
HOLDING DUAL DOMICILE CERTIFICATES, ITS LEGALITY
AND EFFECT?



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN



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COURT: HON'BLE MR. JUSTICE SARDAR AHMED HALEEMI

SUBJECT: CRIMINAL LAW

DATE: 04TH APRIL 2024

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QUERY: WHAT IS THE RECOURSE OF A CONVICT IF HIS APPLICATION UNDER SECTION 426 FOR SUSPENSION OF SETENCE IS REJECTED BY APPELLATE COURT (SESSIONS COURT)?

Research Note: The legal framework and judicial precedents pertinent to the query are encapsulated in section 426 (2) of the Criminal Procedure Code, 1908 and the case laws provided in the following.

Relevant Statutory Provisions: -

Section 426 subsection (2) of the Code of Criminal Procedure 1908: -*"The power conferred by this section on an appellate Court may be exercised also by High Court in the case of any appeal by a convicted person to a Court subordinate thereto.:*

Judicial Precedents: -

1. P L D 1997 Lahore 172 Abdul Jabbar vs the State

Para No. 4. I have heard learned counsel for the parties and have critically examined their respective submissions. Before embarking upon the discussion, it would be advantageous to reproduce subsection (2) to section 426, Cr. P.C.:---

"(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto."

Para No. 5. *A perusal of the above section, no doubt, gives powers to this Court to suspend the sentence in a case in which appeal is pending before the lower Appellate Court in suitable cases* where there is unconscionable delay in the decision of the appeal, but in view of the amendment mentioned above, this provision has become redundant as the petitioner has acquired a right for the suspension of his sentence, pending decision of the appeal, if his appeal is not decided within the stipulated time, so the petitioner cannot invoke the jurisdiction of this Court under section 426, subsection (2), Cr.P.C. in view of the amendment mentioned above.

Para No 6. In the present case, the petitioner was convicted on 29-10-1996 whereas the lower Appellate Court declined to suspend his sentence on 4-11-1996, the case is, therefore, not covered by subsection (1-A) to section 426, Cr.P.C. If the appeal of the

petitioner is not decided within the stipulated period, then, of course, the petitioner would acquire right of suspension of his sentence. In view of the amendment in law, the petitioner is not remediless, he can refile his bail application on the ground of statutory delay in the decision of his appeal. This petition being misconceived and not competent in view of the amendment, referred above, is dismissed accordingly.

2. P L D 2009 Lahore 632 MUBARAK ALI vs the State

Para No. 7. On the contrary section 426(1), Cr. P.C. reads that during the pendency of appeal by a convict person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended. If the appellant is in confinement, the Court may pass an order of his release on bail or on his bond. **Few points in relation to the above deserve to be noted.** Application under section 426, Cr.P.C. can be filed by a convict person; by a convict who has filed an appeal; appellant may not be in confinement. For example, if he has been convicted and awarded sentence of fine only; if the appellant is in confinement, he can be directed to be released on bail or on his own bond. **Subsection (2) of section 426, Cr.P.C. says that if appeal is filed by a convict person before any other Court subordinate to the High Court even then High Court may exercise power mentioned under section 426, Cr.P.C.** Subsection (2-A) of section 426, Cr.P.C. deals with cases where any person is sentenced to imprisonment in a non-bailable offence and an appeal lies from that sentence. Sentence of such an accused person can be suspended by Court to enable the convict person for a sufficient period to present his appeal or to obtain the orders to enable him to file appeal. Under subsection (2-B) of section 426, Cr.P.C. High Court may suspend any sentence imposed by him if a convict person has been granted special leave to appeal to the Supreme Court, if the convict is in confinement. According to subsection (3) of section 426, Cr.P.C. when the appellant is ultimately sentenced to imprisonment, or imprisonment for life, the time during which he is released under section 426 shall be excluded not computing the term for which he was so sentenced.

Annexure(s)

- 1- Full Judgment: **1997 PLD 172 Lahore High Court.**
- 2- Full Judgment: **P L D 2009 Lahore 632 Lahore High Court.**
