

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Crl. Appeal No. 29/2014**

Mubarak Hussain

Vs.

The State etc.

Appellant by: Rai Azhar Iqbal Kharal, Advocate

State by: Barrister Ayesha Siddique Khan, State Counsel.

Respondents No. 2 to 4 by: Mr. Zahid Asif Ch., Advocate

Date of Decision: 17.12.2019.

**MOHSIN AKHTAR KAYANI J.** Through this Criminal Appeal, appellant has assailed the order dated 06.11.2013, passed by learned Additional Sessions Judge-VI (West), Islamabad, whereby criminal revision filed U/s 439-A Cr.P.C was allowed and respondents No. 2 to 4 were acquitted in criminal case FIR No.133, dated 10.03.2010, U/s 420/468/471/34, PPC, P.S Margalla, Islamabad while exercising the powers U/s 249-A Cr.P.C.

2. Brief facts referred in the FIR lodged on the complaint of Mubarak Hussain/appellant are that, he is a British citizen and has purchased House No. 919, Sector I-10/1, Islamabad from one namely Mst. Zetoon Bibi, which was transferred in his name on 05.04.2002 in the CDA record. The appellant sister namely Gul Zahida Akhtar requested him to allow her to reside in the said premises and she was allowed to stay in the said portion, who shifted on the first floor of the said house, whereas ground portion was rented out through Attorney Sabir Hussain. The appellant sister Gul Zahida Akhtar, her husband Mushtaq Ahmad, and her son Rizwan Khan, managed to evict the tenant, who was residing at the ground portion of the said house and claimed that they are owner of the said house and rented out the same to another person. When this fact came into the knowledge of appellant, he had filed an

application before SSP, Islamabad, in which Gul Zahida Akhtar recorded her statement, wherein she has categorically stated that the oral agreement to sell was executed between the parties, thereafter they have prepared fake agreement, which was got notarized from the Stamp Vendor in order to grab the house. The agreement contained the fake signatures of the appellant.

3. Learned counsel for the appellant contends that the respondents filed application U/s 249-A, Cr.P.C before learned Trial Court, which was dismissed mainly on the ground that evidence of the appellant/Mubarak Hussain was not recorded and the statement of Investigation Officer has also not yet been recorded, through which the question of guilt or innocence of petitioner could have been determined, the application U/s 249-A, Cr.P.C was dismissed by the learned Trial Court vide order dated 21.06.2013, the same was assailed by the respondents through criminal revision U/s 435 read with 439-A Cr.P.C before learned Additional Sessions Judge, Islamabad, who vide order dated 06.11.2013 allowed the same, but on wrong presumptions. Learned counsel further contends that the learned Additional Sessions Judge has not considered the merits of the case and passed the acquittal order mainly on the ground that the police is not competent to investigate the criminal case as same is non-cognizable offence, without obtaining prior order from the learned Judicial Magistrate within preview of Section 155(2), Cr.P.C, although the said ground was not taken by the respondents in their memo of criminal revision. It has further been contended that the learned Revisional Court has ignored the offence under Section 420 PPC, which is also part and parcel of the instant case. It has also been contended that the appellant has filed an application for condonation of delay as his appeal is eleven (11) days time barred mainly on the ground that he was out of the country being permanent resident of United Kingdom and he was not informed regarding passing of acquittal order.

4. Learned counsel for the appellant further contends that the impugned order was passed on 06.11.2013, no notice was issued to the appellant for the said date, therefore, the appellant has not been represented in the said criminal revision and the factum of acquittal came to his knowledge on

10.12.2014, whereafter appellant has applied for the certified copy of the said impugned order on 28.12.2013, but the file could not be traced from the Court staff, due to which certified copy was obtained on 14.12.2013. He further contends that the order of acquittal is contrary to law and same is liable to be set-aside.

5. Conversely, learned counsel for the respondents contends that instant appeal is time barred; that the respondents earned double presumption of innocence and such right should not be interfered through time barred appeal. He further contends that the grounds taken in the application for condonation of delay are not justified from the record and the details provided in the said application are ~~an~~ afterthought, which are not corroborated from the record. Learned State Counsel has also opposed the instant criminal appeal.

