond the condonable limit that has been provided under the proviso to Section 21(5).

21. The Calcutta High Court in a recent judgment in the case of *Sheikh Rahamtulla and Others vs. National Investigating Agency*⁴, has also taken the same view that delay beyond 90 days cannot be condoned and provisions of Section 21(5) of the Act will prevail and the provisions of the Limitation Act would not apply.

3. 2015 SCC Online Ker 39625

4. 2023 SCC Online Calcutta 493



22. The Division Bench of the Meghalaya High Court in the case of ***Wallam Jingsuk Barim vs. Union of India***⁵, has held that Section 21(5) and the proviso will be a bar for condonation of delay beyond the period contemplated under the proviso.

VI. CONTRA JUDGMENTS:

23. However, the Division Bench of the Delhi High Court in the case of ***Farhan Shaikh vs. The State (National Investigating Agency)***⁶, has held that petition for condonation of delay beyond the period contemplated under the proviso is maintainable and has condoned the delay of 314 days in filing the appeal and 44 days in representation of the appeal.

24. The Division Bench of this Court in ***Buhari @ Kichan Buhari's*** case cited *supra* has held that the word 'shall' in Section 21(5) should be read as 'may' and hence it should be held to be a directory provision and not a mandatory provision. It was further held that filing of appeals against bail and conviction should be treated differently as it involves the right to life and liberty of the individual guaranteed under Article 21 of the Constitution.

5. 2024 SCC Online Megh 72

6. 2019 SCC Online Del 9158



WEB COPY 25. Thus, there are two different views expressed by different High Courts on the above matter.

VII. LEGAL POSITION IN RESPECT OF THE ISSUE RAISED IN THE PRESENT CASE:

26. In *Nasir Ahammed's* case cited *supra*, the High Court of Kerala considered the very same issue and held as follows;

“1. The question involved in this Criminal Appeal (unnumbered) is whether an appeal under S. 21 of the National Investigation Agency Act, 2008 (hereinafter referred to as the “NIA Act”) can be validly filed before the High Court after the expiry of the period of ninety days from the date of judgment, sentence or order appealed from and whether the High Court can condone the delay in filing the appeal under S. 5 of the Limitation Act.

.....

.....

20. In *Consolidated Engg. Enterprises v. Irrigation Department*, ((2008) 7 SCC 169), a three Judges Bench considered S. 34(3) of the Arbitration and Conciliation Act, 1996 and held thus:

“20 When any special statute prescribes certain period of limitation as well as provision for extension up



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to specified time limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of S. 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of S. 5 of the Limitation Act would not be applicable because the applicability of S. 5 of the Limitation Act stands excluded because of the provisions of S. 29(2) of the Limitation Act.”

.....
.....

22. The N.I.A. Act is an Act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto. The superintendence of the N.I.A. shall vest in the Central Government, as provided in S. 4 of the N.I.A. Act. S. 6 provides for investigation of scheduled offences. S. 7 provides that the N.I.A. may request the State Government to associate itself with the investigation. S. 9 mandates that the State Government shall extend all assistance and co-operation to the Agency for investigation of the scheduled offences. Special courts



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are constituted under S. 11 for the trial of scheduled offences. S. 15 of the N.I.A. Act provides for appointment of Public Prosecutors and Additional Public Prosecutors. S. 16 provides for the procedure and powers of Special Courts. S. 19 of the N.I.A. Act states that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance. Sub-section (2) of S. 21 states that every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal. The scope of the provisos to sub-section (5) of S. 21 of the N.I.A. Act has to be considered in the light of the other provisions in the Act. The period of limitation provided under sub-section (5) of S. 21 is thirty days. The first proviso to sub-section (5) empowers the High Court to entertain an appeal after the expiry of thirty days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the period of thirty days. The second proviso provides that no appeal shall be entertained after the expiry of the period of ninety days. The first proviso



