

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Acquittal Appeal No. 518 of 2019

Appellant : **The State**
through Mr. Muhammad Ahmed, Assistant
Attorney General

Respondents : **Shaikh Muhammad Munawar & another**
through M/s. Mehmood A. Qureshi and
Jamshed Iqbal, Advocates

ORDER

Omar Sial, J.: The State has impugned an order dated 26-2-2019 passed by the learned Special Judge (Central-II) Karachi. In terms of the said order the respondent no. 1 Shaikh Muhammad Munawar was acquitted under section 249-A Cr.P.C. of alleged offences committed under sections 34, 109, 409, 420, 468, 471 P.P.C. read with section 5(2) of the Prevention of Corruption Act, 1947.

2. The facts relevant for the present purpose are that the impugned order was passed on 26-2-2019 whereas the appeal against the said order was filed on 29-8-2019 i.e. 3 days after the period of limitation. The State filed an application M.A. No. 9041 of 2019 praying therein that the delay in filing the appeal be condoned as the same had been caused due to departmental procedures.

3. I have heard the learned AAG as well as the learned counsel for the respondent no. 1. My observations are as follows:

4. In the case of **Hussain Bakhsh v. Allah Bakhsh and others 1981 SCMR 410** an acquittal appeal had been filed with a 3 day delay. The Honorable Supreme Court observed that *"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 petitions against acquittal delay cannot be condoned unless it is shown that the petitioner was precluded from filing his petition in due time to some act of the acquitted respondents; or by some circumstances of a compelling nature, beyond the petitioner's control. The reason for taking the strict view is that in most jurisdiction 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 circumstances of a compelling nature beyond the control of the petitioner.

5. A learned Division Bench of this Court in the case of **The State v. Amir Bux & another (1999 P.Cr.L.J. 587)** where there was a 12 day delay in filing the appeal observed: *“The only reason shown for seeing condonation of delay is that a lot of time was consumed in obtaining departmental sanction. This ground is not sufficient. This cannot be termed to be a ‘circumstance of a compelling nature beyond the control of the appellant’. Nothing has been alleged against the acquitted accused which may have resulted in causing delay. The ground shown for causing delay in filing appeal is neither reasonable nor cogent. The appeal merits dismissal.”*

6. In **Piran Ditta v. The State (1970 SCMR 282)** the Honorable Supreme Court observed that *“The explanation given by the petitioner cannot be taken into consideration because the petitioner was not prevented by the respondents to file the present petition. The view of this Court is that delay in acquittal matters is condoned only in those cases where the petitioner is prevented by an act of the respondent to file the petition for special leave to appeal in time.”*

7. In the case of **WAPDA v. M.A. Rashid (2001 SCMR 722)** the Honorable Supreme Court has observed *“The contention of the petitioner that the delay in filing the above petition resulted on account of late sanction received from the Head Office for filing of the above petition is hardly a ground for condoning the delay.”*

8. Learned AAG, though he tried his best, very honestly and frankly conceded that he was unable to controvert the fact that the departmental delay caused as a consequence of no fault of the respondent, in light of the above judgments and in the absence of any compelling circumstances was sufficient to upset an acquittal.

9. In view of the above, the appeal stands dismissed along with pending application.

JUDGE