

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.D-39 of 2014

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

Appellant: Abdul Latif son of Muhammad Hassan Chandio.
None present for the appellant.

Respondent : The State through Syed Meeral Shah A.P.G. for the State.

Surety: Surety Muhammad Essa present in person.

Date of Hearing : **18.01.2018**

Date of Judgment : **18.01.2018**

J U D G M E N T

ABDUL MAALIK GADDI, J – Appellant Abdul Latif son of Muhammad Hassan Chandio was tried by learned Special Judge (Narcotics), Shaheed Benazirabad in Special Narcotic Case No.224 of 2011. By judgment dated 08.04.2014, the appellant was convicted under section 9(c) Control of Narcotics Substances Act, 1997 and sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs.20,000/-, in case of default in payment of fine he was ordered to suffer simple imprisonment for five months more. Benefit of section 382-B Cr.P.C was extended to the accused.

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. Learned trial court framed the charge against the accused under section 9(c) Control of Narcotics Substances Act, 1997 at Ex.03. Accused pleaded not guilty and claimed to be tried vide pleat at Ex.04.

4. At the trial, the prosecution in order to substantiate the charge examined P.W-1 complainant SIP / S.H.O- Mubeen Ahmed Parhiyar at Ex.6, who produced mashirnama of arrest and recovery at Ex.6/A, F.I.R. at Ex.6/B, simple attested copy of roznamcha entries of departure and arrival at P.S, at Ex.7/C, P.W-2 SIO Laique Muhammad Zardari, at Ex.7, who produced mashirnama of wardat place at Ex.7-A, Chemical report at Ex-7/B and P.W-3 ASI

Muhammad Laique Bhutto, mashir at Ex.8. Thereafter, prosecution side was closed at Ex.9.

5. Statement of accused was recorded under section 342 Cr.P.C at Ex.10, the accused claimed false implication and denied prosecution allegation. He has not examined himself on oath nor examined any witness in disproof of prosecution allegations.

6. Trial Court after hearing the learned counsel for the parties, by judgment dated 08.04.2014 convicted and sentenced the appellant under section 9(c) of Control of Narcotics Substances Act, 1997, as stated above.

7. Appellant filed instant appeal against the impugned judgment, it was admitted to regular hearing vide orders dated 13.05.2014. 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 11.12.2014, subject to furnishing a solvent surety in the sum of Rs.50,000/- and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court. It appears that surety was furnished on 15.12.2014 and thereafter appellant was released. After release on 16.12.2014, the appellant remained absent. NBWs were repeatedly issued against the appellant and notice issued to surety. Time and again NBW were issued against the appellant but all the time S.H.O concerned has reported that the appellant has shifted to some unknown place and his whereabouts are not known. We have perused the last report dated 13.12.2017 submitted by the S.H.O P.S Taluka Nawabshah, which is available on record, wherein said S.H.O has stated that the appellant was not found at his given address and his surety Muhammad Esa was served, who told the S.H.O that the appellant was not residing at the given address and he will appear before the Court.

8. Today, Surety Muhammad Essa son of Nabi Bux is present and submits that the appellant is not in his contact and he made his best efforts to produce the accused before this Court but his whereabouts are not known, however, he is ready to deposit the surety amount before the accountant of this Court. He further submits that he is poor person, therefore, the surety amount be reduced.

9. 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.

10. We have heard the learned A.P.G and surety in person and scanned the record. Since the appellant is not appearing after his release on bail, therefore, order dated 11.12.2014 granting bail to the appellant is recalled and the bail bond is forfeited. However, Keeping in view the poverty of the surety Muhammad Essa, the surety amount is reduced from Rs.50,000/- to Rs.25,000/- to be deposited by him with the accountant of this Court within three days and in case he fails to deposit the said amount, office shall commence proceedings against him to recover the amount as arrears of land revenue. As per 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.”

11. In view of the report of S.H.O P.S Taluka Nawabshah and the statement of surety, 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.

JUDGE

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