

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

Criminal Accountability Acquittal Appeal 10 of 2015

The State
vs.
Wasif Shah & another

(And connected appeals, particularized in the Schedule¹ hereto.)

For the Appellant : Mr. R.D. Kalhoro
Special Prosecutor NAB

Date/s of hearing : 31.08.2022

Date of announcement : 31.08.2022

ORDER

Agha Faisal, J. The present acquittal appeals assail the common judgment dated 13.06.2015 rendered in consolidated references by the learned Accountability Court III Sindh, Karachi (“Impugned Judgment”). The respective appeals were listed and heard conjunctively and shall be determined vide this common order.

2. At the very onset serious objections as to maintainability were raised by the office, back in 2015, *inter alia* that the appeals were time barred and devoid of any certified copy of the Impugned Judgment.

3. Even though these appeals were preferred in 2015, yet no notice has even been sought / issued herein as of date. Time and again adjournments were sought by the appellant, including without limitation on 26.11.2015, 28.11.2017, 15.01.2018, 23.02.2018, 10.08.2018, 05.09.2018, 03.10.2018, 18.01.2019, 21.01.2019, 13.02.2019, 12.03.2019, 15.04.2019 and 02.05.2019. These adjournments were sought consistently and the office objections remained unaddressed.

4. On 23.05.2019, these matters were listed again and vide a detailed order it was observed that the appellant remained unrepresented despite the matters

¹ The Schedule hereto shall be read as an integral constituent hereof.

having been called twice. It was also noted that the appellant had failed to proceed with these appeals since 2015 and even the office objections remained unaddressed. This court was then constrained to dismiss these appeals for non-prosecution.

5. The appellant then preferred applications for restoration of the appeals and on the very next date, being 30.05.2019, the appellant was confronted as to maintainability of thereof as the Court observed that there was no provision to sanction such an application in the Cr.P.C. The appellant sought an adjournment and then continued to do so *inter alia* on 18.07.2019 and 30.07.2019.

6. On 31.10.2019, the restoration applications were allowed and the appeals were restored. In the interests of propriety, we would prefer to eschew any observation in such regard.

7. Thereafter, the matters were once again listed *inter alia* for orders on office objections, however, the appellant sought repeated adjournments on 03.12.2019, 29.01.2020, 17.03.2020, 11.11.2020, 04.03.2020 and 09.09.2020. The matters were listed again today and the Special Prosecutor was asked to address the office objections; however, he remained insistent that the matters be adjourned once again.

8. Per the Special Prosecutor, while the Impugned Judgment was dated 13.06.2015, the present appeals were preferred on 17.08.2015. It was submitted that the appeals could not be presented earlier as a copy of the Impugned Judgment, certified or otherwise, could not be obtained by the appellant, despite best efforts.

9. It is imperative to denote that even at the present time a certified copy of the Impugned Judgment is not on file. Upon being confronted, the Special Prosecutor admitted that none has ever been filed. Therefore, it is apparent that the present appeals were preferred without any certified copy of the Impugned Judgment and none has been placed on record as of date.

10. Remarkably, the respective memoranda of appeal invokes numerous grounds challenging specifics of the Impugned Judgment and does not profess to be ignorant of the body thereof. The Special Prosecutor was queried as to how specifics of the Impugned Judgment were assailed if the same was not

available; however, it was submitted by the Special Prosecutor that he was not aware how the same was done.

11. Attention of the Special Prosecutor was drawn to the “*Reply to objections*” dated 29.08.2015, filed by the appellant, wherein it was stated that a copy of the Impugned Judgment was delivered to the appellant on 18.08.2015. It was asked as to whether the said presumably certified copy of the Impugned Judgment was filed and the Special Prosecutor replied in the negative.

The surveillance of the counsel was then drawn to a copy of the Impugned Judgment, albeit *admittedly* uncertified, on file wherein it is annotated that the said copy was issued on 02.09.2015. The Special Prosecutor was asked that if the copy filed was issued on 02.09.2015, then how could the same have been received by the appellant on 18.08.2015, as denoted vide the appellant’s reply dated 29.08.2015. Once again the Special Prosecutor professed ignorance.

12. The National Accountability Ordinance 1999², as it stood at the relevant time, required that appeals were required to be filed within ten days of the final judgment. It is an admitted fact that the present appeals were not filed within ten days of the Impugned Judgment.

Section 419 CrPC states that all appeals *shall* be accompanied by the judgment appealed, unless the Court otherwise directs. It is the appellant’s case that the present appeals were not filed along with a copy of the Impugned Judgment, certified or otherwise, and no case was ever set forth by the appellant for ever having sought or obtained directions of this Court otherwise.

13. In the context of criminal acquittal appeals, the august Supreme Court in *Shahid Ghafoor*³ followed the earlier edict in *Fakhar ud Din*⁴ wherein it has been held that “*lapse of time, in a criminal matter, is sufficient to provide protection to the accused who had been acquitted, against further judicial process...*”. In *Shahid Ghafoor* the august Court had dismissed an application seeking condoning of delay, however, in the present appeals no such application was ever brought before us.

² Section 32 thereof.

³ Per *Iftikhar Muhammad Chaudhry J* in *M Shahid Ghafoor vs. Muhammad Rashid & Others* reported as 2004 SCMR 1122.

⁴ *Fakhar-ud-Din vs. Fazal Karim & Others* reported as 1999 SCMR 795. Reliance was placed on *Rabia Bibi vs. Rasool Bakhsh* reported as PLD 1966 SC 531; *Abdul Qayyum vs. Ghulam Yasin* reported as PLD 1963 SC 151; *Nabi Bakhsh vs. Ghulam Sarwar & Others* reported as 1968 SCMR 780; *Piran Ditta vs. The State & Others* reported as 1970 SCMR 282; and *Zeenat Sultan vs. Mumtaz Khan* reported as PLD 1994 SC 667.

14. These appeals are manifestly time barred, however, no plea seeking condoning delay has been made as the appellant has assumed that these are within time as the certified copy of the Impugned Judgment was not provided thereto. We would like to observe at this juncture that the Special Prosecutor has failed to demonstrate either that the certified copy was applied for in time and / or when, if at all, the certified copy was provided thereto. On the contrary the Special Prosecutor has admitted that even today no certified copy of the Impugned Judgment has been placed on file.

15. Without prejudice to the foregoing, even if it is assumed that the present appeals were instituted without the Impugned Judgment, upon the premise that the same was not available, even then there was no justification for these appeals to have been instituted beyond time. The Impugned Judgment is dated 13.06.2015 and the present appeals were filed on 17.08.2015. If the judgment was not available and the appeals were to be filed in the absence thereof anyways then there appears to be no justification for the appeals to have been filed almost two months beyond the pale of limitation.

16. These acquittal appeals are found to be *prima facie* barred by limitation. No application seeking condoning of delay was either been filed nor has such relief been verbally sought. The office objections, raised by the office back in 2015, remain unaddressed by the appellant and even today the Special Prosecutor was insistent on yet another adjournment, however, failed to satisfy this Court in respect thereof. Therefore, the present appeals, and all pending applications, are hereby dismissed *in limine*.

JUDGE

JUDGE

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