

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAJA SAEED AKRAM KHAN, CJ
MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CRIMINAL APPEAL NO. 11 OF 2024

(PLA No. 18 of 2023, filed against the judgment of the Shariat Appellate Bench of the High Court dated 25.05.2023, passed in crim. Appeal No. 03 of 2013).

The State through Advocate-General Azad Jammu and Kashmir, Muzaffarabad.

...Appellant

VERSUS

Khalid Hussain Rathore s/o Noor Hussain Rathore r/o Tariqabad Tehsil and District Muzaffarabad and 10 others.

...Respondents

Appearances:

For the appellant: Kh. M. Maqbool War, Advocate-General.

For the Respondents: Raja Sajjad Ahmed Khan, Advocate.

Date of hearing: 13.02.2024

ORDER:

Raza Ali Khan, J:- Titled petition stems from the judgment of the Shariat Appellate Bench of the High Court (*hereinafter to be referred as High Court*) dated 25.05.2023, whereby, the appeal filed by the State has been

dismissed. Given the significant legal questions of public importance at stake the petition is now being converted into an appeal.

2. The complainant, Shafique-ur-Rehman Pervaiz, son of Fazal-ur-Rehman Awan, resident of Upper Chatter, submitted an application to the City Police Station, Muzaffarabad, on 11.03.2011, wherein, the applicant alleged that the accused-respondents, in collusion with each other, forged allotment chits dated 06.11.1952 and 23.06.1961 in favor of respondent No.6, Muhammad Farooq; furthermore they allegedly prepared forged allotment chits for Ali Akbar son of Munshi Fazal Din (respondent No.8), and Muhammad Sultan, son of Ghulam Qadir. The respondents were accused of being involved in land grabbing and purportedly belonged to *land mafia* who utilized fake documents to grab State's land, subsequently selling it for significant profits. The complainant asserted that this land mafia had been operating in Muzaffarabad for long time, acquiring land measuring thousands of kanal through fraudulent means and selling it at inflated price. It was extensively alleged that the accused respondents were involved in the preparation of forged documents such as agreements-to-sell, sale-deeds, allotment chits and other revenue record. Consequently, a case (FIR No.54/2011) was registered at the Police Station City, Muzaffarabad, on 11.03.2011, in the offences under Sections 419/420, 467/468, 471 APC. After an investigation, the challan was presented on 14.11.2011, in the Court of learned Senior Civil Judge/Judicial Magistrate, Muzaffarabad, against the accused respondents for commission of offenses under Sections 419/420, 467/468, 471/475 APC. During the course of trial, the accused-respondents filed an application under section 249-A of the Criminal Procedure Code (Cr.P.C.) before the trial Court, contending therein, that they were not involved in the alleged

crime and the FIR had been lodged against them collusively. They claimed that the alleged forged allotments were already the subject of ongoing legal proceedings at other forum, thus the continuation of the instant case against them would cause them irreparable harm. The trial court heard arguments from both sides and accepted the application on 12.11.2012. An appeal against the said decision was filed by the State before the High Court, which was subsequently dismissed through the impugned judgment dated 25.05.2023.

3. Kh. Muhammad Maqbool War, the learned Advocate-General representing the State contended that the High Court's impugned judgment clearly violates the established law, the facts of the case, and the evidentiary record. He contended that the trial Court's acceptance of the application under section 249-A Cr.PC was legal error, as the accused was undeniably implicated in the case, supported by available evidence of their involvement in forging the documents. He maintained that acquitting the accused respondents of the charge was unjustified, given that the prosecution had successfully substantiated its case against them. Additionally, he stressed that had all the evidence been properly recorded, the guilt of the accused respondents would have been conclusively established. He contended that both the lower Courts gravely erred in acquitting the accused respondents, and prayed for setting-aside the High Court's Judgment.

