

IN THE FEDERAL SHARIAT COURT
(APPELLATE JURISDICTION)

PRESENT

MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE MEHMOOD MAQBOOL BAJWA

CRIMINAL MISCELLANEOUS NO.6-P OF 2015

CRIMINAL APPEAL NO.8-P OF 2015

STATE THROUGH ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

APPELLANT

VERSUS

1. SHER ALI KHAN S/O PURDIL KHAN,
2. KHUSHDIL KHAN S/O MEHER DIL,
RESIDENT OF BEKA, TEHSIL LAHOR, DISTRICT SWABI.

RESPONDENTS

COUNSEL FOR THE APPELLANT/STATE	MR. ARSHAD AHMAD KHAN, ASSISTANT ADVOCATE- GENERAL, KPK.
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FIR AND POLICE STATION	...	933 OF 2013 LAHOR DISTRICT SWABI.
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DATE OF JUDGMENT OF TRIAL COURT	...	15.07.2015
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DATE OF PREFERENCE	...	18.11.2015
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DATE OF HEARING	...	15.11.2017
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DATE OF DECISION	...	15.11.2017
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JUDGMENT:

Mehmood Maqbool Bajwa, J: Since appeal titled "STATE THROUGH ADVOCATE-GENERAL KHYBER PAKHTUNKHWA, PESHAWAR VS. SHER ALI KHAN, ETC." (Criminal Appeal No.8-P of 2015) is barred by 66 days (as calculated by office), therefore, through present criminal miscellaneous, premium has been sought for condonation of delay with the stance contained in para (2) of the petition asserting that "delay occurred due to procure departmental sanctions etc."

2. Learned Assistant Advocate-General submitted that delay is neither intentional nor deliberate but time was consumed in obtaining sanction for preference of appeal by competent authority. Further contended that law favours adjudication on merits.

3. Conscious consideration has been given to the arguments advanced keeping in view the reason assigned in para (2) of the petition.

4. According to the proviso of Rule 18 (a) of The Federal Shariat Court (Procedure) Rules, 1981 (As amended) (Hereinafter called The Rules), Court may for sufficient cause extend the period.

Expression "sufficient cause" has not been defined in the Rules.

5. Same words have been used in Section 5 of The Limitation Act, 1908 (IX of 1908) but have also not been defined.

The Apex Court interpreted the expression in "ABDUL GHANI v GHULAM SARWAR" (P.L.D. 1977 S.C. 102) as follow:

"It is true that this section does not define sufficient cause but the meaning of this expression is too well known to need recapitulation, and we would only refer here to the observations of Kaikaus, J. on this question in Ata Ulla v. Custodian Evacuee Property PLD 1961 SC 236. "Under section 5 .. the has to be a finding of sufficient cause. In pre-partition India sufficient cause had been defined as circumstances beyond the control of the party and I do not know of any case wherein this definition of sufficient cause had been rejected" We re-affirm these observations and we any explain here that the burden is on the appellant to prove that his delay in filing his appeal was on account of circumstances beyond his control, because, as observed by Sir George Rankin in Kunwar Rajendra Bahadur Singh v. Rai Rajeshwar Bali and others AIR 1937 PC 276....."

6. Keeping in view the above-yardstick, we will examine the contention of learned law Officer and reason incorporated in para (2) of the petition.

Reason given in the petition is nowhere suggestive, how and why delay occurred in grant of sanction for preferring appeal. Had there been detail in the petition, we would have been in a better position to examine whether cause was beyond control or is result of negligent action and slackness.

7. We would also like to deal with the cause mentioned in para (2) of the application taking it as gospel truth, which is re-produced for ready reference:-

“That when this case is received by this office the case was already time barred and the delay was neither intentional nor deliberate but occurred due to procure departmental sanctions etc.”

Similar proposition was moot point before Honourable Supreme Court in “COMMISSIONER OF INCOME TAX v. Rais PIR AHMAD KHAN” (1981 SCMR 37) and dealing with the same reason, it was concluded that the government cannot claim to be treated in any manner differently from an ordinary litigant.

Same rule of law was enunciated in "MUHAMMAD BASHIR and another v PROVINCE OF PUNJAB through Collector of District Gujrat and others" (2003 SCMR 83) and "CHAIRMAN / SECRETARY, PAKISTAN RAILWAYS, MINISTRY OF RAILWAYS, GOVERNMENT OF PAKISTAN ISLAMABAD and others v. MUHAMMAD SHARIF JAVAID WARSI" (P.L.D. 2003 S.C. 6).

8. It is further to be noted that petitioner was under legal compulsion to explain delay of each and every day. (See: Sheikh MUHAMMAD SALEEM v FAIZ AHMED (P.L.D. 2003 S.C. 628) and "COMMISSIONER OF INCOME TAX v Rais PIR AHMAD KHAN" (1981 SCMR 37).

9. We are not un-mindful that Ratio expounded in the Reports cited was in cases of civil nature but no line of distinction and demarcation can be made in civil and criminal cases.

10. No doubt law favours adjudication on merits and technicalities should not hamper the way of justice but it must also be kept in mind that law of limitation is not a mere technicality. Reliance is placed upon the

Rule of law expounded in "MUHAMMAD ISLAM v. INSPECTOR-GENERAL OF POLICE, ISLAMABAD and others" (2011 SCMR 8).

11. Viewed from whichever angle, no case has been made for grant of premium to condone the delay resulting in dismissal of criminal miscellaneous.

Criminal Appeal No.8-P of 2015

12. Since the criminal miscellaneous seeking condonation of delay stands dismissed and appeal is admittedly barred by time, therefore, Criminal Appeal No.8-P of 2015 is dismissed in *limine*.

JUSTICE MEHMOOD MAQBOOL BAJWA

JUSTICE DR. FIDA MUHAMMAD KHAN

Dated, Peshawar the
15th November, 2017