

(1960) 03 MP CK 0009
Madhya Pradesh High Court
Case No: None

Ukya Goklia

APPELLANT

Vs

Kaudia Nathya Mahar and
OthersRESPONDENT

Date of Decision: March 28, 1960**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 447

Citation: AIR 1960 MP 259 : (1960) J LJ 578 : (1960) 5 MPLJ 656**Hon'ble Judges:** S.B. Sen, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

S.B. Sen, J.

The non applicants were prosecuted Under Sections 147 and 447 of the Indian Penal Code, on a complaint filed by the applicant, but they have been acquitted. The applicant thereupon filed a revision petition before the Additional Sessions Judge. The petition was dismissed on the ground that a revision petition was not maintainable, as u/s 417 (3) of the Code of Criminal Procedure, there is a right of appeal and, therefore, Section 439 (5) prohibits a revision petition.

2. The dismissal of the revision petition is quite justified. Counsel for the applicant argued that no doubt, there is a prohibition under S, 439(5) Criminal Procedure Code, if an appeal lies, but Section 417 (3) does not confer any right of appeal. His argument is that Section 417 (3) only says that an application has got to be made for grant of special leave to appeal from an order of acquittal, and, therefore, it cannot be said that the applicant has a right of appeal. I cannot agree with this contention of the applicant. It cannot be said that no appeal could lie. Section 417 (3), Criminal Procedure Code, lays down the procedure as to how an appeal has to be preferred. To decide this point, it is necessary to spell out what Section 417 (3) means. When an

application is made u/s 417(3), the High Court has to see whether there is any ground for filing an appeal. This involves determination whether the High Court is going to exercise its appellate powers for reversing the judgment complained of. Whereas, if there was no provision for leave to appeal, but the aggrieved party was allowed a right of appeal, then also the consideration would be the same.

If there was a right of appeal, the applicant had to appear twice, once for the admission to convince the High Court that there was something to be heard and the other side has to be noticed and then for the final hearing. Whereas u/s 417 (3), Criminal Procedure Code, it is only a sort of motion hearing with a right to the other side to challenge even the admission. It is only in this respect that the right of appeal conferred automatically differs from the right to apply for leave to appeal to the High Court. I have, therefore, no doubt in my mind that the applicant could not file a revision petition u/s 439 (5) Criminal Procedure Code. The dismissal of the petition was, therefore, proper.

3. The applicant next urged that if it is held that the revision petition does not lie u/s 439 (5), Criminal Procedure Code, to the Additional Sessions Judge, this petition may be treated as a petition u/s 417 (3). In that case, the petition is hopelessly barred by time. The applicant has, however, filed an application u/s 5 of the Indian Limitation Act for condoning the delay. His contention is that he had filed the revision petition in the Court of the Additional Sessions Judge in good faith and on the counsel's advice. I do not think that it was in good faith.

The law provides a right of appeal u/s 417 (3), Criminal Procedure Code. There cannot be two opinions on this matter and no doubt can be created in the mind of the litigant about the right that has been conferred u/s 417 (3), Criminal Procedure Code, which is specific. The application also does not mention what was the advice given by the counsel. There is no affidavit also in this connection. I, therefore, cannot condone the delay in filing the application for leave to appeal.

4. The petition is, therefore, dismissed.