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to sub-section (5) of S. 21 itself deals with condonation of delay in filing appeal and the delay up to sixty days (ninety days from the date of order) can be condoned by the High Court. By making a restriction that no appeal shall be entertained after the expiry of the period of ninety days, the application of S. 5 of the Limitation Act is expressly excluded. The High Court has jurisdiction to condone the delay in filing the appeal. But that power is restricted under the first proviso to sub-section (5) of S. 21. A further restriction in the second proviso is a clear indication that the High Court cannot exercise the power under S. 5 of the Limitation Act to condone the delay. To that extent, it amounts to an express exclusion of S. 5 of the Limitation Act as contemplated under S. 29(2) of the Limitation Act. For the aforesaid reasons, we are of the view that the application for condonation of delay is not maintainable. Accordingly, the application for condonation of delay as well as the Criminal, Appeal are dismissed as not maintainable.”

27. In *Sheikh Rahamtulla's* case cited *supra*, the High Court of Calcutta also considered the same issue relating to condonation of delay beyond 90 days as contemplated under Section 21(5) of the NIA Act.



28. The High Court of Calcutta has considered all the judgments for and against including the judgment of Kerala High Court in *Nasir Ahammed's* case cited *supra* and the judgment in *Farhan Shaikh's* case in paragraphs 14 and 15. The judgments considered by the Calcutta High Court are elaborately discussed as under;

“14. Mr.Sharma submits that the application of Section 5 of the Limitation Act to the present situation is excluded on the plain reading of Section 21(5) of the NIA Act. The power of the Court to condone delay by resort to Section 5 of the Limitation Act is curtailed in its scope, and the said power cannot be exercised to condone delay beyond 60 days.

15. Mr.Sharma relies on *Nasir Ahammed v. National Investigation Agency*, 2016 Cri LJ 1101, wherein, a Division Bench of the Kerala High Court has held that the restriction imposed by the 2nd proviso to section 21(5) of the NIA Act is a clear indication that the High Court cannot resort to the power under section 5 of the [Limitation Act, 1963](#) to condone the delay in filing an appeal under the NIA Act beyond the period of 60 days.

16. He also relies upon *Gopal Sardar v. Karuna Sardar*, (2004) 4 SCC 252. In this case, the Supreme Court considered whether Section 5 of the Limitation Act was applicable to an application made under



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Section 8 of the West Bengal Land Reforms Act, 1955. Section 8 of the said Act vested a right of pre-emption, which was sought to be enforced belatedly by moving an application under Section 5 of the Limitation Act. The Supreme Court held that the said Act was a self contained code in relation to enforcement of rights of pre-emption. It held that an application for enforcement of rights of pre-emption under Section 8 of the Act is in the nature of a suit. Consequently, Section 5 of the Limitation Act was held to be not attracted to proceedings initiated under Section 8 of the said Act. The Supreme Court held that Section 8 of the said Act does not speak of application of Section 5 of the Limitation Act, or its principles. It held that the legislature had consciously and expressly made Section 5 of the Limitation Act, or its principles, applicable to other proceedings under the Act - such as appeal or a revision, etc., but the same had not been made applicable to initiation of proceedings under Section 8 of the Act. Consequently, it necessarily follows that the legislature did not intend to give benefit of Section 5 of the Limitation Act to a proceeding under Section 8, having regard to the nature of right of pre-emption, which is considered a weak right. The Supreme Court also held that the right of pre-emption must be exercised within the period specified under Section 8 of the Act, so that the rights of purchasers of land are not eclipsed for a long time.”



