

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Crl.A.No.275/2020

State vs Muhammad Imran

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of parties of counsel, where necessary.
12.12.2023.		Ch. Ashgar Ali Gill, Deputy Prosecutor General. Sardar Abdul Basit Khan, Advocate for Muhammad Imran accused/respondent produced by Fiaz Hussain and Zia Sub-Inspectors.

This is an appeal filed by the State against the acquittal of Muhammad Imran accused/respondent vide judgment dated 10.08.2019 passed under section 265-K Cr.P.C. by Additional Sessions Judge/CNSA Court/MCTC, Sadiq Abad in case FIR No. 333/2019 dated 19.06.2019 under section 9-C of the Control of Narcotic Substances Act, 1997, Police Station Bhong, Sadiq Abad, District Rahim Yar Khan. Though this appeal was admitted for regular hearing vide order dated 06.04.2021, yet limitation being question of law is required to be attended first; as per application under section 5 of the Limitation Act, 1908, State has prayed for condonation of delay in filing of appeal.

2. The learned Deputy Prosecutor General submits that the question of law involved in this appeal is also the subject matter of some other appeals pending before this Court which were filed within the period of limitation; he while relying on cases reported as "COLLECTOR OF CUSTOMS, CUSTOMS HOUSE, LAHORE and another Versus Messrs WASIM RADIO TRADERS, LAHORE and others" (**2023 SCMR 1716**); "GOVERNMENT OF BALOCHISTAN through Chief Secretary Quetta and others versus Dr. MUHAMMAD TARIQ JAFAR and others" (**2020 SCMR 1689**) states that when an identical question of law is involved in appeals filed within time and the time barred then the delay must be condoned in the interest of justice. Further submits that there is cumbersome process for obtaining sanction from the government to file an appeal which takes a longer time, therefore, State may be given preferential right in condonation of delay. He continued on submitting that limitation does not run against a void order and the judgment of the learned lower court is

bereft of legal recognition; finally argued that period of limitation for State to file appeal against acquittal is six months in view of Article 157 of the Limitation Act.

3. Heard.

4. We have examined the judgment reported as "COLLECTOR OF CUSTOMS, CUSTOMS HOUSE, LAHORE and another Versus Messrs WASIM RADIO TRADERS, LAHORE and others" (**2023 SCMR 1716**) wherein importers have challenged the Valuation Ruling issued by Customs department under section 25A of the Customs Act, 1969 affecting all the importers alike; similarly in case reported as "GOVERNMENT OF BALOCHISTAN through Chief Secretary Quetta and others versus Dr. MUHAMMAD TARIQ JAFAR and others" (**2020 SCMR 1689**), Supreme Court of Pakistan condoned the delay only on the ground that three appeals were preferred against the same judgment out of which two were time barred, but here before this Court appeals against acquittals in different judgments are pending, therefore, the case law referred by the learned law officer has no relevance on the matter before us.

5. The contention of learned DPG that limitation does not run against a void order is repelled because it is now settled that law of limitation being *lex fori* creates a right in favour of the parties, therefore, cannot be ignored by treating it mere a technicality. A fourteen members' judgment reported as "Gen. (R.) PARVEZ MUSHARRAF v. NADEEM AHMED (Advocate) and another" (**PLD 2014 SC 585**) confirmed the view that limitation would run even against a void order, therefore, we are not required to look into the contours of impugned judgment of learned trial Court. The above judgment of Supreme Court of Pakistan was later followed by the Court in different cases reported as "KIRAMAT KHAN versus IG, FRONTIER CORPS and others" (**2023 SCMR 866**), "CHIEF ENGINEER, GUJRANWALA ELECTRIC POWER COMPANY GEPCO, GUJRANWALA versus KHAID MEHMOOD and others" (**2023 SCMR 291**), "MUHAMMAD SHARIF and others versus MCB BANK LIMITED and others" (**2021 SCMR 1158**), "Haji WAJDAD Versus PROVINCIAL GOVERNMENT

through Secretary Board of Revenue Government of Baluchistan, Quetta and others” (2020 SCMR 2046), “GHULAM HUSSAIN RAMZAN ALI Versus COLLECTOR OF CUSTOMS (PREVENTIVE), KARACHI” (2014 SCMR 1594) and “Messrs BLUE STAR SPINNING MILLS LTD Versus COLLECTOR OF SALES TAX and others” (2013 SCMR 587).

6. It was claimed that period of limitation for filing of appeal against acquittal by the State is six months as per Article 157 of the Limitation Act. We have examined that this appeal against acquittal is not being regulated under section 417 of Code of Criminal Procedure, 1897, rather was filed under section 48 of the Control of Narcotic Substances Act, 1997 which is a special law and is to be read for period of limitation provided therein. Other side has referred the case reported as “The STATE Versus SAID RAHEEM and others” (PLD 2016 Lahore 560) that the limitation for filing an appeal under section 48 of the Control of Narcotic Substances Act, 1997 is 30 days and special law prevails over the provisions of general law; therefore, Article 157 of the Limitation Act shall not apply. We have attended this contention but found that no period of limitation is mentioned for filing of appeal under section 48 of the Control of Narcotic Substances Act, 1997; therefore, while relying on case reported as “ALLAH DINO and another versus MUHAMMAD SHAH and others” (2001 SCMR 286), wherein it was held that any law which does not contain any period of limitation the whole Limitation Act shall be applicable upon it; therefore, subject to section 29 of the Limitation Act, it can safely be held that Article 157 of the Limitation Act would well be available to the State for filing of appeal against acquittal; but we have examined that even the appeal has been filed beyond the period of limitation of six months, which is time barred by 13 days and we cannot condone it under section 5 of the limitation Act which is not available for proceedings under special law. This has also been explained in the above judgment (2001 SCMR 286) that pursuant to section 29 (2) of the Limitation Act, Section 5 of the said Act shall not be applicable to special law. To further thrash this legal provision, we have read section 29 of the Limitation Act in toto, which is reproduced as under: -

“29. Savings. --- (1) Nothing in this Act shall affect section 25 of the Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law.

