

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Appeal No.51/2018

Professor Dr. Atta Ullah

versus

Judicial Magistrate, P.S. Ramna, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.09.2019	Sheikh Muhammad Khizar-ur-Rashid and Ms. Shahina Shahab-ud-Din, Advocates for appellant.

MOHSIN AKHTAR KAYANI, J: Through the instant criminal appeal, the appellant has called in question the order dated 10.04.2017 of the learned Judicial Magistrate, P.S. Ramna, Islamabad, whereby Jamil Babar (Respondent No.2) has been acquitted from case FIR No.258, dated 10.07.2013, under Section 25-D Telegraph Act and Section 506 PPC, P.S. Ramna, Islamabad.

2. Brief facts referred in the instant appeal are that the appellant filed complaint against Respondent No.2 with the allegations that he visited the office of Respondent No.2 (Allied International H&H Exchange Company, Blue Area, Islamabad) to get exchanged Rs.3,960,000/- with US Dollars, against which Respondent No.2 handed him over a receipt as well as a cheque of Rs.3,960,000/- as security. However, respondent No.2 failed to pay back the said amount, even the said cheque got dishonored, whereas Respondent No.2 also extended threats to appellant not to file any case against him. Nevertheless, appellant got lodged the case FIR

No.258/2013 against respondent No.2 and accordingly he was sent up to face his trial. During the trial, Respondent No.2 filed application under Section 249-A Cr.P.C. and the learned Judicial Magistrate vide impugned order dated 10.04.2017 accepted the same and acquitted Respondent No.2. Hence, the instant criminal appeal.

3. Learned counsel for appellant contends that after submission of challan in the Court the appellant was never served with any notice; that all the proceedings have been conducted in absence of appellant; that learned trial Court accepted the application of Respondent No.2 filed under Section 249-A Cr.P.C. without issuing any notice to the appellant; that there is sufficient evidence available on record for conviction of Respondent No.2, but the learned trial Court has passed the impugned order in slipshod manner, hence, the same may be set-aside.

4. Arguments heard, record perused.

5. Perusal of record reveals that Respondent No.2 has been acquitted in case FIR No.258, dated 10.07.2013, under Section 25-D Telegraph Act and Section 506 PPC, P.S. Ramna, Islamabad, by the learned Judicial Magistrate, 1st Class, Islamabad through the impugned order dated 10.04.2017.

6. The main allegation leveled by the appellant in his complaint is the threat telephonically extended by

Respondent No.2 using his mobile number i.e. 0300-5290658 and also using 0300-5808874, which belongs to one Amjad.

7. The Investigating Officer submitted challan against Respondent No.2 in the Court, however the learned Trial Court has observed in the impugned order that since no record of mobile phones or the CDR has been collected by the Investigating Officer in this case, the offence under Section 25-D of the Telegraph Act, 1885 is not made out. Therefore, the only question left to determine is the verbal threat extended to appellant/complainant, which has to be looked into by the learned Trial Court. However, the appellant/complainant admittedly entered into compromise with Amjad/co-accused and this actuality persuaded the learned Trial Court to acquit Respondent No.2 for having no probability of his conviction.

8. I have gone through the impugned order together with record appended with this appeal and have no hesitation to hold that the primary allegation leveled by the appellant has not been substantiated as no CDR has been collected, therefore, the probability of conviction of Respondent No.2 is not apparent in this case.

9. The other important aspect in this case is that the order of acquittal was passed on 10.04.2017 and the appellant has applied for certified copy of the same on 07.03.2018, which was prepared on the same day, whereas the appeal against acquittal was filed on 28.03.2018, hence the appeal against

acquittal is admittedly time barred by 11 months, though the appellant has taken the plea that no notice has been served upon him.

10. The record reveals that proceedings under Section 512 Cr.P.C. have been initiated against Respondent No.2 after issuance of proclamation, but after his appearance he has filed application under Section 249-A Cr.P.C., which was allowed by the learned trial Court vide impugned order dated 10.04.2017 with the observation that probability of conviction is not apparent as the complainant has already compromised the matter with the principal accused and that no mobile call data is available on record, which is the key requirement to prove offence under Section 25-D of the Telegraph Act, 1885 read with Section 506 PPC.

11. Learned counsel for petitioner has been confronted regarding maintainability of the instant appeal on the ground that appeal has been filed with delay, whereby the learned counsel while relying upon 2005 MLD 896 Lahore (Mst. Mamoonah Akhtar vs. Magistrate Section-30, Wazirabad, District Gujranwala) and 2012 P.Cr.LJ 507 Lahore (Zafar Iqbal vs. The State) contends that time of filing of appeal starts from date of knowledge.

12. On the contrary, in appeals against acquittal the apex Court has rendered its opinion in 2014 SCMR 671 (The State vs. Syed Ali Baqar Naqvi, etc.) in the following manner:

“---S. 417---Limitation Act (IX of 1908), Sched. I & Art. 157---Appeal against acquittal---Categories---

Limitation period for filing different categories of appeals against acquittal stated.

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.

13. Keeping in view the above background in terms of Section 417 Cr.P.C., the complainant can assail the order of acquittal within the period of 30 days and as such, the instant criminal appeal is time barred, which otherwise creates certain rights in favour of Respondent No.2, whereas

there is neither any concept of condonation of delay available in this case, nor any such request has been made in writing, therefore, the instant criminal appeal is hereby **DISMISSED** *in limine* on merits as well as on question of limitation.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.