

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Appeal No.D- 31 and 32 of 2015

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Khadim Hussain M. Shaikh.

Date of hearing: 15.11.2017

Date of decision: 15.11.2017

Appellants Through M/s Rasool Bux Solangi and Mazhar Ali Laghari, Advocates.

The State Through Syed Meeral Shah Bukhari, Addl. P.G.

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MUHAMMAD IQBAL KALHORO, J:- Both these appeals arise out of one and the same F.I.R. bearing Crime No.45/2014 of P.S Tando Muhammad Khan wherein both the appellants namely Noor Ahmed and Ashraf Kumbhar are shown arrested and from each of them 1250 grams of charas recovered, therefore, both these appeals are disposed of by this common judgment.

2. Both the appellants vide separate judgments dated 14.03.2015, passed by Special Judge for CNS, Tando Muhammad Khan, in Special Cases No.06 and 07 of 2014, respectively, have been convicted for the offence U/S 9(c) Control of Narcotic Substance Act, 1997 and sentenced to suffer R.I for four years and six months with fine of Rs.20,000/- each and on default thereof to suffer S.I for five months more. Both the appellants, however, have been extended benefit admissible U/s 382-B Cr.P.C.

3. The brief facts of the prosecution case are that complainant S.H.O / SIP Shamsuddin Khokhar on spy information apprehended the appellants from a room situated in Talpur Colony, Tando Muhammad Khan belonging to co-accused namely Rasool Bux alias Karo Kumbhar, who was seen

absconding from there leaving behind a shopper containing charas of 1250 grams consisting of two pieces. From the personal search of each appellant, 1250 grams of charas consisting of two pieces each were recovered. From each recovery of charas, 10 grams of charas were separated and sealed for examination and report by the Chemical Analyzer. Thereafter, such memo of arrest and recovery was prepared at the spot and appellants were brought at Police Station Tando Muhammad Khan where above F.I.R was registered against them.

4. After due investigation, separate challans against the appellants were submitted. Appellant namely Ashraf was tried in Special Case No. 06/2014 and appellant namely Noor Muhammad was tried in Special Case No.07/2014, respectively. In the trial, after framing of the charge, in both the cases the prosecution has examined the same set of witnesses viz. namely P.W-1 SIP Fazal Muhammad Shah (mashir), who has produced memo of arrest and recovery, P.W-2 complainant SIP Shamsuddin Khokhar, the Investigating Officer, who has produced the roznamcha entries, F.I.Rs. and reports of Chemical Examiner.

5. Statements of appellants under section 342 Cr.P.C. were recorded, in which they have denied the allegations and have claimed to be innocent. The appellants have examined themselves on oath under section 340(2) Cr.P.C and also examined DW Muhammad Khan in their defense. After concluding the evidence and hearing the parties, the trial court has convicted the appellants in the terms as stated above through the impugned judgments. Being aggrieved by the above conviction and sentences, the appellants have preferred instant appeals

6. Learned Counsel for the appellants after arguing the case at some length have requested that the appellants are the first offenders and there are certain anomalies in the trial which could be considered as extenuating circumstances in favour of the appellants and the sentence awarded to them could be reduced to the period already undergone by them.

7. Learned Additional Prosecutor General Sindh after going through the record has not opposed this request.

8. We have considered the submissions of the parties and have perused the material available on record. Learned Additional Prosecutor General Sindh has not disputed the contention of defense that the appellants are first offenders and were arrested on the basis of spy information in advance, yet the police did not make efforts to take private person to witness the incident. Additionally, we have seen that the statements of the appellants under section 342 Cr.P.C have been recorded in routine manner and they have not been properly confronted with the incriminating evidence. In the said statements, the learned trial court has not put to the appellants the evidence of sealing the case property viz. charas at the spot and separating the samples from the each piece of charas and sealing them separately for the purposes of sending it to the Chemical Examiner. These omissions left by the trial court would indicate that the statements of the appellants have not been recorded in accordance with the mandatory provision of section 342 Cr.P.C. We, in such circumstances, do not see any reason not to accept the request of the learned Counsel for the appellants.

09. As per Jail Rolls dated 15.11.2017, appellant Noor Ahmed has remained in jail for 06 months and 10 days and has earned remissions of 17 days, whereas, appellant Ashraf has remained in jail for 06 months and 02 days and has earned remissions of 17 days. We, in view of the facts and circumstances, alter the conviction and sentence of the appellants and reduce their sentence to the period already undergone by them which shall include the period they were to suffer in lieu of fine imposed on them. The appellants are on bail, their bail bonds are cancelled and surety discharged.

Appeal in above terms disposed of.

JUDGE

JUDGE