4. On the opposing side, Raja Sajjad Ahmed Khan, the learned counsel for the accused-respondents, raised two preliminary objections. Firstly, he contended that the appeal lodged with the High Court lacked competence. As according to section 417(1) Cr.P.C, for the purpose of filing appeal against an acquittal order, only the Government can appoint

the public prosecutor. He argued that the Additional Advocate-General or Assistant Advocate-General do not fall within the definition of Public Prosecutor as per the legislative framework. Secondly, he asserted that the appeal filed before the High Court was also time-barred, as in the light of the judgment of this Court the limitation is provided as 30 days, whereas, the appeal was filed beyond the period of limitation. In support of this assertion, he referenced a reported judgment of this Court i.e. *State vs. Rustam Khan and others* [2017 SCR 1028]. He concluded by praying for dismissal of the case on the aforementioned grounds.

5. After carefully considering the arguments presented by the learned counsel for both parties and thoroughly revisiting the available case record, we aimed to address the preliminary objection raised by the learned counsel for the accused-respondents. Firstly, he contends that the appeal filed before the High Court lacks competence. According to section 417(1) Cr.P.C, only the public prosecutor is authorized to file an appeal on behalf of the State against an acquittal order and the Additional Advocate-General, and Assistant Advocate-General are explicitly excluded from the definition of the Public Prosecutor for this purpose. In support of this contention, he cited the precedent set forth in *Rustam Khan's* case (*supra*), which dealt with an identical situation. Furthermore, the learned counsel cited to section 417 Cr.P.C, which postulates that 'the Provincial Government may in any case direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.' The term "Public Prosecutor" is defined in section 4(t) of the Criminal Procedure Code, 1898 as follows:

“Public Prosecutor means any person appointed under section 492 and includes any person acting under the direction of a Public prosecutor and any person conducting a prosecution on behalf of the State in any High Court in exercise of its original criminal jurisdiction.”

6. Now, it is crucial to determine whether the Additional Advocate-General, or Assistant Advocate-General fall under the ambit of section 417(1) Cr.PC for the purpose of filing appeals before the High Court. For clarity on this matter, it would be beneficial to cite Rule 2(h) of the Azad Jammu and Kashmir Law Department Manual, 2016 which speaks that: -

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(h) Law Officers means and includes Advocate-General Azad Jammu and Kashmir, Additional Advocate-General and Assistant Advocate-General.”

Rule 2(h) of the Azad Jammu and Kashmir Law Department Manual, 2016, depicts that the Advocate-General, Additional Advocate-General and Assistant Advocate-General are included in the definition of Law Officers. Next refer to Section 9 of the AJ&K Law Officers (Terms & Conditions) Act, 2014, which provides that all Law Officers shall be deemed to be public prosecutors on behalf of the Government. For easy reference, the statutory provision is reproduced below: -

“9.Law Officers shall be deemed to be Public Prosecutors: -Notwithstanding anything contained in any other law for the time being in force. Law Officers shall be deemed to be public prosecutors in terms of section 4(t) of the Criminal Procedure Code, 1898, and shall be competent to institute, file and conduct any proceedings, including appeal or revision for and on behalf of the Government before any Court or Tribunal, including a special Court constituted under any law.”

7. As per the aforementioned statutory provisions, all Law Officers are deemed to be public prosecutors. Upon examination of the impugned judgment of the High Court, it is evident that the appeal before the High Court was lodged by the Additional Advocate-General, who, being classified as a public prosecutor under section 9 of the AJ&K Law Officers (Terms & Conditions) Act, 2014 possessed the requisite competence to do so. Regarding the case law cited by the learned counsel for the respondents, while the Court in that particular case observed that Law Officers do not fall within the purview of section 417(1), Cr.PC it can reasonably be assumed that AJ&K Law Officers (Terms & Conditions) Act, 2014 was not considered or presented, consequently, the judgment was rendered based on incomplete information. If the same had been referenced, the outcome of the case would likely have been different. Therefore, the argument put forth by the learned counsel for the respondents is hereby repelled.

