

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Cr. Acq. Appeal No.S-132 of 2020

1. For orders on office objection.
2. For orders on M.A- 3619 of 2020 (U/S 5 of Limitation Act).
3. For hearing of main case.

05.11.2020

None present for appellant.

Mr. Shawak Rathore, D.P.G.

JUDGMENT

MUHAMMAD SALEEM JESSAR, J.-By means of instant Criminal Acquittal Appeal, Appellant Abdul Qayoom has assailed Judgment dated 06.02.2020, passed by learned Additional Sessions Judge-II, Jamshoro at Kotri in Sessions Case 248 of 2014 (re: The State v. Raja Khoso), outcome of F.I.R. No.08 of 2014, registered at Police Station Khanot, under sections 320, 279, 337-G, 427 PPC, whereby respondent No.1 was acquitted of the charge.

2. Appellant and his counsel called absent. Learned D.A.G. appearing for State while supporting the impugned judgment of acquittal submits that said judgment was pronounced on 06.02.2020, whereas appellant filed application seeking its true copy on 13.05.2020, which was delivered to him on 15.05.2020, even then he filed instant appeal against acquittal on 04.06.2020. Learned D.P.G further submits that listed application u/s 5 of Limitation Act being M.A No.3619 of 2020 for condoning the delay in filing instant appeal is also not tenable, as the grounds mentioned therein by appellant in this application are imaginary and cannot be taken into consideration. He further points out that grounds taken by appellant in his application seeking condonation of delay are due to Pandemic on account of COVID-19, which according to learned D.P.G, was spread and prevailed after 25.03.2020, whereas the impugned judgment was pronounced on 06.02.2020, when there was no Pandemic. He also submits that appellant obtained copy of impugned judgment on 15.05.2020, when there was peak of Pandemic, hence instant appeal against acquittal is hopelessly time barred; and, therefore, submits that it may be dismissed.

3. From perusal of the case file, it reveals that at the time of filing of instant Cr. Acquittal Appeal, *inter alia*, an objection was raised by the office, “*How this Criminal Acquittal Appeal is in time?*”, however, learned counsel for appellant has failed to satisfy / comply with such objection. Besides this, the Court while passing order dated 31.08.2020, observed that point of limitation will be considered at the time of hearing; however, today neither appellant nor his counsel is in attendance. In this view of the matter, it would be proper to first decide the point of limitation.

4. As is evident from record, the impugned judgment was pronounced on 06.02.2020; whereas appellant filed an application for obtaining its true copy on 13.05.2020, which was made ready and delivered to him on 15.05.2020 within three days of his said application. The ground taken by appellant in listed application (M.A-3619 of 2020) is to the effect that due to Pandemic on account of COVID-19, he could not file the appeal against acquittal in time carries no weight. It is astonishing to note that the Pandemic was spread over here after 25.03.2020, whereas the judgment impugned was announced on 06.02.2020 when there was no Pandemic in the country, hence the reason given by appellant in his application under section 5 of Limitation Act is not much of consequence. The limitation provided by the law as mentioned under section 417 Cr.P.C. is 30 days for filing an appeal against acquittal; however, the appellant remained mum right from 06.02.2020 up to 13.05.2020 i.e. more than three months from announcement of the judgment for which no plausible explanation has been furnished by him. It is settled principle of law as well as requirement of section 5 of Limitation Act that delay of each day caused in filing of appeal or an proceedings with inordinate delay has to be explained satisfactorily; however, the listed application (M.A-3619 of 2020) does not show that the appellant has given any justification for such an inordinate delay in filing of instant appeal against acquittal. In this context I am fortified by the dictum laid down in the case of **Athar Khan Vs. Abdul Majeed and others** reported in 2019 Y L R 1292, wherein the learned Division Bench of this Court held as under:

“The first issue to be considered is that of time bar. The learned counsel for the appellant has admitted that the appeal is time barred by 11 days and that he has not filed any application for condonation for delay. It is settled law that the defaulting party while applying for condonation of delay must explain and account for each day of delay because on expiry of period of limitation a valuable right is created in favour of another party. In this respect reliance is placed on Messrs Tribal Friends Co. v. Province of Balochistan (2002 SCMR

1903). The State v. Syed Ali Baqar Naqvi and others (2014 SCMR 671) and Mst. Sirajun-Munira v. Pakistan (1998 SCMR 785). In this case not even an application for condonation for delay has been made and not a single day's delay has been explained and as such on this count alone the appeal deserves to be dismissed."

5. In another case reported as **Utility Stores Corporation of Pakistan (Pvt.) Ltd. Vs. The State and another** (2019 MLD 1124 Karachi), acquittal appeal was filed after a delay of twenty three months and while dealing with the point of delay in filing the acquittal appeal it was held that government cannot be treated differently from a private litigant on the question of limitation and ultimately the appeal was dismissed being barred by limitation.

6. Yet in another case reported as **The State through Prosecutor General, Sindh Vs. Mansoor Mujahid** (2019 MLD 1092 Karachi) it was held that appellant has to explain and give reasons for each and every day of delay in filing the appeal, if it is time-barred. Reference in this respect can also be made to the case of **Ch. Abid Mehmood Vs. Mirza Zafar Javed** reported in 2019 P.Cr.L.J. 1241 [Lahore].

7. In view of above legal position, it can safely be held that instant Criminal Acquittal Appeal is obviously hopelessly time barred. Consequently, listed application (M.A-3619 of 2020) being devoid of merits is dismissed.

8. It would also be pertinent to point out at this stage that the consideration for deciding a Criminal Appeal against acquittal are quite difference from that of a Criminal Appeal against conviction as in the former case presumption of double innocence of the accused is available in the case. It is a settled principle of law that the superior Courts act slowly in interfering with an order of acquittal, unless grounds for acquittal are perverse, wholly illogical or unreasonable. Reliance can be placed upon the case of **Muhammad Asghar and another v. The State** (PLD 1994 Supreme Court 301).

9. In the case of **Yar Mohammad and 3 others Vs. The State** (1992 SCMR 96) Honourable Supreme Court observed as under:

"Unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence no other decision can be given except that the accused is guilty, there has been complete misreading of evidence leading to miscarriage of justice, the High Court will not exercise jurisdiction under section 417, Cr. P.C. In exercising this jurisdiction the High Court is always slow unless it feels that gross injustice has been done in the administration of criminal justice."

10. In view of what has been discussed above, I do not see any justification to interfere with the impugned order of acquittal passed by the trial Court. Consequently, instant appeal against acquittal is dismissed and the impugned judgment dated 06.02.2020, passed by learned Additional Sessions Judge-II, Jamshoro at Kotri in Sessions Case 248 of 2014 (re: The State v. Raja), outcome of F.I.R. No.08 of 2014, registered at Police Station Khanoth, under sections 320, 279, 337-G, 427 PPC, acquitting respondent No.1 of the charge, is hereby maintained.

JUDGE