WEB COPY 29. After considering the judgments for and against as narrated above the Calcutta further considered, the principles as under;

“39. The Supreme Court went on to observe:

“51.....*Maybe, many of the appeals after fuller examination by this Court may fail. **But the minimum processual price of deprivation of precious life or prolonged loss of liberty is a single comprehensive appeal. To be peeved by this need is to offend against the fair play of the Constitution. The horizon of human rights jurisprudence after Maneka Gandhi case (supra) has many hues.***”

40. Mr. Aggarwal also relies on *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528. In this decision the Supreme Court observed:

“12... *Right to appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a fundamental right. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition*”



30. In paragraphs 49, 50 and 51, the Calcutta High Court considered the spirit of Section 21 of the NIA Act and reads as under;

49. The Supreme Court held that the time limit of 60 days laid down in Section 417(4) of the Code is a special law of limitation, and it did not find anything in the said special law, which expressly excludes the applicability of Section 5. It observed:

“.....It is true that the language of subsection (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for 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. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order



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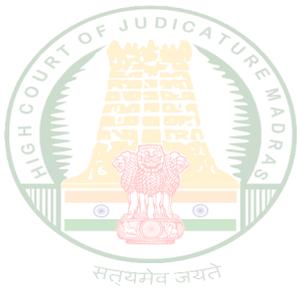
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of acquittal is filed after the coming into force of the [Limitation Act, 1963](#), [Section 5](#) would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in subsection (4) of [Section 417](#), the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it...”

50. Mr. Aggarwal submits that the aforesaid decision has been followed by this Court in *Saj Properties Pvt. Ltd. v. Virender*, [2015 Cri LJ 2772](#).

51. Mr. Aggarwal submits that the objects and reasons, as well as the debates undertaken at the time of the introduction of the NIA Act in the Parliament, shows that the mandatory/strict construction of the second Proviso to [Section 21\(5\)](#) of that Act has no nexus to the objects and reasons of the NIA Act. It is argued that the consequences which flow for the accused/convict from the applicability of the NIA Act, being serious, second Proviso to [Section 21\(5\)](#) of the NIA Act calls for liberal interpretation so as to subserve [Article 21](#) of the [Constitution of India](#).

52. Mr. Aggarwal further submits that the full bench of Allahabad High Court in *In Re Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015*, WP (Crl.) 8/2018 decided on



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10.10.2018, has struck down an identical provision i.e., Section 14A(3) of the [Scheduled Castes and the Scheduled tribes \(Prevention of Atrocities\) Act, 1989](#) as being unconstitutional. The period of limitation to file an appeal under Section 14A(3) of the SC/ST (Prevention of Atrocities) Amendment Act, 2015, (hereinafter referred to as the SC/ST Act) is ninety days. The first proviso to section 14A(3) empowers the High Court to entertain an appeal after the expiry of ninety days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the period of ninety days. The second proviso provides that no appeal shall be entertained after the expiry of 180 days. He submits that section 21(5) of the NIA Act and section 14A(3) of the SC/ST Act are *para materia*. He submits that like section 14A(3) of the SC/ST Act, the 2nd proviso of section 21(5) also impinges on the right of first appeal, which has been recognised to be an integral facet of fair procedure enshrined in Article 21 of the [Constitution](#). Thus, to save Section 21(5) of the NIA Act from being declared ultra vires the [Constitution of India](#), this Court must read down and interpret the said provision as directory and, as not creating a bar on the power of the Court to condone the delay in filing of an appeal under NIA Act, if sufficient cause is shown.

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68. When one examines the issue - as to whether Section 5 of the Limitation Act can be invoked while belatedly preferring an appeal under Section 21 of the NIA Act, in the context that the right of appeal of an accused/convict is a substantive right; is a facet of right of fair trial and substantive due procedure, and; is a right which is protected by Article 21 of the [Constitution](#), the only conclusion that we can draw is that application of Section 5 of the Limitation Act to Section 21(5) of the NIA Act cannot be excluded.

69. Our view is strengthened by the decision of the Supreme Court in *Mangu Ram* (supra). Pertinently, *Mangu Ram* (supra) was a case where the application to seek Special Leave of Appeal against a judgement of acquittal passed by the learned Judicial Magistrate was filed belatedly with an application under Section 5 of the Limitation Act. The Supreme Court rejected the argument that the time limit of 60 days prescribed under Sub Section (4) of Section 417 of the Code for preferring an application to seek Special Leave under Sub Section (3) of the said Section was mandatory, even though, the provision was couched in a mandatory language - like in the present case. Thus, even in respect of an order or judgement of acquittal, the Supreme Court held that the application to seek Special Leave, even if filed belatedly, could be entertained with an application under Section 5 of the Limitation Act.



