

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.D-30 of 2015

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

Appellant: Fateh Muhammad.
None present for appellant.

Respondent : The State through Syed Meeral Shah A.P.G. for the State alongwith SIP Shahid Abbasi on behalf of S.H.O P.S A-Section Latifabad, Hyderabad.

Date of Hearing : **01.02.2018**

Date of Judgment : **01.02.2018**

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 27.03.2015, passed by the learned IIIrd Additional Sessions Judge / Special Judge CNS Hyderabad in Special Case No.03 of 2013 (re-The State Versus Fateh Muhammad son of Gul Hassan Umrani) registered under sections 9(c) of the CNS Act, 1997, in Crime No.35 of 2012 of P.S A-Section, Latifabad, whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in Para-10 of the impugned judgment. For the sake of convenience, it would be proper to reproduce Para-10 of the impugned judgment, which reads as under:-

“10. Thus, the prosecution has established its case against the accused beyond reasonable doubt. Accordingly, he is convicted and sentenced for an offence punishable U/S 9-C of the CNS Act 1997, to suffer rigorous imprisonment for seven years and fine of Rs.10000/- (Rupees Ten Thousand). In default thereof, the accused shall suffer simple imprisonment for thirty (30) days. The accused present in Court on bail, he is taken into custody and remanded to the Central Prison, Hyderabad with the direction that he be kept in the jail and to serve out the sentence awarded to him. However, the accused is awarded benefit of section 382-B Cr.P.C. if he remained in jail.”

2. Precisely, the facts of the prosecution case are that on 12.02.2013 at 2240 hours, at village Koral Damn-e-Kohsar, Latifabad, Hyderabad, appellant Fateh Muhammad was arrested and from his possession 1010

grams of charas was recovered by a police party headed by Inspector Police Rana Perveez Akhtar, of PS A- Section Latifabad, Hyderabad under a memo on the spot. There, 10 grams as sample was taken from the recovered charas and sealed for chemical examination. Similar remaining charas was also sealed on the spot.

3. The accused denied the charge, as above; against him vide his plea available on the record. Therefore, in order to establish its case, the prosecution has examined PWs viz. Complainant Inspector Rana Perveez Akhtar, at Exh. 3, who produced mashirnama at Exh.3/A, daily diary entry at Exh.3/B, F.I.R. at Exh.3/C, PW-2, PC Muhammad Nadeem at Exh.4 and PW-3, Inspector Police Sardar Khan at Exh.5, who produced chemical report at Exh.5/A.

4. Learned ADPP for the State closed the side on behalf of State vide his statement dated 19.11.2014 at Exh.6.

5. On conclusion of trial of the case, statement of accused under section 342 Cr.P.C has been recorded, whereby he has denied the allegations of prosecution and stated that the police have implicated him at the instance of Rasheed Mari, to whom he has dispute over the landed property. However, he has neither examined himself on oath, nor led any defence.

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 above.

7. It appears from the record that the appellant has filed instant appeal against the impugned judgment and it was admitted to regular hearing vide orders dated 23.04.2015. 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 07.07.2015, 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. In compliance of the said order, one Mashooque Ali son of Ali Gul stood surety for the appellant and furnished surety papers / amount on 17.08.2015 before the Additional Registrar of this Court and thereafter appellant was released. As per record, it appears that after release on bail the appellant jumped the bail bond and remained absent. Time and again NBWs have been issued for the arrest of appellant but all the time NBWs returned unexecuted with the endorsement of S.H.O P.S A-Section Latifabad that the appellant was not found at the given address and has shifted to some unknown place and at present his whereabouts are not known. Notice issued to the surety also returned unserved.

8. Learned Deputy Prosecutor Generals Sindh submit 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 D.P.Gs 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 ASI Rano Khan Mashori, P.S Sakrand, 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 returned unserved, let the same be repeated. Separate proceedings against surety shall be continued. Adjourned to a date in office for proceedings against surety.

JUDGE

JUDGE

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