6. Arguments heard, record perused.

7. From the perusal of record, it reveals that appellant had lodged the criminal case FIR No. 133, dated 10.03.2010, U/s 420/468/471/34, PPC, P.S Margalla, Islamabad against the respondents No. 2 to 4 for committing fraud by way of execution of agreement to sell regarding House No. 919, Sector I-10/1, Islamabad, which was owned by the appellant. As per contents of the FIR, respondent No.1/Gul Zahida Akhtar is the real sister of the appellant and respondent No.4 is husband of Gul Zahida Akhtar/respondent No.1 (brother-in-law of the appellant), whereas respondent No.3 is the real son of respondents No. 2 & 4 (nephew of the appellant). As per the claim of the appellant, on the request of his sister, he had given the permission to his sister to stay in the upper portion of the subject house and the ground portion was rented out to the tenant, who was subsequently evicted by the respondents and it was claimed by the respondents that they owned the house through an agreement, which was false and frivolous, even the signatures of the appellant available on the said document are fake. After registration of criminal case, the Investigation Officer got verified the signatures on the disputed document through F.I.A handwriting expert vide report dated 01.06.2010, which confirms that the signatures (Ex-PA/1) on the Iqrar Nama dated 28.02.2002, do not tally

with the corresponding specimen signatures of the complainant/Mubarak Hussain and even the said disputed document is a photo copy. The Investigation Officer has submitted the challan before the learned Trial Court, the charge was framed, even the evidence of complainant/Mubarak Hussain was recorded, whereafter application U/s 249-A, Cr.P.C was dismissed by the learned Trial Court mainly on the ground that the application is premature and the matter would be decided after recording of evidence of the Investigation Officer in accordance with law.

8. The respondents feeling aggrieved with the said order, filed criminal revision U/s 435 read with 439-A, Cr.P.C before learned Additional Sessions Judge (West), Islamabad, who vide order dated 06.11.2013 acquitted the respondents No. 2 to 4 from the criminal case mainly on the ground that the police was not competent to register as well as to investigate the criminal case, as the offences with which the respondents have been charged are non-cognizable, without obtaining prior order from the learned Judicial Magistrate within the preview of Section 155(2) Cr.P.C. The appellant has assailed the said order of acquittal through the instant appeal, which was filed with delay, therefore, it requires determination on the question of limitation at the first instance.

9. I have meticulously scanned the dates mentioned on the certified order, whereby the date of application was 21.12.2013 and certified copy was prepared on 14.02.2014 and the appeal against the said order was filed on 07.03.2014, hence the appeal filed by the appellant against the acquittal of the respondents is 37 days time barred.

10. The appellant has filed an application for condonation of delay mainly on the ground that the factum of acquittal came to his knowledge on 10.12.2014 as referred in his application, which is incorrect date, similarly, he has referred that he applied for certified copy of the order on 28.12.2013, even the said date is not correct as the copy was applied on 21.12.2013.

11. Keeping in view the background of the case, this Court could not enter into the merits of the case, unless the question of limitation been settled. It is

trite law that the application for condonation of delay in terms of Section 5 of Limitation Act, 1908 could not be entertained due to bar contained in Section 29(2) (b) of Limitation Act, 1908, which provides the concept of special limitation prescribed in the Criminal Procedure Code, whereas Section 417(2-A), Cr.P.C provides the limitation period of 30 days for filing of appeal against the order of acquittal and if the same was not observed, the appeal is time barred. Reliance is placed upon case law reported as **2013 YLR 1284 [Sindh] (Mashkooor Ahmed Vs. Abdul Majeed and 2 others).**

12. It is also settled law that unawareness was not a ground of condonation of delay, even delay of one day could not be condoned in appeal against acquittal as held in case law reported as **2017 PCr.LJ Note 1 [Sindh] (Muhammad Asif Vs. Sanobir Khan and 3 others).** It is not the case of the appellant that the delay was caused due to some act of acquitted accused, who had acquired valuable right, which could not be lightly disturbed or destroyed and delay of each day has to be explained. Reliance is placed upon **2018 MLD 1731 [Peshawar (Bannu Bench)], 1985 SCMR 893 (Noor Hussain Vs. Muhammad Salim).**

13. For what has been discussed above, instant appeal is time barred, even the application for condonation of delay does not meet the criteria for consideration of condonation, therefore, instant appeal is **dismissed** being time barred.

(MOHSIN AKHTAR KAYANI)  
JUDGE

RAMZAN