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70. Here, we are dealing with the right of an accused/convict, whose personal liberty stands curtailed by the conviction and the impugned order on sentence passed by the Special Court. In our view, it would lead to travesty of justice if the appellant's substantive appeal is not heard on merits, and is rejected at the threshold only on account of bar of limitation prescribed under Section 21(5) of the Act, particularly, when he has moved the application under Section 5 of the Limitation Act.

71. We must now consider the two decisions - one relied upon by Mr. Sharma in the case of *Nasir Ahammed* (supra) and the other relied upon by Mr. Aggarwal in *In Re Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015* (supra).”

31. Finally, the Kerala High Court arrived at a conclusion that “An appeal sought to be filed after expiry of the period of 90 days from the date of the judgment or order or sentence under Section 21 of the NIA Act cannot be entertained. The period of 90 days from the date of judgment or order or sentence has to be calculated on the principles analogous to Section 12 of the Limitation Act, 1963”.



32. The Calcutta High Court considered all the judgments of various High Courts including the judgments delivered by Kerala High Court and Delhi High Court.

33. Pertinently, the Three Judges Bench of the Hon'ble Supreme Court of India in the case of *Arup Bhuyan vs. State of Assam and Another*⁷, considered the legal principles, more specifically, the Hon'ble Supreme Court considered the correctness of the decisions of the Apex Court in the case of *State of Kerala vs. Raneef*⁸, *Arup Bhuyan's* case cited *supra* and *Indra Das vs. State of Assam*⁹. While considering the correctness of the decision of the Hon'ble Supreme Court in the above said three cases, the Hon'ble Three Judges Bench of the Hon'ble Supreme Court ruled as follows;

“59. Now so far as the reading down of Section 10(a)(i) of the UAPA, 1967 by this Court in the case of Arup Bhuyan (supra) is concerned, at the outset it is required to be noted that such reading down of the provision of a statute could not have been made without hearing the Union of India and/or without giving any opportunity to the Union of India.

60. When any provision of Parliamentary

7. (2023) 8 SCC 745

8. (2011) 1 SCC 784

9. (2011) 3 SCC 380



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legislation is read down in the absence of Union of India it is likely to cause enormous harm to the interest of the State. If the opportunity would have been given to the Union of India to put forward its case on the provisions of [Section 10\(a\)\(i\)](#) of the UAPA, 1967, the Union of India would have made submissions in favour of [Section 10\(a\)\(i\)](#) of the UAPA including the object and purpose for enactment of such a provision and even the object and purpose of UAPA. The submission made by Shri Parikh, learned Senior Counsel relying upon the decision of this Court in the case of Sanjeev Coke (supra) that it is ultimately for the Court to interpret and read down the provision to save any provision from declaring as unconstitutional is concerned, it is true that it is ultimately for the Court to interpret the law and/or particular statute. However, the question is not the power of the Courts. The question is whether can it be done without hearing the Union of India?

61. Even otherwise in absence of any challenge to the constitutional validity of [Section 10\(a\)\(i\)](#) of the UAPA there was no question of reading down of the said provision by this Court. Therefore, in absence of any challenge to the constitutional validity of [Section 10\(a\)\(i\)](#) of UAPA, 1967 there was no occasion for this Court to read down the said provision.

62. Even otherwise as observed and held by this Court in the case of [Subramanian Swamy and others vs. Raju](#) through Member, Juvenile Justice Board and Anr.,



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(2014) 8 SCC 390 reading down the provision of a statute cannot be resorted to when the meaning of a provision is plain and unambiguous and the legislative intent is clear. This Court has thereafter laid down the fundamental principle of “reading down doctrine” as under: (SCC p.420, para61)

“64.Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. At the cost of repetition, it is observed that reading down a particular statute even to save it from unconstitutionality is not permissible unless and until the constitutional validity of such provision is under challenge and the opportunity is given to the Union of India to defend a particular parliamentary statute”.

