

IN THE FEDERAL SHARIAT COURT
(**Appellate Jurisdiction**)

PRESENT

MR.JUSTICE CH. EJAZ YOUSAF CHIEF JUSTICE
MR.JUSTICE DR.FIDA MUHAMMAD KHAN

CRIMINAL MISC.A. No.93-I OF 2005 IN
CRIMINAL APPEAL NO.84/I OF 2005

Tariq Mahmood son of -- Applicant
Muhammad Iqbal, resident of
Ward No.2,House No.512,
Mohallah Trakia Baba Rahim-
Shah, Tehsil Gujarkhan,
District, Rawalpindi.

Versus

Mehfooz Hussain son of Sangar-- Respondents.
Khan, and three others
Residents of village Jarmote,
Tehsil Gujar Khan, District
Rawalpindi and
The State

Counsel for the applicant -- Mr.Ansar Nawaz Mirza,
Advocate.

Counsel for the respondents --- Ch.Shafique Ahmad,
Advocate.

Counsel for the State -- Mr.Shafqat Munir Malik,
Assistant Advocate General

No.date of FIR and -- No.470 dt:23-9-2004
Police station Gujar Khan

Date of the order -- 22.12.2004
Of trial Court

Date of institution -- 26.3.2005

Date of hearing -- 19.5.2005

Date of decision -- 19.5.2005

ORDER

CH. EJAZ YOUSAF, CHIEF JUSTICE. This is an application for condonation of delay in filing the appeal against acquittal of respondents No.1 to 4 from the charge under sections 10 and 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as "the Ordinance").

2. It has been contended by the learned counsel for the applicant/appellant that since at the time of passing the impugned judgment the applicant was in United Kingdom and no sooner, he received information regarding decision of the case, then he rushed back, made application for obtaining certified copy of the impugned judgment which, despite efforts made, was not supplied to him for want of appointment of the Presiding Officer at Gujar Khan and perforce the appeal has been preferred without the same, therefore, the delay in filing the appeal, if any, may be condoned. He has added that since applicant had left Pakistan on 3.10.2004 and came back on 6.3.2005, as is evident from perusal of the copies of his Passport and

other documents attached with the application, therefore, the application may be allowed.

3. Ch.Shafique Ahmad, Advocate, learned counsel for the respondents, while opposing the grant of application, has urged; that since section 417 Cr.P.C. provides a 30 days period of limitation for filing appeal against acquittal, therefore, the instant appeal is barred by 34 days; that even if the period of limitation is to be governed by the Federal Shariat Court (Procedure) Rules 1981 even then the appeal is barred by 4 days. It is further his case that since as per section 29(2)(a) only the provisions of sections 4, 9 to 18 and 22 of the Limitation Act (hereinafter referred to as "the Act") apply to the cases where any special or local law prescribes, for any suit or appeal, a period of limitation different from the period prescribed therefor by the first schedule of "the Act" and section 5 of "the Act" do not find place in section 29(2)(a) of "the Act", therefore, condonation of delay cannot be sought under section 5 of "the Act".

4. Mr.Shafqat Munir Malik, Assistant Advocate General has submitted that since certified copy of the impugned judgment has not been supplied to the applicant, the fact that the applicant at the time of pronouncement of the impugned judgment was away to United Kingdom has not been controverted by the opposite side and law favours a decision on merits, therefore, it would be highly appropriate to condone the delay in filing the appeal.

5. It may be mentioned here that rule 18(1) of the Federal Shariat Court Procedure Rules, provides 60 days period of limitation for filing appeal. Learned counsel for the applicant has, though, tried to canvass that since section 417 Cr.P.C. provides a different period of limitation i.e. 30 days for filing appeal against acquittal and the period of limitation prescribed for, by the Criminal Procedure Code has to govern the case but we are afraid in view of clear exposition of law on the subject, by Shariat Appellate Bench of the Hon'ble Supreme Court of Pakistan, in the case of State vs. Zahid Hussain – 1990 SCMR 164, wherein, it was unequivocally laid down that in the face of the Federal

Shariat Court (Procedure) Rules 1981 framed by the Court, in exercise of the powers conferred by Article 203-J of the Constitution, "the general law of limitation stands displaced and excluded" the contention raised by the learned counsel for the appellant appears to be, on its face, devoid of force.

As to the second limb of argument in the contention that since, as per section 29(2)(a), only the provisions of sections 4, 9 to 18 and 22 of "the Act", apply to the cases where any special or local law prescribes, for any suit or appeal, a period of limitation different from the period prescribed therefor by the First Schedule of "the Act" and section 5 of the Limitation Act, do not find place in section 29(2)(a) of "the Act", therefore, condonation of delay cannot be sought under section 5 of "the Act", it may be pointed out here that no doubt section 5 of "the Act" do not find place in section 29(2)(a) of "the Act" but in presence of the proviso tagged to sub-rule (1)(A) of rule 18 of the Federal Shariat Court (Procedure) Rules, which provides that the Court may for sufficient cause extend the period, section

29(2)(a) of "the Act" would have no relevance or application to the instant case. The relevant provision alongwith the proviso, which was added by Notification No. F.1/92 Admn.FSC dated 23.4.1992 is reproduced herein below which reads as follows:-

"18. Presentation of appeal.-(1) Every appeal shall be presented personally by the appellant himself, or by his counsel, if any, to the Registrar or any other officer authorized by the Chief Justice, at the principal seat of the Court or the registry-office of the Province in which the offence is alleged to have been committed.

"(A) An appeal shall be presented to the Court within sixty days from the date of the order or decision appealed from."

Provided the Court may for sufficient cause extend the period."

Objection, therefore, is misconceived.

Needless to point out that since copy of the impugned judgment has, as per statement made at the bar by the learned counsel for the applicant, not, so far, been supplied to the applicant and the time consumed in computing the period of limitation prescribed for the appeal can otherwise be excluded on that count, therefore, objection


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regarding maintainability of appeal on the ground of limitation

otherwise is pre-mature.

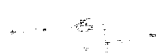
6. Since from perusal of the documents attached with the application, including photostat copy of the Passport, it is apparent that the applicant at the time of passing the impugned judgment was away to the U.K. and on coming back to Pakistan had immediately made application for obtaining certified copy of the impugned judgment, which has not been supplied to him and he has been diligently pursuing the matter, therefore, we are inclined to allow the application and condone the delay in filing the appeal. Order accordingly.


(Ch. Ejaz Yousaf)
Chief Justice


(Dr.Fida Muhammad Khan)
Judge

Islamabad,dated the
19th May, 2005
ABDUL RAHMAN/

FIT FOR REPORTING


CHIEF JUSTICE