8. The second objection raised by the learned counsel for the respondents concerns the limitation of the appeal filed before the High Court. It was argued that the appeal, filed on 30.01.2013, exceeded the prescribed limitation period of 30 days for appealing against an acquittal order passed by the trial Court. In support of this contention, reference was made to the precedent set forth in *Rustam Khan's* case, (supra) wherein it was established that section 417(2-A) Cr.PC imposes a 30-day limitation for filing appeals against acquittal orders. For clarity, the relevant portion of the judgment (supra) is reproduced below:

“While meeting the argument of the learned counsel for the appellant in appeal No.27 of 2016 that limitation provided under section 417 (2-A), Cr.P.C., is not applicable in the appeal against the acquittal order passed under section

265-K, Cr.P.C., it may be observed here that only section 417 (2-A), Cr.P.C., provides limitation for filing appeal against acquittal order of any Court other than High Court, which is 30 days. It does not make any difference that the person is acquitted of the charge without recording evidence under, section 265-K, Cr.P.C., or after recording evidence under section 245, Cr.P.C. In each case, section 417 (2-A), Cr.P.C., provides limitation for filing appeal against the acquittal order which is 30 days.”

9. In the aforementioned case, this Court observed that only section 417(2-A) Cr.PC imposes a 30-day limitation for filing appeals against acquittal orders passed by any Court other than the High Court. It is irrelevant whether the acquittal occurs without evidence being recorded under section 256-K or after evidence recorded under section 245 Cr.P.C; in both scenarios, section 417(2-A) mandates a 30-day limitation period for filing an appeal against the acquittal order. The interpretation adopted in that judgment seems to have been misunderstood. For a clearer understanding of the proposition, Section 417 Cr.PC, is reproduced hereunder: -

“417. Appeal in case of acquittal. (1) Subject to the provision of sub-section (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.

2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.]

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.

(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, on appeal from that order of acquittal shall lie under sub-section (1).]"

10. Upon a comprehensive review of the above-mentioned legal provisions concerning the right to appeal against an acquittal order, it is evident that this right delineated into three distinct categories for the purpose of limitation. Firstly, pursuant to subsection (1) of Section 417, of Criminal Procedure Code, 1898, the authority to direct the public prosecutor to pursue such legal recourse before the High Court from an original or appellate order of acquittal rests exclusively with the State for which no specific period of limitation is stipulated under section 417 Cr.P.C. Secondly, under subsection (2), in cases where an acquittal order is issued in response to a complaint, the option of filing an appeal against such order in the form of special leave to appeal is conferred solely upon the complainant, who must avail this remedy within sixty days from the date of the acquittal order, as stipulated in subsection (3). Lastly, with the addition of subsection (2A) to section 417 Cr.P.C, the right to appeal against an acquittal order, whether original or appellate, is extended to a person aggrieved by such order, who may exercise this remedy within thirty days. It is evident from the foregoing analysis, that the specified limitation periods of sixty days and thirty days respectively apply only to those criminal acquittal appeals filed by the "complainant" or "person aggrieved" respectively. However, no specific limitation period is prescribed under the amended provision regarding appeals against acquittal under subsection (1) of

section 417 Cr.P.C thereby leaving it regulated by Article 157 of the Limitation Act, as reproduced under: -

Description of Appeals	Period of Limitation	Time from which period begins to run
157. Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Six months	The date of order appealed from

11. In the light of the well-established principle of statutory interpretation that where the plain and simple meaning of a provision of law is clear and unambiguous, nothing should be presumed or inferred from external sources, it follows that all the appeals against acquittal covered by subsection (1) of section 417 Cr.P.C will continue to be governed by Article 157 of the Limitation Act. This legal position regarding the limitation period remains unchanged even after the addition of subsection 2A to section 417 Cr.P.C, which grants the right to appeal within thirty days to an aggrieved person. Similarly, subsection (2) read in conjunction with subsection (3) of section 417 of the Cr.P.C, which pertains to acquittal appeals in complaint cases, confers the right of appeal solely to the complainant within sixty days, subject to the condition of obtaining special leave for this purpose. However, regarding the appeal on behalf of the State, the correct legal position is that the limitation period for filing an appeal under section 417(1) Cr.PC is six months, as prescribed by Article 157 of the Limitation Act, 1908. It may be observed here that the applicability of the Limitation Act, 1908 in the proceedings conducted under Criminal Procedure Code had been a debate since decades. There had been a divergent opinion regarding the applicability of the Limitation Act in the proceedings conducted in Cr.PC. Reference can be made to the case

