

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**CASE NO. : Criminal Appeal No.85-2017**

**Lt. Col. (R) Irfan Pirzada**

**Vs.**

**The State etc.**

**CASE NO. : Criminal Appeal No.86-2017**

**Lt. Col. (R) Irfan Pirzada**

**Vs.**

**The State etc.**

**Appellant by : In person.**  
**Respondent by : Mr. Jan Muhammad Khan, Advocate**  
**State by : Mr. Awais Haider Malik, State Counsel.**  
**Date of hearing : 04.07.2018**

**AAMER FAROOQ J.** This judgment shall decide the instant appeal as well as Criminal Appeal No.86-2017, as common questions of law and facts are involved.

2. The facts, leading to filing of above appeals, are that the appellant filed a criminal complaint under section 200 Cr. P.C. wherein respondent No.2 was alleged to have been involved in criminal breach of trust. After recording of cursory statement, learned trial court issued summons to respondent No.2/accused. During course of proceedings, referred respondent filed an application under section 249-A Cr.P.C., which was allowed vide order dated 18.11.2016. The referred order has been challenged in Criminal Appeal No.85-2017. The appellant also filed a Qalandra under section 506 PPC against respondent No.2. In the referred proceedings, learned trial court acquitted the

respondent/accused vide impugned order dated 20.10.2016, which has been impugned through Criminal Appeal No.86-2017.

3. The appellant, in person, *inter alia* contended that Qalandra has been dismissed with malafide on part of learned trial court in connivance with respondent No.2. In this behalf, it was pointed out that Qalandra was dismissed on 20.10.2016 on the basis that connected private complaint stood dismissed, whereas complaint was dismissed on 18.11.2016. Moreover, it was contended that the nature of controversy did not warrant summary dismissal of criminal complaint as there were allegations of facts. It was also contended that in light of judgments of the superior courts, dismissal/discharge of accused under section 249 Cr.P.C., is deprecated where the allegations are such, which cannot be resolved without recording of evidence. Reliance was placed on cases reported as 'The State through A.G. Sindh High Court of Karachi Vs. Raja Abdul Rehman' (2006 ac 299), 'Rashida Parveen Vs. State and 4-others' (PLJ 2003 Cr.C. (Lahore) 621) & 'The State Vs. Asif Ali Zardari and another; (1994 SCMR 798).

4. Learned counsel for respondent No.1, at the very outset, submitted that appeals are barred by limitation. In this behalf, it was contended that in Crl. App. No.85-2017, the impugned order was passed on 18.11.2016 and the appellant initially approached the Court of Sessions Judge-West, Islamabad, whereas appeal was dismissed as withdrawn on 22.04.2017. It was submitted that the appeal was filed in this Court on 27.05.2017. Likewise, it was contended that in Crl. App. No.86-2017, the impugned order was passed on 20.10.2016, whereas appeal was preferred

before the Court of Sessions, however the same was dismissed as withdrawn on 22.04.2017 and was filed in this Court on 27.05.2017. It was contended that under section 417 Cr.P.C., the limitation for filing an appeal in this Court is 30-days, however it was pointed out that where a person is acquitted in a criminal complaint, the appeal before this Court is not as of right but application for obtaining Special Leave to Appeal to be filed and the limitation period for the same is 60-days from the date of impugned order. It was further submitted that section 5 of the Limitation Act, 1908 is not applicable in light of section 29 of the Limitation Act, 1908.

5. The appellant, in response to the objection raised by learned counsel for respondent No.1 regarding the appeals being barred by limitation, contended that he was unaware about the dates on which the impugned orders were passed, as despite repeated enquiries, learned trial court did not provide information regarding case. It was contended that inadvertently, the appeals were initially filed before the Court of Sessions, Islamabad, however later on, same were withdrawn and filed before this Court. It was further submitted that it is an established principle that where due to negligence of counsel, wrong forum has been approached, the delay, if any, is to be condoned. In support of his contentions, the appellant placed reliance on cases reported as 'Muhammad Hasham Khan Vs. The Chairman, Baluchistan Service Tribunal and Others' (PLD 1983 Supreme Court 262), 'Al-Haj Mian Ghulam Yasin Vs. Managing Director, A.K.L.A.SC. Muzaffarabad and another' (1987 CLC 1307), 'The State through Advocate-General,

Sindh High Court of Karachi Vs. Raja Abdur Rehman' (2005 SCMR 1544) & 'Muhammad Akram Vs. DCO, Rahim Yar Khan and others' (2017 SCMR 56).

6. The arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

7. Since respondent No.1 has raised objection regarding the appeals being barred by limitation therefore the referred objection is being taken up first for adjudication.

8. The examination of appeals shows that same were filed in this Court on 27.05.2017. In this behalf, in Crl. App. No.86-2017, application for obtaining certified copy of the impugned order was made on 22.04.2017 vide application No.11335 and the certified copies were prepared and delivered on 06.05.2017. Similarly, in Crl. App. No.85-2017, application for obtaining certified copy of the impugned order dated 18.11.2016 was made on 22.04.2017 vide application No.11336 and the copy of the same was prepared and delivered on 06.05.2017.

