

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.D-54 of 2014

PRESENT

*Mr. Justice Naimatullah Phulpoto
Mr. Justice Muhammad Karim Khan Agha*

*Date of Hearing: 01.06.2017
Date of Judgment: 01.06.2017
Appellant/accused: None present.
The State: Through Syed Meeral Shah Bukhari,
Additional Prosecutor General, Sindh
alongwith ASI Noor Muhammad
Buriro of P.S T.M Khan. .*

JUDGMENT

NAIMATULLAH PHULPOTO, J:- Appellant Loung S/o Dalil

Khan was tried by learned Sessions Judge/Special Court (CNSA) Tando Muhammad Khan under Section 9(b) of Control of Narcotic Substances Act, 1997 on the allegation that he was found in possession of 120 grams of the charas.

2. Learned Trial Court framed the charge against the accused under Section 9(b) of Control of Narcotic Substances Act, 1997. Accused pleaded not guilty and claimed to be tried.

3. At the trial, the prosecution to substantiate the charge examined P.W-1 complainant/SIP Ashfaque Ahmed Jahejo at Ex-4 and P.W-2 Mashir/HC Ali Nawaz at Ex-5. Thereafter, prosecution side was closed.

4. Statement of accused was recorded under Section 342 Cr.P.C at Ex-7, in which the accused denied the prosecution allegations and claimed that he has been falsely implicated in this case at the instance of Ghazi Leghari. Accused did not lead evidence in defence and also declined to examine himself on oath in disproof of the prosecution allegations.

5. Trial Court after hearing the learned Counsel for the parties, by judgment dated 28.04.2014, convicted the appellant under Section 9(b) of Control of Narcotic Substances, 1997 and sentenced to 01 year and 03 months R.I and to pay a fine of Rs.9,000/-, in case of default in payment of fine, to suffer S.I for 03 months and 15 days more with benefit of Section 382(B) Cr.P.C.

6. Appeal was preferred by the appellant. This Court vide order dated 21.05.2014 admitted the appeal for regular hearing. During pendency of the appeal, the appellant moved an application under Section 426 Cr.P.C for suspension of sentence. However, the sentence awarded to the appellant by the trial Court was suspended by this Court vide order dated 04.06.2014. Thereafter, the appellant has never appeared. B.W was issued against the appellant and notice to his surety under Section 514 Cr.P.C.

7. ASI Noor Muhammad Buriro of P.S Tando Muhammad Khan has returned B.W un-executed with the endorsement that the appellant is concealing deliberately at some unknown place. In this regard, ASI has recorded statements of the persons of the locality namely Ahmed and Amir Bux and filed such statements today in the Court.

8. Learned Additional Prosecutor General submits that from the statements of the private persons recorded by ASI Noor Muhammad Buriro, it is proved that the accused has become absconder and fugitive from the law and has concealed himself from the proceedings pending against him. The Honourable Supreme Court in the case of *IKRAMULLAH AND OTHERS V/S. THE STATE (2015 SCMR 1002)* has observed as under:-

9. A report dated 11.12.2014 has been received from the Superintendent, Central Prison, Bannu informing that Adil Nawab appellant had escaped from the said jail during the night between 14/15.04.2012 and he has become a fugitive from law ever since. The law is settled by now that a fugitive from law loses his right of audience before a Court. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal.

9. In view of the report of ASI Noor Muhammad Buriro of P.S Tando Muhammad Khan, it is clear that the appellant has become a fugitive from the law. The law is settled by now that a fugitive from law loses his right of audience before a Court. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal.

10. Before parting with this order, it is observed that proceedings against the surety shall be continued.

Adjourned to a date in office for proceedings against surety.

JUDGE

JUDGE