

**HIGH COURT OF SINDH, CIRCUIT COURT AT  
HYDERABAD**

Cr. Appeal No.D-12 of 2020

[Javed another versus The State]

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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*Present:-*

**Mr. Justice Abdul Maalik Gaddi**  
**Mr. Justice Adnan-ul-Karim Memon**

Appellants: Through Mr. Yasir Hussain Malik advocate  
State: Through Ms. Rameshan Oad, APG  
Date of hearing: 06.08.2020  
Date of Decision: 06.08.2020

**JUDGMENT**

**ABDUL MAALIK GADDI, J:-** Through this criminal appeal the appellants have called into question the legality and propriety of the impugned judgment dated 01.02.2020, passed by learned II<sup>nd</sup> Additional Sessions/Special Judge C.N.S, Hyderabad in Special Case No.249 of 2018 (*Re: The State versus Javed another*) arising out of Crime No.127 of 2018 registered with PS Bhittae Nagar, Hyderabad under Section 9(c) CNS Act, 1997, whereby, the learned Trial Court after full dressed trial convicted and sentenced the appellants as follows:-

**POINT NO.3**

23. *The crux of my discussion in point No.1, is that the prosecution has fully established the charge of offence punishable under section 9(c) of the Control of Narcotic substances Act-1997 against accused beyond any reasonable shadow of doubt. Since the accuses are young persons and as per record first offenders, therefore, by taking a lenient view they are convicted and sentenced under section 265-H(2) Cr.P.C to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.300,000/- in case of failure to pay the fine the accused shall have to suffer S.I for one year more. The accused are provided benefit of section 382-B Cr.P.C. The accused are present in custody. They are remanded back to custody with conviction warrant and slip to serve out the sentence awarded to them.*

2. Being aggrieved with and dissatisfied with the said judgment, present appellants have preferred this appeal on the ground that the impugned judgment is against the law and facts and the learned Trial

Court while deciding the case did not consider the evidence of prosecution witnesses, which is full of contradictions, hence cannot be relied upon, hence the impugned judgment is liable to be set aside and the appellants may be acquitted of the charge.

3. On the other hand learned APG submits that the impugned judgment is perfect in law and on facts. She further submits that the prosecution witnesses in their evidence have fully supported the prosecution case and there is no material contradiction in their evidence. According to her 42 kg of charas was recovered from the car bearing No.ASB-311 in which present appellants were available and they were transporting the same for selling purpose, but apprehended at the spot, even, learned Trial Court despite of corroboratory evidence has awarded the punishment of 10 years to appellants with fine of Rs.300,000/-, which too is silent that whether both accused have been awarded sentence or otherwise.

4. Arguments heard and record perused.

5. It is noted that in this matter 42 kg charas was allegedly recovered from a car in which present appellants were boarded, however, learned Trial Court, as stated above, has convicted and sentenced them to suffer R.I for 10 years with fine of Rs.300,000/-, which is deviation from the sentencing policy, as stated in Ghulam Murtaza case reported as PLD 2009 Lahore 362, which has also been affirmed by Hon'ble Supreme Court of Pakistan in Ameer Zaib case, which provides that in the event of recovery of chars of more than 10 kilograms from an accused, said accused is liable to be punished for "Imprisonment of Life" or Death" and fine of Rs.100,000/- and in case of failure in payment of fine to further suffer S.I for one year. Not only this, but impugned judgment is also silent with regard to awarding of sentence to appellants individually.

6. When these circumstances and infirmities in the impugned judgment were confronted to parities' counsel, they submit that they have no objection if the impugned judgment is set aside and the case is remanded back to learned Trial Court for passing the judgment afresh.

7. Since the impugned judgment has not been written in accordance with law by discussing in detail the points raised before learned Trial Court by the parties, therefore, by keeping in view the above and with the consent of both counsel of parties, the impugned judgment date 01.02.2020

is set aside and the case is remanded back to learned District and Sessions Judge Hyderabad with directions to him to decide the same from the stage of arguments of parties and then pass a judgment strictly in accordance with law without influence of this order expeditiously within two months from today under intimation to this Court.

8. Office is directed to immediately send the R&P to learned District and Sessions Judge Hyderabad through a swift means for compliance. Before parting with the order, we expect from the learned District and Sessions Judge Hyderabad that he shall pass the judgment after hearing the parties and purely on merit and independently without influence by the impugned judgment passed by learned Trial Court.

9. Instant appeal stands disposed of in the above terms.

**JUDGE**

**JUDGE**