

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT**  
**RAWALPINDI BENCH, RAWALPINDI**  
**(JUDICIAL DEPARTMENT)**

*Crl. Appeal No. 1041 of 2018 &*  
*Crl.Misc. No. 01-M/2018*

*Ch. Abid Mehmood*

*.....Appellant*

*versus*

*Mirza Zafar Javed etc.*

*.....Respondents*

**ORDER**

<b><i>Date of hearing:</i></b>	<b><i>05.03.2019</i></b>
<b><i>Appellant by:</i></b>	<b><i>M/s Rizwan Haider Afzal and Malik Mushtaq Ahmad, Advocates.</i></b>
<b><i>Respondents No. 1 to 3 by:</i></b>	<b><i>Mr. Afzal Khan Jadoon, Advocate.</i></b>

**Muhammad Tariq Abbasi, J** – Although, in the instant appeal, filed in terms of Section 417(2A) Cr.PC, against acquittal of Mirza Zafar Javed, Mirza Waqas and Mirza Muhammad Bilal (***hereinafter referred to as the respondents***), through judgment dated 26.09.2018, delivered by Sumaira Alamgir, learned Judicial Magistrate 1<sup>st</sup> Class, Rawalpindi, respondents No. 2 & 3 have been summoned, but it has been observed that the appeal is time barred and for condonation of delay, an application bearing No. 01-M/2018, has also been preferred. Therefore firstly, it would be seen whether the delay in filing the appeal, requires condonation or otherwise.

2. The judgment in question was passed on 26.09.2018, whereby in an application under Section 249-A Cr.PC, moved by the

respondents, the learned A.D.P.P. as well as counsel for the respondents were heard and thereafter, the said application was allowed and consequently, the respondents were acquitted of the charge.

3. The appellant had applied for attested copies of the judgment on 11.12.2018 i.e. after 02 months and 15 days, which were supplied on the same day and thereafter, the appeal was filed on 17.12.2018.

4. Section 417(2-A) Cr.PC, prescribes a period of thirty days, for filing an instant like appeal, but the appeal in hand has been preferred, with a delay of about 01 month and 20 days. In the application i.e. CrI.Misc. No. 01-M/2018, condonation of delay has been sought, on the sole ground, that no notice to the appellant or his witnesses was ever served and as such he remained unaware of passing of the impugned judgment. The said stance is totally unjustified, because through an order dated 14.02.2017, passed in CrI.Misc. No. 232-B/2017, with consent of the parties, a direction to the learned trial court, for early decision of the case was given, in the following words:-

***"However, with the concurrence of both the parties, learned trial court is directed to conclude the trial expeditiously, preferably within three months of the copy of receipt of this order. In order to comply with this direction the trial court may proceed with the trial on day to day basis under intimation to this Court through Deputy Registrar (Judl)."***

Thereafter, a number of opportunities were given to the appellant, to lead his evidence and even to procure attendance of the appellant and his witnesses, non-bailable warrants of arrest were also issued. Therefore, it could not be presumed that the appellant remained unaware of pendency of the case, in the trial court.

5. Furthermore, as per Section 249-A Cr.PC, to invoke jurisdiction under it, the Prosecutor and the accused should be heard. The said provision reads as under:-

**"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."

6. The learned trial court, after hearing the learned Prosecutor as well as counsel for the respondents/accused, had pronounced the judgment, hence the prescribed procedure was duly complied with. Even otherwise, according to Section 493 Cr.PC, it is only the Public Prosecutor, who shall conduct the prosecution and if there is any private counsel, engaged by the complainant, he should act under instructions of the Public Prosecutor. For convenience, the above said enactment is reproduced hereinbelow:-

**"493. Public Prosecutor may plead in all Courts in cases under his charge. Pleaders privately instructed to be under his direction.** The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct prosecution, and the pleader so instructed shall act therein, under his directions."

In this way, even in the light of the above said provision, the alleged stance of the appellant, that he should have been given notice, is of no legal value.

7. Due to the reasons mentioned above, there is no reason, cause or justification, to condone the delay, hence the request made through Crl.Misc. No. 01-M/2018, is declined. Consequently the appeal being hopelessly time barred, is **dismissed**.

**(Muhammad Tariq Abbasi)**  
**Judge**

**Approved for reporting.**