63. In view of the above in all the aforesaid three decisions, this Court ought not to have read down [Section 10\(a\)\(i\)](#) of the UAPA, 1967 more particularly when neither the constitutional validity of [Section 10\(a\)\(i\)](#) of the UAPA, 1967 was under challenge nor the Union of India was heard.”

34. The legal principles settled by the Three Judges Bench of the Hon'ble Supreme Court of India in *Arup Bhuyan's* case cited *supra* and *Indra Das's* case cited *supra* would be binding on all Courts across the Country. It



is needless to state that any judgment of any High Court running counter to the principles settled by the Hon'ble Supreme Court of India, denuded to lose its status as precedent including the judgment now relied on by the respondent in ***Buhari @ Kichan Buhari's*** case cited *supra*.

(A) SPIRIT OF THE RULINGS:

35. Let us now understand the spirit of the rulings made by the Hon'ble Apex Court in ***Arup Bhuyan's*** case cited *supra*. The Hon'ble Supreme Court while considering the correctness of its own earlier decision formed an opinion that “it is required to be noted that reading down of the provision of a Statute could not have been made without hearing the Union of India and / or without giving any opportunity to the Union of India”.

36. In paragraph 60 the likelihood of causing enormous harm to the interest of the State is also considered.

37. In paragraph 61, the Hon'ble Supreme Court said that in the absence of any challenge to the constitutional validity of Section 10(a)(i) of the UA(P) Act there was no question of reading down of the said provision by this Court. Therefore, in the absence of any challenge to the constitutional



validity of Section 10(a)(i) of the UA(P) Act there was no occasion for the Court to read down the provision.

38. In the case of *Subramanian Swamy vs. Raju*¹⁰, the Hon'ble Apex Court held that “reading down the provision of a statute cannot be restored to when the meaning of a provision is plain and unambiguous and the legislative intent is clear”.

39. The Hon'ble Supreme Court laid down the fundamental principles of “reading down doctrine” as under;

“64.Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. At the cost of repetition, it is observed that reading down a particular statute even to save it from unconstitutionality is not permissible unless and until the constitutional validity of such provision is under challenge and the opportunity is given to the

10. (2014) 8 SCC 390



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Union of India to defend a particular parliamentary statute”.

Therefore, reading down the doctrine is now settled by the Hon'ble Supreme Court and it is permissible only if the constitutional validity of a particular provision is under challenge in any proceedings.

VIII. ANALYSIS:

40. National Investigation Agency Act, 2008 is a special enactment, enacted by the Parliament to deal with serious offences involving the sovereignty and security of the Nation and the citizens. It deals with the offences punishable under the Unlawful Activities (Prevention) Act, 1967 relating to serious crime such as terrorist organisation, or act of terrorism, etc. The Parliament in its wisdom thought that normal procedure and normal rights as available under the general law would be insufficient to handle the situation so as to ensure sovereignty and security of the Nation and the citizens are protected through special enactments. Special enactment will prevail over general law.



(A) RIGHT TO APPEAL:

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41. There is no inherent right for any citizen to prefer an appeal before the Appellate Forum. Right to appeal is created through an enactment. Such right is to be conferred by a Statute. In the absence of any such right conferred under the Statute, no right of appeal would arise. When right to appeal is a Statutory Right, it cannot be construed as an inherent right. Consequently, such right of appeal would be available in accordance with the conditions stipulated for preferring an appeal including the period of limitation contemplated.

42. Under NIA Act, right of appeal is created as conferred under Section 21 of the Act.

43. Sub Section (2) to Section 21 stipulates “Every appeal under Sub-Section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal”.