9. Section 417 Cr.P.C. governs the right of any person, who files an appeal in case of acquittal. For ease of convenience, the referred Section is reproduced below: -

***“417. Appeal in case of acquittal. (1) Subject to the provision of sub-section (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.***

***(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.***

*(2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.'*

*(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.*

*(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1)".*

The examination of above provision of law shows that under section 417(2A) Cr.P.C., in case of order of acquittal passed by any court other than High Court, an appeal lies against the same within 30-days, however if the order of acquittal is passed, in any case, instituted upon a complaint and the High Court, on an application made to it by the complainant, grants Special Leave to Appeal from the order of acquittal, only then the complainant may present such appeal to the High Court. Under subsection (3) to section 417 Cr.P.C., the limitation period for moving an application for grant of Special Leave to Appeal is 60-days from the date of order of acquittal.

10. Respondent No.2/accused was acquitted from the charges leveled in complaint filed against him and the appellant was required to file applications for Special Leave to Appeal within sixty days from passing of the orders of acquittal dated 18.11.2016 (Crl. App. No.85-2017) and 20.10.2016 (Crl. App. No.86-2017), however instead of preferring applications, appeals were preferred. If the appeals are taken as application for Special Leave to Appeal even then, same are barred by limitation inasmuch Special Leave to Appeal is to be filed within 60-days. The present appeals have been preferred beyond the period of 60-days of the impugned orders.

11. Along with appeals, applications for condonation of delay have been filed. Even, in support of his submissions, the appellant placed reliance on cases reported as 'Muhammad Hasham Khan Vs. The Chairman, Baluchistan Service Tribunal and Others' (PLD 1983 Supreme Court 262) & 'Al-Haj Mian Ghulam Yasin Vs. Managing Director, A.K.L.A.S.C. Muzaffarabad and another' (1987 CLC 1307). The applications for condonation of delay as well as the judgments relied upon by the appellant do not come to his aid. In this behalf, it is pertinent to observe that Section 5 of the Limitation Act, 1908 empowers the Court to condone delay with respect to any appeal, application or suit, where there is sufficient cause shown to the satisfaction of the court however, under section 29 of the Limitation Act, 1908, Section 5 *ibid* is not applicable, where the period of limitation is not provided in the Limitation Act but is governed by a special statute. In the instant case, limitation period for filing of appeal against acquittal is not provided in the Limitation Act, 1908 but under section 417 Cr.P.C. hence section 5 of the Limitation Act, 1908 would not apply. In reaching referred conclusion, this Court is fortified with judgments reported as 'Haji Muhammad Ashraf Vs. The State and 3-others' (1999 MLD 330), 'Maj. (r) Qamar-ud-Din Vs. Muhammad Iqbal' (2010 MLD 961) & 'Shahid Manzoor Vs. The State and others' (2015 YLR 853). Even otherwise, in light of latest pronouncement by the august Apex Court reported as 'Khushi Muhammad through L.Rs. and others Vs. Mst. Fazal Bibi and others' (PLD 2016 Supreme Court 872), the negligence of the counsel in pursuing the remedy before a wrong forum, is not a ground

for condonation of delay. The august Apex Court, in the said judgment, laid down the following principles: -

*“4. Before considering the propositions above, it is expedient to mention certain salient features which have been settled over a period of time by the superior Courts for the purposes of interpretation of the law of limitation. These are:-*

*(i) The law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with. Statutes of limitation by their very nature are strict and inflexible. The Act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them. Justice, equity and good conscience do not override the law of limitation. Their object is to prevent stale demands and so they ought to be construed strictly;*

*(ii) The hurdles of limitation cannot be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship does not save limitation, nor does poverty of the parties;*

*(iii) It is salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction is enjoined as regards the main provision. For when such a provision is set up as a defence to an action, it has to be clearly seen if the case comes strictly within the ambit of the provision;*

*(iv) There is absolutely no room for the exercise of any imagined judicial discretion vis- -vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction;*

*(v) A statute of limitation instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should have received such support from courts of justice as would have made it what it was intended emphatically to be, a statute of repose. It can be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable defence. There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence. The court has to only see if the defence is good in law and not if it is moral or conscientious;*

*(vi) The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period*

*to a suit to enforce an existing right.*

*(vii) The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suitor;*

*(viii) Construing the Preamble and Section 5 of the Act it will be seen that the fundamental principle is to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who are expected to be aware and conscious of the legal position and who have facilities for proper legal assistance can hardly be encouraged or countenanced”.*

In view of the above facts and circumstances, applications for condonation of delay, filed by the appellant, are not maintainable inasmuch as Section 5 of Limitation Act, 1908 is not applicable therefore the delay, in filing the appeals, cannot be condoned; even otherwise, the appellant has to explain the delay of each and every day, for condoning of delay, which has not been done in the present case.

12. Since the appeals are barred by limitation and are being decided on the basis thereof, therefore, no finding on merits is being rendered regarding the dismissal of Qalandra as well as the complaint.

13. For the above mentioned reasons, instant appeals are dismissed.

(AAMER FAROOQ)  
JUDGE

Announced in Open Court on \_\_\_\_\_

JUDGE

Zawar