

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)

Cr.A No.39-B of 2018.

The State

Vs

Ihsan Ullah

JUDGMENT

Date of hearing _____ 17.9.2018 _____

Appellant-Petitioner: **By Shahid Hameed Qureshi, Addl: AG**

Respondent: _____

SHAKEEL AHMAD, J--- The State through Advocate

General, Khyber Pakhtunkhwa, Peshawar has filed the present criminal appeal under section 417 Cr.P.C against the impugned judgment/order dated 10.01.2018 of the learned Judge Anti Terrorism Court, Bannu, whereby with reference to crime report No.21 dated 13.4.2016 of Police Station CTD, Bannu, he had acquitted accused/respondents Ihsan Ullah son of Sain Gul, Hayat Ullah son of Khan Gul and Dil Baz son of Dost Muhammad Khan all r/o Gerra Shah Jahan, District Bannu of the charges under sections 387/427 PPC/3/4 ESA/21-J/7ATA. The appeal was filed on 17.2.2018, after the

expiry of period of limitation, which is **30 days as enumerated in section 417(2-A) Cr.P.C.**

2. The learned AAG, representing the State mainly argued that the delay in filing the appeal occurred due to non-availability of the documents. He next contended that most of the time consumed in collection of the case file from the department concerned. He lastly argued that under circumstances of the compelling nature the delay may be condoned in the interest of justice.

3. We have given our anxious consideration to the submissions of the learned AAG representing the State and perused the record with his eminent assistance.

4. The appeal was filed with the delay of about 05 days. The only plea urged before us that the delay in filing the appeal occasioned due to non-availability of the documents and that most of the time consumed in collection of the case file from the department concerned, therefore, the same may be condoned in the interest of justice.

5. Perusal of the record reveals that the accused/respondents were acquitted of the charge vide

judgment dated 10.01.2018, the **application for issuance of certified copy was not submitted** and certified copy of the impugned judgment was obtained on 20.01.2018, but despite obtaining the same on 20.01.2018, the appeal in hand was filed before this Court on 10.02.2018, it was returned with objections, after removal of the same it was re-submitted on 17.02.2018, the appeal is barred by 05 days. The only plea urged before us is that most of the time consumed in obtaining the documents from the concerned department, it appears from the record that vide order No. SO (Pro:/HD/1-13/2017/Vol-1 dated 30.01.2018, the Provincial Government had accorded sanction to the Advocate General to file the appeal, but despite that it was filed after lapse of considerable time. For seeking the condonation of delay each day has to be explained, which is lacking in this case. Furthermore, the State cannot be treated differently than ordinary litigants and is not entitled to preferential treatment and is to be treated on equal footing with ordinary litigant. In the reported case of the **“State through Advocate General Sindh Vs. Amir**

Bakhsh” (1981 SCMR 410), the Hon’ble Supreme Court

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 S C M R 71), Jalal Khan v. Lakhmir (1968 S C M R 1345), Muhammad Khan v: Sultan (1969 S C M R 82), Piran Ditta v. The State (1970 S C M R 282), and Nur Muhammad v. The State (1972 S C M R 331), that in petitions 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 record 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, a 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

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 wine by an act of the acquitted accused; or by some circumstance of a compelling nature beyond the control of the petitioner."

In the reported case of **"Government of Punjab Vs. Muhammad Saleem"** (PLD 1995 SC 396) the Hon'ble Supreme Court held as under:

"In the present case, the High Court gave good reasons for declining to condon 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. Discretion exercised by the High Court proceeded on correct appreciation of factual and legal position. It, therefore, does not call for any interference by this Court. It may be stated that even before us, learned counsel appearing for the appellants has failed to explain each day's delay. According to the respondent, the papers were received in the office of the Advocate-General on 6.1.1992 and the appeal was filed on 9.1.1992 but no explanation whatsoever has been offered for the delay of these days.

6. In order to bring a case for condonation of delay, the appellant is required to show that there was sufficient cause and it was beyond the control to file within the prescribed time. The explanation offered for condonation of delay by the learned AAG is neither cogent nor plausible. Furthermore, nothing has been alleged that the delay was occurred due to some act of the acquitted accused/ respondents, who have acquired valuable rights, which cannot

be lightly disturbed or destroyed as held by the Apex Court in the reported case of “**Muhammad Bashir Vs. Province of Punjab**”(2003 SCMR 83).

7. Resultantly, this appeal is dismissed in *LIMINE* being barred by time.

Announced.
17.9.2018.

J U D G E.

J U D G E.