44. Sub Section (5) to Section 21 stipulates “Every appeal under this Section shall be preferred within a period of thirty days from the date of the



judgment, sentence or order appealed from”.

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(a) Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days

(b) Provided further that no appeal shall be entertained after the expiry of period of ninety days.

45. The negative that is prescribed under the second proviso would control the first proviso. As such any appeal, it to be preferred after the period of 30 days provided for such appeal, cannot be entertained beyond the period of 90 days. As such, reading Section 21(5) of the Act together with the two provisos, it is clear that the intention of the Parliament is that the period of limitation prescribed therein is mandatory and not directory.

46. The holistic reading of all the Sub Sections to Section 21 would amplify the legislative intention and the power conferred to regulate preferring an appeal including the period of limitation and period for disposal of such appeals. Sub Section (2) to Section 21 prescribe three months for the disposal of appeal from the date of admission. First proviso in Sub Section (5) to Section 21 stipulates that High Court can condone the delay and



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entertain appeal within a period of 90 days. The second proviso unambiguously stipulates that no appeal shall be entertained after the expiry of period of 90 days. Therefore, the provision is crystal clear and the intention of the Parliament is explicit and unambiguous. The Scope for further interpretation of the said provision is not made available on account of the clarity explicitly made under Section 21 of the NIA Act in entirety. Reading down the said provision in the absence of challenge would not arise at all. In the event of reading down the provision it will result in an anomalous situation and there is a possibility of taking two different opinions on different circumstances, which will result in inconsistency leading to miscarriage of justice.

47. As far as the case relied on i.e., ***Buhari @ Kichan Buhari's*** case cited *supra*, the Division Bench of the Madras High Court held that delay is condonable, if any appeal has been preferred by an accused, but not condonable, if any appeal is filed by National Investigation Agency / prosecution. Such an interpretation is impossible and there cannot be two different interpretation as the period of limitation as contemplated under Section 21(5) of the NIA Act, one for the accused person and another for



National Investigation Agency (NIA).

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(B) NO VIOLATION OF ARTICLE 21 OF THE CONSTITUTION:

48. One of the arguments advanced by the respondents in the present case on hand is that the Division Bench in ***Buhari @ Kichan Buhari's*** case cited *supra* considered the personal liberty ensured under Article 21 of the Constitution of India. Therefore, there cannot be law of limitation and delay is to be condoned.

49. In this context, Article 21 of the Constitution only provides that no person shall be deprived of his life and liberty otherwise than by due procedure of law. NIA Act is a code in itself. It contemplates offences, mechanism for prosecution and also the procedures to be followed. When all such procedures and processes are created through a Statute enacted by the Parliament, the life and liberty is not taken away otherwise by the Authority of Law.

50. Question of invoking Article 21 of the Constitution in the presence of a special enactment to deal with offences would not arise at all. The provision is not under challenge, therefore, High Court while exercising its



jurisdiction as an Appellate Forum conferred on it by the Act of Parliament, cannot read down the provision in the absence of any challenge regarding the constitutionality of the said provision. When the Parliament itself has conferred the appellate jurisdiction to the High Court under the special enactment, the High Court is not expected to expand the scope of jurisdiction, while acting as an Appellate Forum.

(C) OTHER ENACTMENTS AND CONDONATION OF DELAY:

51. There are several other enactments in which provisions for condonation of delay and the limit of number of days up to which the delay can be condoned has been prescribed. The said provisions are considered and held to be mandatory by the Courts.

52. In the case of *Union of India vs. Popular Construction Company*¹¹, the Hon'ble Supreme Court of India has held that the time limit that has been prescribed under Section 34(3) and proviso of the Arbitration and Conciliation Act, 1996 is mandatory and no petition for setting aside of the Arbitral Award can be filed beyond the time that is permitted therein and Section 29(2) of the Limitation Act would bar the application of the

11. 2001 (8) SCC 470



provisions of the Limitation Act.