reported as *Mohammad Ibrahim vs. Goppi Lal*¹ wherein, it has been held that bar is absolute and Limitation Act does not apply, however, in the case reported as *AIR 1957 (Madras) 300*, *AIR 1975 (Andra Pardesh) 406*, *AIR 1958 (Andra Pardesh) 230* and *AIR 1957 (Allahbad) 500*, it has been eloquently enunciated by the Courts that Criminal Procedure Code, 1898 is a general law and provisions of the Limitation Act are applicable in the proceedings. Subsequently, it has been a consistent view of the superior Court that the provisions of Limitation Act are applicable in the proceedings regulated in Cr.PC. In the present case, the appeal against acquittal on behalf of the State was filed within six-months period from the date of the acquittal order rendered by the trial Court, thus it was filed within time. The identical proposition came under the consideration of the apex Court of Pakistan in the case reported as *The State vs. Syed Ali Baqar Naqvi and others*², wherein, it has been held as under:

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“A plain reading of above provisions of law relating to availing the remedy of appeal against an order of acquittal go to show that for the purpose of limitation, right to such appeal has been conferred and categorized into three classes. Under subsection (1), it is exclusively the Provincial Government, who may direct the Public Prosecutor to avail such legal remedy before the High Court from an original or appellate order of acquittal, for which no period of limitation is prescribed under section 417, Cr.P.C. Under subsection (2), when an order of acquittal is IA passed in a case instituted upon a complaint then the remedy of filing an appeal against such order in the form of special leave to appeal has been conferred only to the complainant which remedy, in terms of subsection (3) can be availed by him within sixty days from the date of order of acquittal. Lastly, in the subsequently added subsection (2A) to section 417, Cr.P.C., the right to appeal against an order of acquittal, whether

¹ [1958 AIR 691]

² [2014 SCMR 671]

original or appellate, has been conferred to a person aggrieved .0 against such order, who may avail the remedy of filing acquittal appeal within thirty days.

5. From the above discussion, it is evident that the prescribed period of limitation of sixty days and thirty days respectively is available only for those criminal acquittal 'appeals, which are filed by "the complainant" or "person aggrieved" respectively, while no specific period of limitation under the amended dispensation as regards the acquittal appeals .Under subsection (1) to section 417, Cr.P.C. Is prescribed, which will thus continued to be regulated by Article 157 of the Limitation Act, as reproduced above. In such circumstances, when well accepted principle of interpretation of a statute that where the plain and simple meaning of a provision of law is clearly understandable without any ambiguity then nothing is to be presumed or imported from outside, is applied to understand the issue of limitation raised in the present proceedings, the irresistible conclusion will be that all those acquittal appeals, which are covered by subsection (1) to section 417, Cr.P.C., for the purpose of limitation will still be governed by Article 157 of the Act of 1908, as this legal position as to the period of limitation has remained unchanged even after addition of subsection (2A) to section 417, Cr.P.C., providing right to such effect to aggrieved person within thirty days. Similarly, subsection (2) read with subsection (3) to section 417, Cr.P.C., which deals with the acquittal appeals in a complaint case has conferred such right of appeal only to the complainant within sixty days, with the condition of grant of special leave for this purpose.

6. The upshot of above discussion is that in the present case the learned Single Judge in the High Court of Sindh at Karachi, while passing the impugned order, fell in error of law in arriving at a conclusion that acquittal appeal on behalf of the State/Provincial Government is to be filed within sixty days. The correct legal position is that for filing an appeal under section 417(1) by the' State/Provincial Government the period of limitation is six months as prescribed by Article 157 of the Act of,1908.

