

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.D-88 of 2008

Present: *Mr. Justice Abdul Maalik Gaddi*
Mr. Justice Arshad Hussain Khan

Appellant: Lal Bux alias Lalu
None present for the appellant.

Respondent : The State through Syed Meeral Shah A.P.G. for the
State alongwith Excise Inspector Mir Rizwan
Talpur, I/C Excise Circle Digri.

Date of Hearing : **13.02.2018**

Date of Judgment : **13.02.2018**

J U D G M E N T

ABDUL MAALIK GADDI, J – Through this appeal the appellant has assailed the legality and propriety of the judgment dated 29.08.2008, passed by the learned Sessions Judge / Judge Special Court, Control of Narcotics Substances, Mirpurkhas in Special Case No.12 of 2006 (re-The State versus Lal Bux alias Laloo) registered under sections 9(c) CNS Act, 1997, in Crime No.03 of 2006 of P.S Excise Circle, Digri, whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in point No.2 of the impugned judgment. For the sake of convenience, it would be proper to reproduce point No.2 of the impugned judgment, which reads as under:-

“Point No.2

In view of my findings on points No.1, I am of the considered view that prosecution has successfully proved the recovery of 800 grams Heroin, 1000 grams charas, 500 grams Opium from the possession of accused Lal Bux alias Lalu beyond shadow of reasonable doubt. I, therefore, find him guilty for an offence punishable u/s 9(c) of C.N.S. Act, 1997, and convict him to suffer R.I for five years and to pay fine of Rs.10,000/- (Ten thousand only) and in default thereof he shall suffer S.I for six months more. The benefit of section 382-B Cr.P.C is extended to him for the period he remained in jail. Accused Lal Bux alias Lau is produced in custody and remanded back to the custody Superintendent, District Jail, Mirpurkhas to serve out the sentence now imposed upon him.”

2. Facts of the case need not be reiterated here as the same have been stated in the impugned judgment as well as memo of appeal.

3. It appears from the record that learned trial court on 10.01.2007 framed charge against the accused under section 9(c) Control of Narcotics Substances Act, 1997 at Ex.2, to which accused pleaded not guilty and claimed trial of the case vide his plea at Ex.3.

4. It also appears from the record that at the trial, the prosecution in order to substantiate the charge examined P.Ws viz. complainant Excise Inspector Gul Muhammad at Ex.4, who produced mashirnama of arrest and recovery at Ex.4/A, F.I.R. at Ex.4/B and chemical reports at Ex.4/C and 4/D, and Mashir EC Nasir Hussain at Ex.5. Learned Incharge SPP gave up P.W Mir Anwar Ali vide statement at Ex.6 and moved application u/s 540, Cr.P.C for calling chemical report from Chemical Examiner, which application was allowed by order dated 05.09.2007. Thereafter, learned I/C SPP closed the prosecution side vide his statement at Ex.9.

5. On conclusion of trial of the case, statement of accused under section 342 Cr.P.C was recorded at Ex.10, wherein accused denied the allegations leveled against him and claimed to be innocent. Accused Lal Bux alias Laloo examined himself on oath u/s 340(2), Cr.P.C at Ex.11. He produced certified copies of F.I.R. bearing Cr. No.84/2008, charge sheet No.24/2008, judgment in S.C No.250/1991 and judgment in CrI. Case No.57/2007 at Ex.11/A to Ex.11/D. Accused also examined D.Ws Saleem Raza and Faqeerani at Ex.12 and Ex.13. D.W Mst. Faqeerani produced photo copy of application addressed to Chief Justice Honourable Supreme Court of Pakistan Islamabad, application addressed to DIG Police Mirpurkhas at Ex.13/A and Ex.13/B. Thereafter, learned Counsel for the accused filed statement whereby he gave up D.Ws Naeem, Muhammad Hanif, Muhammad Hassan and Abdul Aziz at Ex.14.

6. Trial Court after hearing the learned counsel for the parties, by impugned judgment, convicted and sentenced the appellant under section 9(c) of Control of Narcotics Substances Act, 1997, as stated in Point No.2.

7. Appellant filed instant appeal against the impugned judgment, it was admitted to regular hearing vide orders dated 24.09.2008. During pendency of appeal, application for suspension of sentence was preferred on behalf of the appellant and sentence of the appellant was suspended vide order dated 14.10.2008, subject to furnishing a solvent surety in the sum of Rs.1,00,000/- and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court. It appears from the record that surety was furnished on 17.11.2008 by Dashtee son of Kaloti and thereafter appellant was released. After release, the appellant remained absent, as such, time and again NBWs were issued against him and all the time it has been reported that the appellant has shifted to some unknown place and his whereabouts are not known. Lastly, the NBWs were issued against the appellant through Excise Inspector Mir Rizwan Talpur, I/C Excise Circle Dgri for execution on the appellant so also notice to surety. Today, Excise Inspector Mir Rizwan Talpur, I/C Excise Circle Dgri, is present and has submitted his report stating therein that the accused has shifted to some unknown place and his whereabouts are not known, the report is taken on record.

8. Learned Additional Prosecutor General Sindh submits that after suspension of sentence, the appellant has absconded away and is deliberately concealing himself at some unknown place.

9. We have heard the learned A.P.G. and scanned the record. It is proved that the appellant is concealing himself deliberately after suspension of sentence and he has become fugitive from the law. The law is settled by now that a fugitive from law and Courts loses some of normal rights granted by procedural as well as substantive law. 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 for seeking resurrection of this appeal.”

10. In view of the report of Excise Inspector Mir Rizwan Talpur, I/C Excise Circle Dgri, it is clear that the appellant has become a fugitive from the law, as since appellant loses some of normal rights granted by procedural as well as substantive law. 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. Since notice under section 514, Cr.P.C issued against the surety has not been served, let the same be repeated. Separate proceedings against surety shall be continued. Adjourned to a date in office for proceedings against surety.

JUDGE

JUDGE