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53. In the case of *Commissioner of Customs and Central Excise vs. Hongo India Private Limited*¹². The Hon'ble Supreme Court, while considering the limitation for filing appeals under Section 35(H) of the Central Excise Act has held that the High Court has no power to condone the delay beyond period specified in Section 35(H) of the Act and Section 29(2) of the Limitation Act would bar the application of Section 5 of the Limitation Act for condoning the delay beyond the said period.

54. In the case of *Chhattishgarh State Electricity Board vs. Central Electricity Regulatory Commission and Others*¹³, the same principle has been applied by the Hon'ble Supreme Court, while dealing with the appeals under the Electricity Act 2003.

55. The Telangana High Court in I.A.No.1of 2024 in Crl.A.No.421 of 2024 and I.A.No.1 of 2024 in Crl.A.No. 425 of 2024 has held that the delay can be condoned beyond the period, if sufficient cause is shown. But, however, has held that the power of condonation of delay should be applied

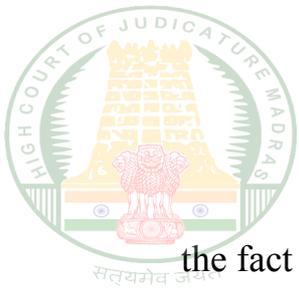
12. 2009 (5) SCC 791

13. 2010 (5) SCC 23



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equally, both for the citizen as well as the agency. The Telangana High Court proceeded on the basis that the provisions in Section 14(A)(iii) of the SCST (Prevention of Atrocities) Act, 1989 which contains a similar provision for condonation of delay and fixing the maximum period for such condonation is stricter than the provision contained in NIA Act and therefore, the judgments under the SCST Act would not be applicable and therefore, Section 21(5) can be considered liberally. The said reasoning is with all due respects contrary to law as (i) NIA Act is a special legislation; (ii) Even in Section 21(5), Section 21(1) uses the word notwithstanding anything contained in the code an appeal shall lie from any judgment, sentence or order, not being an interlocutory order of a Special Court to the High Court both on facts and on law. Section 21(4) of the Act also uses the word 'notwithstanding', while saying notwithstanding anything contained in Sub-Section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail, Section 21(5) provides that every appeal under this section shall be preferred within a period of 30 days from the date of judgment, sentence or order appealed from and contains two provisos. Therefore, reading Section 21(1), 21(4) and 21(5), the Parliament has made it clear that **the non obstante** clause here will be applicable despite



the fact that it is different from the other enactments.

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56. The consideration and the deliberations made by us with reference to the judgments discussed above, the legal principles settled are that in the absence of challenge to the constitutional validity of a provision, High Court cannot read down the provision. The holistic reading of Section 21 is crystal clear that the period of limitation is prescribed not only for entertaining an appeal under Section 21(5) of the NIA Act, but also for disposal of the appeal under Sub Section (2) within a period of three months from the date of admission of the appeal. Appeal to the High Court itself is a creation of Statute. High Court is acting as an Appellate Forum under Section 21 of the NIA Act. Sub Section (5) first proviso states that High Court may entertain an appeal after expiry of the period of 30 days if sufficient cause for not preferring an appeal within a period of 30 days is provided. Second proviso to Sub Section (5) stipulates that no appeal shall be entertained after the expiry of the period of 90 days.

57. Since negative provision has been enacted by the Parliament not to entertain any appeal after the expiry of period of 90 days, there is no ambiguity or doubt on the intention of the Parliament. When the intention of



the Parliament is explicitly projected in the proviso Clause to Sub Section (5) to Section 21, it is unnecessary for the High Court to traverse beyond the scope of the provisions, since the High Court cannot read down the provision which would not only run counter to the legislative intention but would result in inconsistency in entertaining criminal appeals under Section 21 of the NIA Act.

58. In respect of the judgment of Division Bench of this Court in ***Buhari @ Kichan Buhari's*** case cited *supra*, it is held that delay under Section 21(5) of the NIA Act is condonable only if any appeal is filed by an accused and uncondonable, if such an appeal has been preferred by the National Investigation Agency.

