

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Syed Mansoor Ali Shah
Justice Amin-ud-Din Khan
Justice Athar Minallah

Criminal Misc. Appeal No. 6/2020 in
Criminal Appeal No. Nil/2020

[Against the order of the Registrar dated 17.01.2020]

General (Retd.) Pervez Musharraf. *... Appellant*

Versus

Federation of Pakistan and others. *... Respondents*

For the Appellant: Mr. Salman Safdar, ASC

For the Respondents: N.R.

Date of Hearing: 10.11.2023

ORDER

Qazi Faez Isa, CJ. Learned Mr. Salman Safdar representing the appellant, General (Retd.) Pervez Musharraf, states that the appellant was convicted by a Special Court and had a right to prefer an appeal against his conviction under section 12(3) of the Criminal Law Amendment (Special Court) Act, 1976. The appellant was convicted *vide* judgment dated 17 December 2019 and the criminal appeal against such judgment was filed on 16 January 2020, which was within time as the said provision stipulates that a convict '*may prefer an appeal to the Supreme Court within thirty days of the passing of the judgment.*' However, the criminal appeal was not numbered as the Institution Officer of the office of the Supreme Court objected to its filing as the appellant had not surrendered himself; in this regard reliance was placed on the proviso to rule 8 of Order XXIII of the Supreme Court Rules, 1980.

2. Against the said office objection, dated 17 January 2020, Criminal Miscellaneous Appeal No. 6/2020 was filed on 14 February 2020, which was put up for hearing in Chamber before Justice Umar Ata Bandial, as his

lordship then was, and, after noting the contentions of the learned counsel, he observed *vide* his order dated 25 February 2020 that, '*It would be appropriate that these points are considered by a Bench of this Court. Accordingly, let the present C. M. Appeal be fixed before the Court for hearing.*' However, the learned counsel states, the appeal was not fixed in Court till today, and the appellant passed away on 5 February 2023.

3. The learned counsel relies on the case which he had also cited before the learned Judge in Chamber, that is, *Benazir Bhutto v State* (1999 SCMR 1619), and submits that it was fully applicable, in particular its paragraph 11, at page 1628. He further states that in the *Benazir Bhutto* case reliance was placed upon the decision in the case of *Pakistan v General Public* (PLD 1989 Supreme Court 6) wherein the Shariat Appellate Bench of this Court had directed that in the laws under consideration provisions be made for providing a right of appeal. He further states that a right of appeal also accords with the Constitution of the Islamic Republic of Pakistan ('**the Constitution**') as it is an adjunct to *fair trial and due process* as provided in Article 10A of the Constitution.

4. We enquired from the learned senior counsel, Mr. Hamid Khan, representing Mr. Taufiq Asif, learned senior counsel, Mr. Rasheed A. Rizvi, representing Sindh High Court Bar Association, learned Mr. Haroon-ur-Rashid, Vice President of the Pakistan Bar Council, learned Hafiz Abdul Rehman Ansari, representing himself, in the connected matters fixed today, that is, CMA No. 677/2020, etc., whether they have any objection if Criminal Miscellaneous Appeal No. 6/2020 is allowed and they as well as the learned Additional Attorney-General state that they have no objection to the extent of numbering of the criminal appeal provided the question regarding the intervening death of the appellant will be considered later.

5. It is unfortunate that despite the order of the learned Judge in Chamber, directing that the said criminal miscellaneous appeal be fixed in Court this was not done till today (10 November 2023), that is, the same was not fixed for a period of over three years and eight months for no discernable reason. For this inordinate delay neither the appellant nor his counsel can be faulted. This Court has repeatedly held that no one should be made to suffer on account of an act of Court, or as in this matter, on account of inaction. Even otherwise an appeal is the right of every convict.

Accordingly, Criminal Miscellaneous Appeal No. 6/2020, assailing the office objection, is allowed and consequently the unnumbered criminal appeal be numbered. The record of the Special Court be summoned and be put up alongwith the said appeal for hearing in Court.

6. The learned Mr. Salman Safdar states that he is in contact with the widow, son and daughter of the appellant and will be informing them that the appeal has been numbered and fixed for hearing and will be taking instructions from them.

7. The said appeal be fixed in Court on **Tuesday, 21 November 2023 at 11.30 am** alongwith the abovementioned petitions.

Chief Justice

Judge

Judge

Judge

Islamabad
10.11.2023
(Farrukh)

Approved for Reporting