

**(1990) 02 OHC CK 0034**

**Orissa High Court**

**Case No:** Miscellaneous Case No. 708 of 1989 in Criminal Miscellaneous Case No. 412 of 1989

Town Surveyer

APPELLANT

Vs

Smt. Arnapurna Patra alias  
Anusuya Patro

RESPONDENT

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**Date of Decision:** Feb. 14, 1990

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 378(4), 378(5)
- Orissa Municipal Act, 1950 - Section 347
- Prevention of Food Adulteration Act, 1954 - Section 16, 7

**Citation:** (1990) 69 CLT 670

**Hon'ble Judges:** V. Gopalaswamy, J

**Bench:** Single Bench

**Advocate:** N.K. Misra, for the Appellant; A.S. Naidu, P. Mohanty, A.K. Rath and P.K. Mohapatra, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

V. Gopalaswamy, J.

The above Misc. Case arises out of Criminal Misc. Case No. 442 of 1989, an application under Sub-sections (4) and (5) of Section 378 of the Code of Criminal Procedure for granting special leave to appeal from the order of acquittal passed by the Judicial Magistrate, Second Class, Berhampur, in 3(a) C. C. No. 316 of 1986, filed by the Town Surveyer authorised by the Executive, Berhampur Municipality, against Smt. Arnapurna Patra alleging that she committed an offence u/s 385-A of the Orissa Municipal Act. According to the complainant-Petitioner the special leave application ought to have been filed on 6-5-1989 (Saturday), but it was filed on 8-5-1989 and as there was delay of two days, he filed the present Misc. Case u/s 5 of the Limitation Act for condoning the delay.

2. The learned Counsel for the opposite party contended, that the assertion of the Petitioner that there was a delay of only two days in filing the special leave application is based on the erroneous assumption that the period of limitation is six months, whereas the period of limitation available to the Petitioner is only sixty days as the complainant in this case is not a public servant and therefore, as the special leave application is filed after inordinate delay, the same is liable to be dismissed.

3. The Town Surveyer authorised by the Executive Officer, Berhampur Municipality, is the complainant and it is he who filed the special leave application. Sub-section (5) of Section 378, Code of Criminal Procedure provides:

( 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.

From the above quoted provision it is clear that when a complainant is a public servant the period of limitation is six months and in every other case the period of limitation is sixty days.

4. That the Town Surveyer is a public servant is not disputed by the learned Counsel for the opposite party. But his contention is that though the Town Surveyer filed the complaint, the Berhampur Municipality must be deemed to be the complainant and as a local authority it cannot have the benefit of the extended period of six months which is allowed only to a public servant. In this context he relied on [Municipal Corporation of Delhi Vs. Jagdish Lal and Another](#), , and *Municipal Corporation of Delhi v. Amrit Lal*, 1982 Cri. L.J. 422 (Delhi High Court).

5. In the above referred Supreme Court case of Jagdish Lal the prosecution was u/s 20 of the Prevention of Food Adulteration Act (P. F. A. Act, for short) for an offence committed within the Delhi Municipal Corporation area. u/s 20 the complaint can be filed either by the Municipal Corporation or by a person authorised by it in that behalf by a general or special order. The relevant facts in that case are Shri S. S. Mathur, Municipal Prosecutor of the Delhi Municipal Corporation, filed a complaint in the Court of the Magistrate, First Class, against the Respondent Jagdish Lal u/s 7 read with Section 16 of the P. F. A. Act. The learned Magistrate acquitted the responde it. The Delhi Municipal Corporation made an application for special leave to appeal against the order of acquittal and the same was granted. The preliminary objection of the Respondent that as Shri S. S. Mathur was the complainant, the appeal could not be filed by the Delhi Municipal Corporation was upheld by the High Court and the appeal was dismissed. Hence the matter came up before the Supreme Court on appeal by the Delhi Municipal Corporation. The Supreme Court held that in filing the complaint Shri Mathur was not acting on his own personal behalf but was acting as an agent authorised by the Delhi Municipal Corporation to file the complaint and it must, therefore, be deemed in the contemplation of law

that the Delhi Municipal Corporation was the complainant in the case. Hence holding that the application for special leave and the appeal petition were properly instituted by the Delhi Municipal Corporation allowed the appeal.

6. The question which was decided in the above referred Supreme Court case (A. I. R. 1970 Supreme Court 7) arose out of the provisions of Section 30 of the P. F. A. Act, whereunder the prosecution for the offence may be instituted either (a) by the Central Government or the State Government or a local authority or (b) a person authorised in that behalf by general or special order by the Central or the State Government or a local authority. But in the present case we are concerned with the provisions of the Orissa Municipal Act (hereinafter referred to as "the Act"). Section 347 of the Act provides:

347. Persons empowered to prosecute ; - Save as otherwise expressly provided in this Act, no person shall be tried for any offence against the provisions of this Act, or of any rule, regulation or bye-laws made under it, unless a complaint is made by the police or the Executive Officer of a municipal council, or by a person expressly authorised in this behalf by the municipal council or its Executive Officer, within three months of the commission of the offence, but nothing herein shall affect the provisions of the Code of Criminal Procedure, 1898, in regard to the power of certain Magistrates to take cognizance of offences upon information received or upon their own knowledge or suspicion; On a reading of the above quoted provisions it is seen that the Executive Officer or a person expressly authorised by him can file a complaint case against a person for any offence committed by him under the provisions of the Act. So the Town Surveyer authorised by the Executive Officer was entitled to file the complaint case for prosecuting the opposite party u/s 385-A of the Act and likewise he is the competent person to prefer the appeal and pray for special leave. As he is admittedly a public servant the benefit of the extended period of limitation of six months is available to him. So the decision of the Supreme Court in Municipal Corporation of Delhi v. Jagdish Lal (supra) is not applicable to the facts of the present case.

7. Municipal Corporation of Delhi v. Amrit Lal (supra) cited by the learned Counsel for the opposite party is also a case wherein complaint was filed by the Municipal Prosecutor on behalf of the Municipal Corporation for an offence committed under the P. F. A. Act. On acquittal when an appeal was preferred, the Division Bench of the Delhi High Court held that the Delhi Corporation was the complainant in the contemplation of law and as it is not a public servant the period of limitation was only sixty days. In this case Delhi Development Authority v. Punjab National Bank, 1981 R.L.R. 4, was relied on. In a subsequent Division Bench decision of the Delhi High Court in [Delhi Development Authority Vs. K.P. Shankra and Another](#), when the Secretary, Delhi Development Authority filed a complaint, relying on [Oriental Bank of Commerce Vs. Delhi Development Authority and Another](#), (Delhi High Court), it was held that both the Delhi Development Authority and the public servant who

filed the complaint be considered as complainants. Thus there is a conflict of decisions of the Delhi High Court itself on the point in question. I agree with the view taken by the subsequent Division Bench of the Delhi High Court in K. P. Shankara's case (supra). In any event, in the present Case the Town Surveyer is competent to file the complaint and prefer the appeal under the provisions of the Act and so there is no room for any controversy that the period of limitation available to him u/s 378(5), Code of Criminal Procedure is six months.

8. Considering the facts and circumstances of the case, I find that this is a fit case for condoning the delay and accordingly" the delay is condoned and the Misc. Case is allowed.

Misc. Case is allowed.