

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

**BEFORE:
MR. JUSTICE MAHMOOD AHMAD KHAN
MR. JUSTICE MUHAMMAD HASAN (AKBER)**

Criminal Acquittal Accountability Appeal No.D-105 of 2019

Appellant: The Chairman National Accountability Bureau,
through Ms. Shahida Ghani Special Prosecutor
NAB.

Respondent: Mr. Bachu Mal, through Mr. Zakir Hussain
Advocate

Date of hearing: 19.03.2025
Date of decision: 19.03.2025

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- Through the instant criminal Acquittal Accountability Appeal filed under Section 32 of National Accountability Ordinance 1999 (**Ordinance 1999**), the acquittal of the Respondent has been assailed, which was passed by the learned Accountability Court at Hyderabad in Reference No.01 of 2018 vide Judgment dated 08.08.2019.

2. Succinct facts of the case are that, upon completion of Inquiry, Investigation was initiated against the respondent with respect to accumulation of assets incommensurate with his known sources of income and which culminated into filing of Accountability Reference No.01/2018 before the learned Accountability Court at Hyderabad. The prosecution's case was that during a span of 37 years between 1981 till 2018, the respondent being an employee in government service as Superintendent in the Education Department, District Mirpurkhas, Government of Sindh, has accumulated an unexplained sum of Rs.11,59,71,130/-, which were found beyond his known sources of income and for which the accused could not justify the legal sources and therefore he has committed offence of corruption and corrupt practices as defined under section 9(a)(v) of the NAO 1999, which is punishable under section 10 of the Ordinance and Schedule thereto. After framing of Charge, a full-fledged trial was conducted wherein NAB examined 31 witnesses, whereas 4 defence witnesses were examined, whose statements on oath under section 340(2) Cr.PC were recorded. Being convinced that the prosecution has utterly failed to prove the Charge against the accused, the learned Accountability Court acquitted the accused

under section 265-H(i) Cr.PC. vide the impugned Judgment dated 08.08.2019.

3. Learned counsel for the Respondent has raised a preliminary objection against maintainability of this appeal on the ground that the same is barred by limitation and has not been filed within time as provided under section 32 of the Ordinance, 1999. It was further pleaded that even no application under section 5 of the Limitation Act 1908 for condonation of such delay was filed by the appellant. Conversely, the learned Special Prosecutor NAB has vehemently agitated that the appeal is within time; that law favours adjudication on merits and technicalities should not hamper the way of justice; that no application under section 5 of the Limitation Act was filed because there was no delay; that no notice was received from the copying branch for collection of copies and therefore as soon the same was received, the instant appeal was filed without any delay. Reliance was placed upon 2001 YLR 1501.

4. We have heard both the learned counsels and have also minutely perused the record with their able assistance. The Ordinance 1999, which is a special law, provides a period of 10 days for filing an appeal, under section 32 thereof. Section 12(2) of the Limitation Act 1908 provides that the **time requisite** for obtaining a copy of the decree, sentence or order appealed from shall be excluded.

“12. Exclusion of time in legal proceedings. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be executed.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and

5. In the present case, the Judgment was passed on 08.08.2019; application for certified copies was applied on 09.08.2018; Fee for cost of certified copies was ‘Estimated’ on the same day 09.08.2018; cost for the same was paid on 16.08.2018; and on the same day, the certified copy was prepared by the copying branch; but the certified copy was received on behalf of NAB from the branch on 21.09.2018. The Appeal was filed on 23.09.2018. Therefore, the moot question for determination would be,

whether the time spent, from the date of preparation of certified copy by the branch, till the receipt of the certified copy by the appellant, would be counted as 'time requisite' under section 12(2) of the Limitation Act 1908?

6. A brief look of the decisions by the superior Courts in Pakistan on this issue, brings us to the first case of '*Fateh Muhammad and others v. Malik Qadir Bakhsh*'¹ wherein it was held by the Supreme Court that the "time requisite" for obtaining copy of an order within the meaning of section 12 of the Limitation Act, means only the interval, between the date of application for preparation of certified copy and the date when it is ready for delivery; whereas the time spent between the date on which the copy was ready for delivery, and the date on which the applicant chooses to take delivery of the copy, is not a portion of time "requisite" for obtaining a copy. Same view was taken in '*Mst. Jamila Khatoon and another v. Mst. Tajunnisa and others*'² and such principles were followed in '*Mst. Aneela Zehra v. Kaleem Haider and 10 others*'³, '*Mian Muhammad Sabir V. Malik Muhammad Sadiq through Legal Heirs and others*'⁴ '*Khalid Aziz v. The State through Director General NAB, Balochistan*'⁵. Even in the Indian jurisdiction, same principles have been applied in '*Pramatha Nath Roy v. Lee*'⁶ wherein their Lordships of the Privy Council observed that in determining what is the time requisite, as referred in section 12, subsection (2) of the Limitation Act, the conduct of the appellant must be considered, and "no period can be regarded as requisite under the Act, which need not have lapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order". In '*Jeji Bhoy N. Surty v. T. S. Chettyar*'⁷ their Lordships again emphasized as follows:

"The word 'requisite' is a strong word; it may be regarded as meaning something more than the word 'required'. It means 'properly required'. It means 'properly required' and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default.