7. There is no denial of the fact that in the present proceeding criminal acquittal appeal on behalf of

the State was filed within six months from the date of judgment of acquittal passed by the trial Court on 7-10-2011. Thus, the impugned order is set aside with the observation that Criminal Acquittal Appeal No,111 of 2012, filed by the appellant before the High Court of Sindh, at Karachi, on 20-3-2012, shall be deemed to be pending before the High Court, which shall be heard and disposed of on merits and in accordance with law.”

12. So far *Rustam Khan's* case (supra) relied upon by the learned counsel for the respondents, is concerned, upon thorough examination, it becomes evident that the reliance on *Rustam Khan's* case was exacerbated by inadequate legal representative and misapplication of legal principles in this particular instance. The Court acknowledges the substantial volume of cases it must contend with, yet it cannot overlook the detrimental consequences of insufficient advocacy by the legal representatives involved. It is observed that due to the lack of comprehensive legal assistance, judgments such as those rendered in the *Rustam Khan's* case (supra) may deviate from the established legal framework, thus contravening the dictates of law. The Court emphasizes the pivotal role of learned counsel in providing diligent and informed guidance, ensuring that relevant legal statutes are appropriately cited and applied. Failure to fulfill this duty undermines the integrity of judicial proceedings and compromises the administration of justice. Therefore, it is incumbent upon all parties involved to strive for a higher standard of legal representation, thereby upholding the principles of fairness and legality inherent in the judicial process. In such state of affairs, the judgment recorded by this Court in *Rustam Khan's* case (supra) is hereby overruled, as it has been found to be based on erroneous interpretation and inadequate legal representation. The observations made in the instant judgment shall prevail hereafter, establishing

a corrected legal precedent in accordance with the principles of law and justice.

13. Before coming to the merits of the case, we wish to extend appreciation of the learned counsel for the respondents who, despite forcefully advocating these legal points, gracefully conceded upon presentation of the legal position, a commendable gesture that exemplifies the decorum expected from all the members of the Bar.

14. Turning to the merits of present case, upon reviewing the record, it becomes apparent that the learned trial Court acquitted the respondents of all charges by accepting the application filed under section 249-A Cr.P.C. For ease of reference, the relevant statutory provision is reproduced below: -

“249-A. Power of Magistrate to acquit accused at any stage: Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence.”

Upon examining the statutory provision (ibid), it is evident that every Court, whether civil or criminal, possesses inherent powers to administer complete justice in the absence of an express provision in the procedural law governing its operations. The section 249-A, Cr.PC merely reinforces this principle. With this provision, the accused now has a prompt recourse in the original jurisdiction to seek immediate relief from unfounded charges, without having to pursue the same remedy under section 561-A Cr.P.C, which is exclusively available with the High Court and may require travel to a distant locale for redressal³. This section deviates

³ [1985 SCMR 257, [1985 PSC 143], {PLJ 1984 Cr.C 22}]

from the norm that acquittal follows a full trial. It represents a compromise between the societal interest and the rights of the individual offender. The objective is to spare the offender the rigors of a full trial if the Court determines, at any stage, that the charge lacks merit and the prosecution is unlikely to succeed. Moreover, the phrase "at any stage" used in section 249-A Cr.PC does not hinge on the recording of prosecution evidence. A party can seek acquittal at any point during the proceedings, and there is no legal impediment or requirement that the application for acquittal must be made only after the evidence of all witnesses has been recorded. Instead, the phrase "at any stage" signifies that the application under section 249-A Cr.PC can be lodged even while evidence is being recorded.

15. After thoroughly examining the record no evidence has been found indicating that the accused respondents had been involved in the preparation of forged documents or allotment chits. Even if we consider the entirety of the prosecution evidence and deem it to be true, there remains no likelihood of the accused respondents being convicted of the alleged offenses. Therefore, the learned trial Court, exercising its powers under section 249-A, Cr.PC rightfully acquitted them. This decision was subsequently affirmed by the High Court. Given these circumstances, we believe that the High Court's judgment is entirely consistent with law, the facts of the case, and the evidence on record. Consequently, there is no justification for this Court to intervene in the matter.

In view of the above, the appeal stands dismissed.

JUDGE CHIEF JUSTICE JUDGE

Mirpur,
20.02.2024