

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 440 of 2017

PRESENT:

Mr. Justice Aftab Ahmad Gorar
Mr. Justice Amjad Ali Sahito

Appellant/State : Anti-Narcotics Force through Assistant
Director (Law) Mr. Habib Ahmed,
Special Prosecutor for ANF.

Respondent No.2 : None present

Date of Hearing : 15.01.2019

Date of Order : 15.01.2019

J U D G M E N T

AMJAD ALI SAHITO, J : - Through this instant Criminal Appeal, the appellant has aggrieved and dissatisfied with the impugned order dated 21.04.2012 passed in Special Case No.33 of 2012 arising out of the FIR No.20/2012, under section 6, 9(c) of the Control of Narcotic Substances Act, 1997 of Police Station ANF Gulshan-e-Iqbal, Karachi, whereby the learned trial Court awarded lesser sentence to the accused/respondent No.2. It has been further prayed by the appellant that by setting aside the impugned order sentence of the respondent No.2 may be enhanced.

2. Briefly, the facts of the prosecution case are that SI/SHO Muzammil Ahmed of PS ANF lodged FIR on 07.03.2012; alleging therein that on the day of the incident he was present at PS ANF and received spy information that a Pakistani citizen Muhammad Ameer hiding heroin capsules in his stomach was traveling via Flight No.PK-735 to Saudi Arabia. On such information, ANF officials started surveillance at about 2200 hours on the pointation of the spy the

accused/respondent No.2 was arrested and he was taken to Nihal Hospital, Malir Karachi where X-ray was taken out and the doctor gave positive report, thereafter, the accused was taken to Jinnah Hospital and through medical process 125 capsules weighing 1015 grams were recovered from his stomach by the doctor, the heroin was separated from the capsule and the weight became 865 grams. Thereafter, the accused/respondent No.2 was arrested and instant FIR was lodged against him under sections 6, 9(c) of Control of Narcotic Substances Act, 1997 by the complainant on behalf of the State.

3. After completing all the formalities, report under section 173, Cr.P.C. was submitted before the competent Court of Law. During the trial the accused/respondent No.2 admitted his guilt and confessed before the trial Court and on such admission of guilt, he was convicted by the trial Court for an offence under section 6/9(b) of the Control of Narcotic Substances Act, 1997 and was sentenced to suffer R.I. for the term 2½ months with benefit of section 382-B, Cr.P.C. Being aggrieved the State through ANF filed instant Criminal Appeal for enhancement of sentence of the accused/respondent No.2.

4. The instant Criminal Appeal was presented on 13.8.2012 before this Court and vide order dated 21.03.2013 bailable warrant was issued in the sum of Rs.25,000/- against the respondent No.2, but time and again the case was adjourned, but the police of ANF failed to execute a bailable warrant issued against the respondent No.2. Today i.e. on 15.01.2019, the learned Special Prosecutor for ANF submits that he is prepared to argue the case if Criminal Appeal is allowed, then the perpetual warrants may kindly be issued against the respondent No.2.

5. It is inter alia contended by the learned Special Prosecutor for ANF that heroin powder weighing its 1015 grams were recovered from the respondent No. 2 but the learned trial Court has convicted and sentenced him only for 2 ½ months, which is against the sentencing policy; that the trial Court has not followed the guideline provided in the case of Ghulam Murtaza and others. Lastly, he prayed for enhancement of the sentence.

6. We have heard the learned Special Prosecutor for ANF and have gone through the material available on record. In this case, the State/ANF made prayer through the instant Criminal Appeal regarding enhancement of the sentence of the respondent No.2 the learned Special Prosecutor ANF mainly relied upon the case of *Ghulam Murtaza and others Vs. the State [PLD 2009 Lahore 362]* wherein the guideline/sentencing policy was provided, but in Para 10 of the judgment, the learned Lahore High Court observed that **“in a particular case carrying some special feature relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reason for such departure”**. In the instant case, the trial Court had recorded reasons for passing a sentence against the respondent No.2 which made a departure from the sentencing guideline. The trial Court had observed that:

“The accused is in custody since his arrest on 07.03.2012. The offence of Section 6/9 (c) of CNS Act, does not apparently seem to have stood attracted/made out in the circumstances, in letter and spirit. Since the question of possession of the secured narcotics in the given facts, needs consideration, and a different view absolving the accused of the liability of possession of narcotics could reasonably be drawn/taken thereby, as a matter of interpretation. The facts however, prima facie, seem to

be having ingredients of an act of attempt to commit suicide as defined by, and made punishable U/s 325 PPC (with simple imprisonment for a term which may extend to one year, or with fine, or with both), for the accused having had knowledge that his death could take place in the process of keeping of narcotics of such quantity in his stomach for an uncertain period, which could, after all, meet the process of digesting system of his foreign parts of body (through which to undergo that of dissolution of such a poisonous stuff) and the entire matter was about to depend/depended on timing and risk to life in consequences, willingly took/swallowed the said stuff thereby risked in life in the first instance. The accused is young and first offender as well.”

7. The learned trial Court has recorded the reasons while passing the impugned order particularly that the accused is young and the first offender as such the learned trial Court reduced the sentence against the respondent No.2/accused and for making the departure from the sentencing guideline. In this context, the reliance is placed upon the case of **State through the Deputy Director (Law) Regional Director Anti-Narcotics Force Vs. Mujahid Naseem Lodhi (PLD 2017 SC 671)** wherein the Hon’able Supreme Court of Pakistan has held that:

5. The exercise of jurisdiction and discretion in the matter of the respondent’s sentence by the trial court and the High Court have not been found by us to be open to any legitimate exception, particularly when the reasons recorded for passing a reduced sentence against the respondent and for making a departure from the above-mentioned sentencing guidelines have been found by us to be proper in the peculiar circumstances of this case. This petition is, therefore, dismissed and leave to appeal is refused.”

8. Apart from the above, the instant Criminal Appeal is pending since 13.08.2012, the State/ANF failed to execute theailable warrants issued against the accused/respondent No.2 till today.

9. In our humble view, the learned trial Court while passing the impugned order has given cogent reasons, which do not require any interference. Resultantly, the instant Criminal Appeal stands dismissed.

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