- (a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and
- (b) the remaining provisions of the Act shall not apply.”

The above section makes it clear that in a special law application of Sections 4, 9 to 18 and 22 shall *ipso facto* apply if they are not specifically excluded from that law, whereas, as per clause (b) above the remaining sections of the Act shall not be applicable in any manner, which obviously includes Section 5 of the Act, therefore, this Court has no jurisdiction to invoke section 5 of the Limitation Act for condoning delay in any appeal against acquittal filed under the Control of Narcotic Substances Act, 1997. Reliance in this respect is further placed on the cases reported as “SHEHZD ALI SHAH versus SPECIAL JUDGE RENT, LAHORE and others” (**PLD 2020 Lahore 354**), “Messrs SPIRIT INDUSTRIES (PRIVATE) LIMITED through authorize representative Versus NASTGIONAL TARRIF COMMISSION, ISLAMABAD and 2 others” (**2021 PTD 647**), “STATE (NAB) versus MUHAMMAD ASLAM BAJWA and others” (**2016 P Cr. L J 1189**), and “ASMAT versus SAHIB ROKHAN and 7 others” (**PLD 2023 Peshawar 64**).

7. The argument of learned Deputy Prosecutor General for treating the State somewhat preferentially in the matters about condonation of delay, finds the answer in the case reported as “GOVERNMENT OF THE PUNJAB versus MUHAMMAD SALEEM” (**PLD 1995 SC 396**) where the Supreme Court of Pakistan while holding that delay of each and every day is to be explained, also held that the Government cannot be treated differently than a private litigant on the question of limitation under section 5 of the Limitation Act. Similarly, delay in obtaining sanction from government is also no ground to seek condonation on this score.

Reliance is on cases reported as “KHUDA BAKHSH and others Versus MUZAFFAR through L.Rs. and others” (2007 SCMR 1032); “GOVERNMENT OF PAKISTAN through Ministry of Works and another Versus Messrs MALBROW BUILDERS, CONTRACTORS, SIALKOT” (2006 SCMR 1248), “PAKISTAN through Secretary, Ministry of Defence versus Messr AZHAR BROTHERS LIMITED” (1990 SCMR 1059), “CHIEF SECRETARY, GOVERNMENT OF SINDH, KARKACHI and another Versus MUHAMMAD RAFIQUE SIDDIQUI” (2004 PLC (C.S.) 962), “COLLECTOR, LAND ACQUISITION, CHASHMA RIGHT BANK CANAL PROJECT, WAPDA, D.I. KHAN and others” (2002 SCMR 677), “LAHORE HIGH COURT, LAHORE, through Registrar versus NAZAR MUHAMMAD FATIANA and others” (1998 SCMR 2376), “CENTRAL, BOARD OF REVENUE, ISLAMABAD through Collector of Customs, Sialkot Dry Port, Samberial, District Sialkot and others versus Messrs RAJA INDUSIES (PVT.) LTD, Through General Manager and 3 others” (1998 SCMR 307) and “FEDERATION OF PAKISTAN through Secretary, Ministry of Finance versus NIAZ AHMAD” (1997 PLC (C.S.) 750). In the light of above it is held that where Government/State is provided six months’ limitation period for filing an appeal against acquittal, which is sufficient to recourse to legal remedy, then after period of limitation even delay of one day should not be condoned.

8. The law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. Reliance is on case reported as “Dr. MUHAMMAD JAVED SHAFI Versus SYED RASHID ARSHAD and others” (PLD 2015 Supreme Court 212).

9. Last but not the least, according to established principle of the criminal administration of justice once an acquittal is recorded in favour of accused facing criminal charge he enjoys twice the presumption of innocence, and such acquired right cannot be undone by ignoring the law of land applicable on the subject. The Supreme Court of Pakistan in case reported as “HUSSAIN BAKHSH versus ALLAH BAKHSH ETC” (**1981 SCMR 410**) while referring the cases reported as “NAZAR versus. THE STATE” (**1968 SCMR 715**), “JALAL KHAN AND ANOTHER versus LAKHMIR AND ANOTHER” (**1968 SCMR 1345**), “MUHAMMAD KHAN versus SULTAN AND OTHERS” (**1969 SCMR 82**), “PIRAN DITTA versus THE STATE and 2 others” (**1970 SCMR 282**), and “NUR MUHAMMAD versus THE STATE” (**1972 SCMR 331**) has held that 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 be shown that the petitioner was prevented from moving the same by an act of the acquitted accused; or by some circumstance of a compelling nature beyond the control of the petitioner.

10. On the touchstone of above case law, we have gone through the reasons mentioned in the application seeking condonation of delay in filing the appeal and the same have not been found tenable/legal in any manner so as to entertain the appeal. Consequently, the application under section 5 of the Limitation Act, 1908 is dismissed; in consequence thereof, the main appeal also meets with the same fate.

(Asjad Javaid Ghural)
Judge.

(Muhammad Amjad Rafiq)
Judge.

APPROVED FOR REPORTING.

Judge.

Judge.

This judgment was pronounced on
12.12.2023 and after dictation and
preparation it was signed on 19.12.2023.

Javed*