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1. 1975 SCMR 157
 2. PLD 1984 SC 208
 3. 2021 CLC 73
 4. PLD 2008 Supreme Court 577
 5. 2020 P Cr. L J 1291
 6. AIR 1922 P C 352
 7. AIR 1928 P C 123

7. Turning to the objection that application under section 5 of the Limitation Act has also not been filed by the appellant for condonation of delay, suffice it to say that in terms of section 29(2)(a) of Act, where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed therefor by the First Schedule of the said Act, provisions of section 3 shall apply as if such period were prescribed there for in that Schedule. Clause (a) of the same subsection suggests that in case special or local law provides period of limitation for preferring appeal, provisions contained in sections 4, 9 to 18 and 22 shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law. Whereas clause (b) thereof specifically rules out the application of remaining provisions of Act, including section 5 thereof. In the present case, since specific period of limitation has been provided under section 32 of the Ordinance 1999, therefore, keeping in view the provisions of section 29(2) of Limitation Act, the provisions of section 5 of the Act will not be applicable. Such principle has been settled in '*Ali Muhammad and another v. Fazal Hussain and others*'⁸, '*Allah Dino and another v. Muhammad Shah and others*'⁹, '*City District Government Lahore through District Coordination Officer, Lahore v. Mian Muhammad Saeed Amin*'¹⁰, '*Province of Punjab through Collector and others v. Muhammad Farooq and others*'¹¹ and '*Khalid Aziz v. The State through Director General NAB, Balochistan*'⁵ *supra*.

8. The next contention raised by learned special prosecutor, that technicalities should not be allowed to hamper the way of justice, is beyond mark for the reason that the question of limitation cannot be considered as a technicality *simpliciter*. The basic rule is that, the law of Limitation is not a mere technicality because the moment limitation expires, by operation of law, a right accrues in favour of the other side, which cannot be taken away lightly, nor can it be disturbed or brushed aside, unless "sufficient cause" is shown to the satisfaction of the Court. Reference can be made to the cases of '*Asad Ali v. Bank of Punjab*'¹², '*Ghulam Qadir v. Abdul Wadood*'¹³, '*Abdul Sattar v. Federation of Pakistan*'¹⁴, '*Muhammad Islam v. Inspector-General of Police*'¹⁵ and '*Muhammad Anwar (deceased) through legal heirs*'

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- 8. 1983 SCMR 1239
 - 9. 2001 SCMR 286
 - 10. 2006 SCMR 676
 - 11. PLD 2010 Supreme Court 582
 - 12. PLD 2020 SC 736
 - 13. PLD 2016 SC 712
 - 14. 2013 SCMR 911
 - 15. 2011 SCMR 8

*and others V. Essa and others*¹⁶. In addition to the above, delay of each and every day is also required to be explained by the party, and where delay is not explained through a sufficient cause, the same cannot be condoned, as held in '*Lt.-Col. Nasir Malik v. Additional District Judge and others*¹⁷. In the case of '*Imtiaz Ali v. Atta Muhammad and another*¹⁸, even a single day's delay in filing of an appeal was not condoned by the Supreme Court, since it had created valuable right in favour of the respondents, and no sufficient cause was found for filing the appeal beyond the period of limitation.

9. The case of '*Nazar Muhammad V. Muhammad Nawaz and 6 others*' 2001 YLR 1501, as relied upon by the learned special prosecutor, is a Judgment by a learned Single Judge of the Lahore High Court, on completely distinct facts and circumstances, wherein certified copy was transmitted to the copying agency at another District headquarters for no fault of the party, under the Punjab Copying Manual Rules. The same is therefore inapplicable to the facts of the present case.

10. Perusal of record in the present case shows that the Judgment was passed on 08.08.2019; application for certified copies was applied on 09.08.2018; Fee for cost of certified copies was 'Estimated' on the same day 09.08.2018; cost for the same was paid on 16.08.2018; and on the same day, the certified copy was prepared by the copying branch; but the certified copy was received on behalf of NAB from the branch on 21.09.2018 however, the Appeal was filed on 23.09.2018. Per learned counsel for the Respondent, once the copy was prepared on 16.08.2018, time for filing appeal starts ticking and NAB ought to have immediately collected the same, but the same was collected on 21.09.2018 (after a delay of 35 days). The Appeal ought to have been filed within 10 days of the Judgment, whereas it was filed on 23.09.2019, (after a delay of almost 37 days). As already held in the above referred Judgments, law does not help the indolent; that each and every day of delay in filing of the appeal was required to be explained, through sufficient cause; and that valuable rights have been created in favour of the opponent party due to appellant's such delay; and that the appellant ought to have remained more and more vigilant about its own case. In the present case, the appellant could not establish sufficient cause for even a single day of delay, and for which, it would be unfair to

16. PLD 2022 Supreme Court 716
17. 2016 SCMR 1821
18. PLD 2008 SC 462

penalize the Respondent, hence the delay in the present case cannot be condoned on equitable grounds, as held in the above decisions. The principle is that, neither appellant could be allowed to take benefit of his own mistakes, nor the Respondent should be punished for the negligence and indolence of the Appellant.

11. Apparently, the appellant has not been able to sufficiently explain the inordinate delay of 34 days in filing this appeal, within the parameters of law and we see no sufficient cause to condone this inordinate delay. For the foregoing reasons, the appeal is hereby dismissed as being barred by time. These are the reasons for our short order dated 19.03.2025, which was as follows:

"Learned counsels have been heard to the extent of limitation wherein for reasons to follow the Criminal Accountability Appeal No.D-105 of 2019 is found barred by limitation and stands dismissed accordingly. However Criminal Miscellaneous Application No.D-28 of 2022 is adjourned."

12. Before parting with this Judgment, the professional and enthusiastic efforts of the learned Special Prosecutor NAB to salvage this appeal from the mischief of limitation and the assistance provided by the learned counsel for the Respondent, are appreciated.

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