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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

Case No. 04/10 of 2024

Date of institution: 16.05.2024

Date of decision: 08.06.2024

Date of consignment:

Mehdi Hasan son of Khayal Mehdi resident of Bar Muhammad Khel,
Orakzai (appellant/accused)

Versus

State through Shal Muhammad SHO, Kalaya Police Station, Orakzai and
one other (respondents/complainants)

APPEAL AGAINST JUDGMENT AND ORDER

DATED 09.03.2024 PASSED IN CASE FIR NO. 75, DATED 11.08.2022
U/S 295-A & 298-A PPC OF KALAYA POLICE STATION,

ORAKZAI


JUDGMENT

1. Appellant/accused has faced trial before the court of learned Judicial Magistrate-I, Kalaya, Orakzai in subject case whereby the learned trial court has returned the case to prosecution with direction to first obtain the sanction from the government, if they so desire, and then try the appellant/accused as per law.
2. Concise facts of the case as per available record are that respondent has registered a criminal case against appellant for act of uploading and sharing derogatory material against the sacred name of Ummul Mumineen, the righteous caliphs & companions of the holy Prophet (peace be upon him), with deliberate and malicious intention of outraging the religious feelings of Ahl-e-Sunnat from his Facebook account through cellular phone. The appellant was released on bail by the august Peshawar High Court.
3. On completion of the investigation; the complete challan was put in court against the appellant before the learned trial court.

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4. The learned trial court furnished copies to appellant in compliance to the provision of section 241-A CrPC, where after, the appellant was charge sheeted under sections 295-A and 298-A PPC, to which the appellant did not plead his guilt and claimed the trial.
5. The trial commenced and prosecution produced its entire evidence and closed the evidence. Thereupon, the statement of appellant was recorded u/s 342 CrPC, the learned trial court heard the arguments and fixed the case for order, however, before the order could have been pronounced, the respondents submitted an application under section 344 r/w/s 196 CrPC alleging that for trial of an offence under section 295-A CrPC, a sanction from the competent authority was mandatory, however, they have failed to obtain the same; therefore, prayed to cure the mistake.
6. The notice of application was given to the appellant. The learned trial court heard both the parties and returned the case to prosecution with direction that the Government may if it so desires, try the appellant/accused after strictly complying with the conditions laid down in section 196 CrPC in following words;

"Where a mandatory condition for the exercise of jurisdiction was not fulfilled, then the entire proceedings that followed would become coram-non-judice, illegal and without jurisdiction. No sanction for prosecution of accused was obtained as envisaged by Ss. 196 & 196-A CrPC, resultantly, case is returned back to prosecution with directions that the Government may if it so desires, try the accused after strictly complying with the conditions laid down in this section. Application disposed of accordingly. Accused is on bail. He will remain on bail. Prosecution shall resubmit the case file within 15 days of receipt of record."


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7. Feeling aggrieved from the order of learned trial court, appellant has impugned herein the judgment and order of the learned trial court dated 09.03.2024 with assertion that when the case was fixed for order, the learned trial court had no power to return the case to the prosecution to fill up the lacunae; therefore, alleged the impugned order of the learned trial court as illegal, against the law, against the norms of justice and not maintainable in the eyes of law, which on acceptance of instant appeal may be set-aside and case be returned/ remanded to the learned trial court with direction for pronouncement of order on the basis of evidence already recorded and closed.

8. Preliminary arguments heard and record perused.

9. Without touching merits of the case & while going through available record and arguments advanced by learned counsel for appellant/ accused, it is worth noting that learned trial court has returned the case to prosecution on 09.03.2024 and appellant was competent to impugn the said order in appeal within 30 days from the date of its pronouncement within the meaning of Article 154 of The Limitation Act, 1908. Since, the impugned order was passed on 09.03.2024 and 30 days period of limitation provided for filing an appeal started computing from 10.03.2024, day following the order was passed, therefore, period of limitation was to be expired on 08.04.2024 as per law, where after, one cannot file appeal except the day on which order is pronounced and the time consumed in obtaining attested copies of the order shall be excluded from computing the period of limitation in which case limitation period extends to those many days commensurate to the time consumed in obtaining copies. In present case, if day on which order was passed by the learned trial court, three days consumed in obtaining the attested copies of the order and the day on which appeal was presented before the appellate court are

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excluded, then, appellant was supposed to file appeal on or before 11.04.2024. The record, however, provides that the appellant has presented the appeal on 16.05.2024 with an unexplained delay of thirty five days. In such an eventuality, appellant was duty bound to explain delay of each and every day with sufficient reasons. Here, the appellant could not justified the delay by providing any sufficient cause as envisaged under section 5 of The Limitation Act, 1908 nor did he has file any application for condonation of delay, hence, it is held that appeal in hands is badly time barred, which cannot be admitted for regular hearing, hence, it is dismissed *in limine*.

- 10. Copy of this order be transmitted to the learned trial court with direction to place the same on original record after making proper entries in the relevant register, whereas, file of this court consigned to record room after completion and compilation.

Announced
08.06.2024

Abdul Basit
Addl. Session Judge-II, Orakzai

CERTIFICATE

Certified that my judgment consist of four (04) pages. Each page is signed by me after necessary corrections, where needed.

Announced
08.06.2024

Abdul Basit
Addl. Session Judge-II, Orakzai