

PESHAWAR HIGH COURT, BANNU BENCH

FORM OF ORDER SHEET

Date of order or proceeding	Order or other proceedings with signatures of Judge (s).
(1)	(2)
22.08.2017	<p><u>Cr.A No.333 -B of 2016 with</u> <u>Cr. Misc: No.212 -B of 2016</u></p> <p><u>Present:</u></p> <p style="text-align: center;">Shahid Hameed, Addl: A.G for the State. *****</p> <p><u>SHAKEEL AHMAD, J.---</u> The State through A.G Khyber Pakhtunkhwa has filed, under section 417 Cr.PC, this appeal against the judgment dated 26.04.2014 of the learned Additional Sessions Judge-I, Bannu , whereby accused respondents were acquitted. Alongwith instant criminal appeal an application for condonation of delay was also filed.</p> <p>2. Learned A.A.G appearing on behalf of the State argued that the delay in filing the appeal was neither intentional nor deliberate, but due to non availability of documents/ record, the most of the time consumed in obtaining the documents from the department concerned. He next submitted that under the circumstances of compelling nature the delay can</p>

	<p>be condoned.</p> <p>3. We have gone through the appeal and considered the submission made by the learned A.A.G representing the State.</p> <p>4. Perusal of record reveals that impugned judgment was passed on 26.04.2014, while this appeal was filed on 14.05.2016 after expiry of one and half year, which was returned with objection to re-file on 30.05.2016, but it was re-submitted on 08.08.2016, with further delay of more than three months. The only plea urged by the learned A.AG is that the delay was occasioned due to non availability of documents/ record, and that most of the time consumed in obtaining the documents from the department concerned. For seeking the condonation delay of each day has to be explained, which is lacking in this case. Furthermore, the Government/State cannot be treated differently than ordinary litigant and is not entitled to preferential treatment and is to be treated on equal footing with ordinary litigant. In this respect reference</p>
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can well be made in case titled *"The State through Advocate-General Sindh Vs. Amir Bux (1981 SCMR 410)"*, wherein the Hon'ble supreme Court has held as under:

"It must also be stated that it has been the consistent view of this Court, as expressed in Nazar v. The State 1968 SCMR 715, Jalal Khan v. Lakhmir 1968 SCMR 1345, Muhammad Khan v. Sultan 1969 SCMR 82, Piran Ditta v. The State 1970 SCMR 282 and Nur Muhammad v. The State 1972 SCMR 331, that in petition against acquittal delay cannot be condoned unless it is shown that the petitioner was precluded from filing his petition in time due to some act of the acquitted respondents; or by some circumstance of a compelling nature, beyond the petitioner's control. The reason for taking the strict view is that in most jurisdictions an acquittal, once recorded by a competent Court is final, and the matter cannot be reopened at the instance of any party including the State. However, 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. "

5. In the reported case of "Government of Punjab v. Muhammad Salam PLD 1995 SC 396" the Honourable Supreme Court has held as under:--

"In the present case, the High Court gave good reasons for declining to condone the delay. It held that the ground taken by the appellants in their application under section 5 of the Limitation Act that they could not file the appeal within time as they had entered into correspondence with litigating departments and the Solicitor was quite vague and reliance was also placed. on a judgment of this Court reported in 1990 SCMR 1059 wherein it was held that "it is a well-settled principle of law that under section 5 of the Limitation Act, delay of each day is to be explained" and further that, the Government cannot be treated differently than a private litigant on the question of limitation under section 5 of the Limitation Act."

6. In order to bring the case for condonation of delay, the appellant is required to show that there was sufficient cause and it was beyond the control to

file appeal within the prescribed time. The ground agitated for condonation of delay is neither reasonable nor cogent nor confidence inspiring, therefore, the delay cannot be condoned. Furthermore, nothing has been alleged against the acquitted accused that the delay was accrued due to some act of the acquitted accused, who acquired valuable rights, which cannot be lightly disturbed or destroyed, as held by the Hon'ble Supreme Court in the reported case of **"Muhamamd Bashir Vs Province of Punjab" (2003 SCMR 83).**

7. The ground shown for condonation of delay is neither reasonable nor cogent nor inspire confidence and the delay of about more than one and half year cannot be condoned. This appeal as well as criminal Msic: application are dismissed being barred by time.

**Announced.
22.08.2017**

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