

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Acq. Appeal No. 07 of 2023

[The State v. Talib Hussain & another]

Appellant/State : Collector, Collectorate of Customs,
Hyderabad, through Mr. Zulfiqar Ali
Arain, Advocate.

Date of hearing : 30-01-2024

Date of order : 30-01-2024

JUDGMENT

Adnan Iqbal Chaudhry J. - This is an acquittal appeal under section 185-F of the Customs Act, 1969 from order dated 06-05-2023 passed by the Special Judge (Customs, Taxation & Anti-Smuggling), Karachi in Case No. 208/2021, whereby the Respondent No.1 was acquitted under section 265-K CrPC for the alleged offence of smuggling under section 2(s), punishable under clauses 8(i) and 89 of section 156(1) of the Customs Act, 1969.

2. Section 185-F of the Customs Act provides an appeal against any order passed or decision made by the Special Judge under the Customs Act 'or under the CrPC', and prescribes a limitation of 60 days for such appeal. By reason of section 29(2) of the Limitation Act, 1908, the limitation provided in section 185-F of the Customs Act, which is special law, will prevail over the limitation for an acquittal appeal provided in section 417 CrPC or Article 157 of the Limitation Act. The appeal is admittedly time-barred, hence M.A. No. 11076/2023 under section 5 of the Limitation Act for condoning the delay.

3. The impugned order was passed on 06-05-2023. Application for certified copy of the order was made by the Appellant on 07-06-2023, after a delay of 31 days. The copy was made ready and delivered the same day. Nonetheless, the appeal was filed on 17-08-2023, after another 70 days. Excluding the 60 days provided by section 185-F of the Customs Act, this appeal is time-barred by 41 days or so. The

ground taken for condoning delay is that the certified copy was provided by the Department to the concerned Collectorate on 19-06-2023, and therefore limitation should be computed from that date. In other words, the plea is of departmental delay, a ground peculiar to the State/Government. However, the plea is completely vague. The supporting affidavit does not disclose how and where the delay occurred in the Department, which officer was responsible, and what action was taken against him.

4. It is settled law that the Court's power to condone delay under section 5 of the Limitation Act is a matter of discretion which is exercised on a case-to-case basis for 'sufficient cause'. In civil appeals by the Government, the Courts have on occasion accepted the plea of departmental delay as sufficient cause where it is of the view that shutting out the appeal may affect the public, the public exchequer, public property or innocent third parties, or where the delay may have been collusive and shutting out the Government's appeal will defeat the law and/or justice.¹ However, in criminal 'acquittal' appeals, be that by the State or an aggrieved person, the hypothesis of sufficient cause is some-what different. It was held by the Supreme Court in *Hussain Bakhsh v. Allah Bakhsh* (1981 SCMR 410), and then reiterated by a learned Division Bench of this Court in *State/Anti-Narcotics Force v. Muhammad Adeel Hussain* (2010 YLR 1322) that:

"It must also be stated that it has been the consistent view of this Court, as expressed in *Nazar v. The State* 1968 SCMR 71, *Jalal Khan v. Lakhmir* 1968 SCMR 1345, *Muhammad Khan v. Sultan* 1969 SCMR 82; *Piran Ditta v. State* 1970 SCMR 282 and *Nur Muhammad v. The State* 1972 SCMR 331, that in petitions against acquittal delay cannot be condoned unless it is shown that the petitioner was precluded from filing his petition in time due to some act of the acquitted respondents; or by some circumstances of a compelling nature beyond the petitioner's control. The reason for taking the strict view is that in most jurisdictions an acquittal once recorded by a competent Court is final, and the matter cannot be re-opened at the instance of any party including the State. However under our law, an acquittal can be challenged in certain circumstances, but if it is not challenged within the period allowed by law, it becomes final. In these circumstances it is only just and proper that a petition against acquittal must not be entertained if it is filed beyond time, unless it

¹ See *Karachi Metropolitan Corporation v. Zafar Memorial Education Society* (2019 CLC 1697).

be shown that the petitioner was prevented from moving the same by an act of the acquitted accused or by some circumstances of a compelling nature beyond the control of the petitioner.”

5. Therefore, for sufficient cause to condone delay in an acquittal appeal the appellant must demonstrate that it was some-how prevented from filing the appeal in time due to an act of the acquitted respondent, or by circumstances of a compelling nature beyond the State’s control, failing which the appellate court will be slow to exercise discretion in favor of the appellant. Nothing of the sort has even been pleaded here by the State/Appellant. On the other hand, the Special Judge has recorded acquittal of the Respondent No.1 when the I.O. of the case submitted a lab report to the effect that the diesel and petrol seized from the Respondent No.1 was of Pakistani origin and not smuggled as alleged.

6. Therefore, in the circumstances of the case discussed above, I am not inclined to accept the plea of departmental delay as sufficient cause for condoning limitation. M.A. No. 11076/2023 is dismissed. Resultantly, the appeal is dismissed as time-barred.

JUDGE

SHABAN*