59. In paragraph 23 of the Division Bench of this Court held that the provision under Section 21 is the procedural law has the effect of extinguishing a fundamental right, we may read down the provision. Accordingly, the Division Bench has taken a view that second proviso to Section 21(5) of the NIA Act, has to be read down, and the word 'shall', shall be read as 'may' in respect of appeals, which, if not entertained would amount to a violation of a fundamental right. The appeal challenging the judgment of



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conviction and the appeal challenging rejection of bail, in our view, are filed in exercise of one's fundamental right. The other appeal that we can think of which would involve the fundamental right of an accused is against an order cancelling his bail. Therefore, in those types of appeals, which are filed with a delay, the word 'shall', shall be read as 'may'.

60. Plain reading of the decision arrived by the Division Bench of this Court in *Buhari @ Kichan Buhari's* case cited *supra* would reveal that Section 21(5) has been read down to the extent that the word shall in a provision shall be read as 'may'.

61. The Division Bench opined that appeal after 90 days if any filed by the National Investigation Agency for cancellation of the period is not entertainable, if it is filed beyond the period of limitation contemplated under Section 21(5) of NIA Act.

62. Since the Three Judges Bench of the Hon'ble Supreme Court of India in *Arup Bhuyan's* case cited *supra* ruled that “reading down doctrine cannot be resorted to when the meaning of the provision is plain and unambiguous and the legislative intend is clear”. Further it is held



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that “reading down of the provision of a Statute without hearing the Union of India and / or without giving any opportunity to the Union of India”.

63. In the absence of challenging the constitutional validity of any provision of an enactment, Courts cannot read down the provision differently than that of the language employed in the particular provision. Courts are expected to read the provision as it is and on the intention of the legislature. Section 21(5) of the NIA Act is unambiguous and the intention of the Parliament is also explicit. There is no further scope to expand the interpretation in the matter of preferring an appeal and to condone the delay under Section 21(5) of the NIA Act. Courts creating distinction between appellant under Section 21(5) of the NIA Act for condoning the delay in preferring an appeal, would absolutely fall beyond the realm of the rule of interpretation. Parliament intended and prescribed limitation expressly under the enactment. Reading down the provision will defeat the legislative intention in the absence of challenge regarding the constitutional validity of the said provision.



IX. CONCLUSION:

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64. Thus, we have no hesitation in arriving at a conclusion that the judgment of this Court in ***Buhari @ Kichan Buhari's*** case cited *supra* is not a good law and running counter to the legal principles settled by the Three Judges Bench of the Hon'ble Supreme Court of India in ***Arup Bhuyan's*** case cited *supra*. Thus, the judgment in ***Buhari @ Kichan Buhari's*** case denuded to lose its status as precedent in the matter of condoning the delay in preferring appeals under Section 21(5) of the NIA Act. Further, the High Court is not empowered to condone the delay beyond the permissible limit contemplated under Section 21(5) of the NIA Act.

65. Accordingly, we hold that the High Court is not empowered to condone the delay beyond the permissible limit contemplated under Section 21(5) of the National Investigation Agency Act, 2008. Consequently, the Criminal Appeals on hand stand dismissed on the ground of limitation. However, dismissal of the present criminal appeals under Section 21(5) of the NIA Act would not be a bar for an aggrieved person to approach the Trial Court, if it is otherwise permissible under law.



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Index : Yes
Speaking order
Neutral Citation : Yes

To

- 1.The District and Sessions Judge,
Special Court under the National Investigation Agency Act, 2008,
Sessions Court for Exclusive Trial of Bomb Blast/POTA Cases,
Poonamallee, Chennai.
- 2.The Special Public Prosecutor,
High Court of Madras,
Chennai – 600 104.



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[S.M.S., J.] [V.S.G., J.]
30.10.2024
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S.M.SUBRAMANIAM, J.
and
V.SIVAGNANAM, J.

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30.10.2024
(1/2)