

ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl.Appeal No.358/2019

Lt.Col.Muhammad Naeem Rasheed
VERSUS
Rana Mubashar etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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05.11.2019. Sardar Muhammad Tariq Fareed Gopang, Advocate for petitioner.

Through the instant criminal appeal, the appellant has assailed the judgment dated 30.07.2019 passed by Judicial Magistrate Section-30 (West) Islamabad whereby learned Magistrate has acquitted the respondents No.1 & 2 in terms of Section 249-A Cr.P.C in case FIR No.140 dated 28.4.2010 under sections 471, 467, 420, 468 PPC Police Station Kohsar, Islamabad.

2. Learned counsel for the appellant contends that learned trial Court has passed the impugned judgment of acquittal without appreciating the law on the subject and even overwhelming evidence was not considered nor any opportunity of hearing was granted to the appellant to produce his evidence to achieve the conviction of the respondents No.1 & 2.

3. During the course of arguments learned counsel for the appellant has been confronted regarding maintainability of the instant appeal against the impugned order of acquittal as the impugned judgment was announced on 30.07.2019. From the perusal of record it transpires that appellant has applied for certified copy of the said judgment on 23.9.2019 which was received by the appellant on the same day. The appellant has failed to answer the question of limitation. While considering the above background this Court is persuaded with the judgment of Apex Court titled *The State Versus Syed Ali Bagar Naqvi etc (2014 SCMR 671)*

wherein it is held that:-

Under section 417, Cr.P.C. right to appeal against acquittal was categorized into three classes---Under section 417(1), Cr.P.C., it was exclusively the Provincial Government, which may direct the Public Prosecutor to avail such legal remedy

before the High Court from an original or appellate order of acquittal for which no period of limitation was prescribed, thus such appeal would be regulated by Art. 157 of the Limitation Act, 1908, which provided a limitation period of six months for filing such appeal.

Under section 417(2), Cr.P.C. when an order of acquittal was passed in a case instituted upon a complaint, then the remedy of filing appeal against such order in the form of special leave to appeal had been conferred only to the complainant, which remedy, in terms of section 417(3), Cr.P.C. could be availed by him within sixty (60) days from the date of order of acquittal.

Under section 417(2A), Cr.P.C., right to appeal against an order of acquittal, whether original or appellate, had been conferred to a person aggrieved against such order, who might avail such remedy of filing acquittal appeal within thirty (30) days.

Prescribed period of limitation of sixty (60) days and thirty (30) days respectively was available only for those acquittal appeals, which were filed by "the complainant" or "person aggrieved" respectively, while no specific period of limitation as regards acquittal appeals under section 417(1), Cr.P.C. was prescribed, which would thus be regulated by Art. 157 of Limitation Act, 1908, under which period of limitation was six months.

4. Besides the above referred position it is a trite law that where the appellant is seeking reversal of acquittal order recorded in favour of accused and appeal has been filed with delay, the period can only be condoned in those cases where appellant prevented to file an appeal in time or it has been shown that the appellant was not in the knowledge of the order of acquittal and it is beyond his capacity to file the appeal, however, no such reason have been argued or raised before this Court.

5. Keeping in view the above background instant appeal has been filed with delay and same is time barred as period necessary for filing of appeal against the order of acquittal under section 417 (2-A) Cr.P.C is 30 days but instant appeal has been filed with delay, therefore, same is hereby ***dismissed*** being barred by limitation.

(MOHSIN AKHTAR KAYANI)
JUDGE

M.S. ZAKI