

Form No: HCJD/C-121

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT**  
**LAHORE**  
 JUDICIAL DEPARTMENT

**PSLA No.6 of 2016**

Khawaja Muhammad Ahmed

**VS.**

Muhammad Ayyub, etc.

S.No. of order/ proceeding	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
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**25.10.2018.** Nemo for the petitioner.  
 Mr. Tariq Javed, District Public Prosecutor.

The petitioner namely Khawaja Muhammad Ahmad son of Khawaja Bashir Ahmed being aggrieved of the order of the acquittal passed by the Judicial Magistrate Ist Class Gujranwala dated 28.2.2015 in the case instituted upon the complaint filed by the petitioner and has prayed for grant of special leave to appeal from the order of said acquittal. The application for grant of special leave to appeal was presented on 9<sup>th</sup> of January, 2016 beyond the period of 60 days as prescribed by Section 417 (3) of the Code of Criminal Procedure, 1898 along with an application under section 5 of the Limitation Act, 1908 seeking condonation of delay on the following grounds:-

1. ....
2. *That the impugned order was came to the knowledge of the petitioner two days before filing of this petition so in the interest of justice the delay in filing the present appeal may be condoned.*
3. *That the petitioner has a very good prima facie arguable case in her favour.*
4. *That if the delay is not condone the petitioner shall suffer irreparable loss and injury.*

2. At the very outset it has been noticed that the order of the acquittal was passed by the Court of Judicial Magistrate Ist Class, Gujranwala on 28.2.2015 and this petition is hopelessly barred by time.

3. It is important to note that section 417(2) of the Code of Criminal Procedure, 1898 provides for filing of such applications seeking grant of special leave to appeal whereas section 417 (3) provides for the time before the expiry of which such application for grant of special leave to appeal from order of acquittal can be entertained by the High Court. That said provisions of law are being reproduced as under:

**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, no appeal from that order of acquittal shall lie under sub-section (1).

(5) An appeal against an order of conviction or acquittal under Sections 354A, 376, 376A, 377 or 377B of the Pakistan Penal code, 1860 (Act XLV of 1860) shall be decided within six months."

4. It is important to note that according to established principle of the criminal administration of justice once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse. The said principle has been enunciated by the August Supreme Court of Pakistan in the judgment reported as Muhammad Inayat Versus The State ( **1998 SCMR 1854**). Furthermore the August Supreme Court of Pakistan in the case reported as Abdul Qayyum Versus Ghulam Yasin (**PLD 1963**

**Supreme Court 151**), refused to condone the delay of only fifteen days.

5. The application under section 5 of the limitation Act, 1908 is otherwise not maintainable in cases relating to applications made under section 417 (2) Code of Criminal Procedure, 1898 seeking grant of special leave to appeal on the order of acquittal in a case instituted upon a complaint. In this regard Section 29 of the Limitation Act, 1908 provides as under:

**Section 29. Saving.**

(1) *“Nothing in this Act shall affect section 25 of the Contract Act, 1872.*

(2). *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, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law:*

(a) *the provision contained in section 4, sections 9 to 18 and section 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: and*

(b) *the remaining provisions of this Act shall not apply.*

(3) *Nothing in this Act shall apply to suits under the Divorce Act (IV of 1869).*

(4) *Sections 26 and 27 and the definition of “easement” in section 2 shall not apply to cases arising in territories to which the Easements Act, 1882, may for the time being extend”.*

6. As is very much evident from the perusal of the said provision of law for determining any period of limitation prescribed for any suit, appeal or application shall only apply insofar as, and to the extent to which they are not expressly excluded by such special or local law. As the instant application for grant of special leave to file an appeal against the order of acquittal has been filed under section 417 (2) of the Code of Criminal Procedure and Section 417 (3) of the Code of Criminal Procedure, 1898 itself provides the period within which the same has to be filed. Therefore, Section 5 of the Limitation Act, 1908 cannot be made applicable to such applications. Needless to add that the time period provided under Article 157 of the Limitation Act is also of no import in this matter.

7. In the case of the *State versus Zahid Hussain* reported as **(1990 SCMR 164)**, it was held by the August Supreme Court of

Pakistan that where period of limitation is prescribed by a special law or local law and its different from the one in the Limitation Act, 1908, then the period as provided in the special or local law shall prevail over the period provided for by the Limitation Act. It has been further held in the above mentioned case of *The State versus. Zahid Hussain* that in case of conflict of express words the limitation Act yields.

8. For all the above reasons and upon consideration of the above binding decisions of the August Supreme Court of Pakistan I am of the view that section 5 of the Limitation Act 1908 is not applicable to the applications filed under Section 417(2) of the Code of Criminal Procedure, 1898. This Court is, therefore, not empowered to condone any delay in filing the applications for grant of special leave to appeal from the order of acquittal passed by the learned Judicial Magistrate, Gujranwala.

9. For the reasons stated above, the application under section 5 of the Limitation Act is dismissed and consequently the petition for grant of special leave to appeal No. 6 of 2016 is also dismissed.

*(Sadiq Mahmud Khurram)*  
**JUDGE**

Raheel

**APPROVED FOR REPORTING**

**JUDGE**