

# IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

*Mr. Justice Mohammad Karim Khan Agha*  
*Mr. Justice Irshad Ali Shah*

## Criminal Appeal No.657 of 2019

Appellant : Suneel Ashraf S/o Ashraf Masih  
 Through Mr. Masjood Ali Memon  
 Advocate

Respondent : The State  
 Through Mr. Hussain Bux Baloch,  
 Addl. Prosecutor General, Sindh.

Date of Hearing : 17.09.2021

Date of Order : 17.09.2021

## J U D G M E N T

**Mohammad Karim Khan Agha, J.** The Appellant Suneel Ashraf was convicted by the Court of 1<sup>st</sup> Additional Sessions Judge (Model Criminal Trial Court), Karachi South in Special Case No.474/2019 under FIR No.385/2018 under Sections 6/9(b) CNS Act, 1997 registered at PS Clifton, Karachi South vide Judgment dated 30.09.20219 and was sentenced to suffer RI for one year and three months and directed to pay fine of Rs.9000/- and in default thereof, he was ordered to suffer SI for three months more. However, he was given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that on 24.12.2018, complainant ASIP Abdul Sattar alongwith police party was on patrolling duty, when they reached at Zamzama Signal, Clifton at about 0010 hours found a suspect going on foot, therefore, they apprehended him who disclosed his name as Suneel Ashraf. However, from his personal search, one shopper of white colour was recovered from right side front pocket of his trouser wherein two pieces of *chars* weighed about 200 grams which was sealed on spot. Hence, the instant FIR.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

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4. In order to prove its case, the prosecution examined three PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant in light of case of Ghulam Murtaza & another vs. The State reported in PLD 2009 Lahore 362 as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. After reading out the evidence, learned counsel for the appellant, under the instructions of the appellant who is present on bail, stated that he did not press this case on merit if the sentence may be converted into the period already undergone as the sentence awarded by the learned trial court is only for one year and three months. Learned counsel further stated that the appellant is married, belongs to a poor family and being a sole breadwinner, the family members are badly suffering due to his conviction. When this proposal was put to learned Addl. PG, he had no objection to convert the sentence into already undergone.

7. We have gone through the evidence and we find the evidence of three PWs to be reliable, trustworthy and confidence inspiring who arrested the appellant on spot with narcotics, as such, we find that the prosecution has proved its case against the appellant beyond a reasonable doubt.

8. In this case, we find numerous special features/mitigating factors which can justify conversion of sentence into already undergone which are as follows: §

- i) That no resistance was shown by the appellant at the time of arrest despite having narcotics.
- ii) That the appellant is married and belongs to a poor family and due to his conviction, the family members are badly suffering.
- iii) That the appellant is relatively a young man and as such he is capable of reformation.

- iv) That the appellant is the sole breadwinner of his family, who relies on his income.
- v) That the appellant has fully accepted his guilt and as such has shown genuine remorse.
- vi) That he is a first time offender.
- vii) That he has severe medical problems
- viii) That the amount recovered from him was minor in nature; and
- ix) That he has already undergone a substantial part of his sentence.

9. Based on these special circumstances/mitigating factors and no objection given by learned Addl. PG we hereby uphold the appellant's conviction, however, whilst exercising our discretionary powers, we hereby reduce the sentence of one year and three months handed down by the trial Court to the period which the appellant has already undergone and he is not liable to pay the fine imposed upon him. It is noted that the appellant is on bail and his bail bond stands discharged.

10. The instant Criminal Appeal is dismissed except as modified in terms of reduction of sentence as mentioned above.

11. The appeal is disposed of in the above terms.