

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.469 of 2018

Date	Order with signature of Judge
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For hearing of main case.

The State/ANF Vs. *The Judge Special Court-1 (CNS) & another*

Present:

Mr. Justice Nazar Akbar

Mr. Justice Zulfiqar Ahmad Khan

05.11.2020

Ms. Abida Parveen Chanar, Special Prosecutor, ANF.

Mr. Farhan Ahmed Mangi, Advocate for Respondent No.2.

NAZAR AKBAR, J.- This Criminal Appeal has been preferred by the appellant for enhancement of sentence awarded by the order dated **31.01.2012** passed by the learned Special Judge, Court-I, CNS, Karachi in Special Case No.06/2012, whereby, in view of plea of guilty, Respondent No.2 was convicted for an offence under Section 6/9(b) of CNS Act, 1997 and sentenced to suffer the term of R.I with benefit of Section 382-B of Cr.P.C, for the period he has already under-gone (1 month 7 days without fine).

2. Initially on **7.7.2012**, the appellant has filed a Criminal Revision Application No.166/2012 under **Section 439** of Cr.P.C seeking enhancement of the punishment awarded to Respondent No.2 Muhammad Saad Javed son of Javed Iqbal through the impugned order dated **31.01.2012**. Respondent No.2 was facing trial for an offence under **Section 6/9(b)** of CNS Act, 1997 and he was convicted by the trial Court on his voluntarily accepting the guilt.

3. The Revision Application under **Section 439** of Cr.P.C was filed without realizing that the provisions of Cr.P.C were not applicable in

the matters relating to the trial under Control of Narcotics Substances Act, 1997 (CNS Act, 1997) and this legal position that a Cr. Revision Application was not maintainable was in the knowledge of the appellant, if not on **07.7.2012**, but at least from **18.2.2013** when the Hon'ble Supreme Court on an appeal filed by Deputy Director of ANF against Fazeelat Bibi (**PLD 2013 SC 361**) has held that:-

“It ought to have been appreciated by the learned Division Bench of the Lahore High Court, Lahore that a remedy of an appeal, revision or review is a creation of a statute and applicability of **the procedure prescribed in the Code of Criminal Procedure to proceedings under any other special statute does not ipso facto make the remedies provided in the Code of Criminal Procedure applicable to the other statute.** The Control of Narcotic Substances Act, 1997 is a special law containing all the relevant remedies catering for different situations and section 47 of the said Act has only made the procedure contained in the Code of Criminal Procedure applicable to the proceedings under the Act of 1997.

However, despite the judgment of Hon'ble Supreme Court dated **18.2.2013**, the appellant, after more than five years of the above Supreme Court's order, on **17.9.2018** made an oral request that the Revision Application be converted into a Criminal Appeal on the basis of the dictum laid down by the Hon'ble Supreme Court.

4. The legal position is that an appeal under **Section 48** of CNS Act, 1997 against the findings of Special Court before High Court dated **31.01.2012** was required to be filed within **60 days** from the date of judgment/order in terms of **Article 155** of the Limitation Act, 1908. **Article 155** of the Limitation Act is reproduced below:-

155. Under the same Code to a High Court, except in the cases provided for by Article 150 and Article 157.	Sixty days	The date of the sentence or order appealed from.
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Therefore, even if we consider that Revision filed on **07.7.2012** to be treated as an appeal filed by the appellant it appears to be hopelessly time barred.

5. Today we confronted learned counsel for ANF with the question of limitation for an appeal against the impugned order dated **31.01.2012**, she has contended that the revision has already been admitted on **15.3.2013** and she claimed that the maximum time for filing an appeal is six months under **Article 157** of the Limitation Act, 1908 which is reproduced below:-

157. Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Six months	The date of the order appealed from.
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Her reference to **Article 157** of the Limitation Act is erroneous as the appellant has not filed an appeal against an order of acquittal. This appeal is against conviction in which, according to the appellant, Respondent No.2 has been awarded lesser punishment. In our humble view, the Hon'ble Supreme Court in the case of Mst. Fazeelat Bibi (**PLD 2013 SC 361**) has authoritatively held that ANF can only invoke the jurisdiction of appeal under **Section 48(i)** of CNS Act, 1997 for challenging the order of Special Court under CNS Act. The relevant observations of the Hon'ble Supreme Court from the same judgment are reproduced below:-

4. The provisions of section 48(1) of the Control of Narcotic Substances Act, 1997 clearly and unambiguously contemplate an appeal to a High Court against an order passed by a Special Court comprising of a Sessions Judge or an Additional Sessions Judge and in the case in hand the learned Judge, Special Court, CNS, Lahore trying the respondent was a Sessions Judge. The right of appeal conferred by section 48(1) of the Control of Narcotic Substances Act, 1997 is all pervasive catering for every kind of appeal from

every kind of order passed by such a Special Court and the provisions of section 48(1) of the Control of Narcotic Substances Act, 1997 do not make any distinction between an appeal against a conviction, an appeal against an acquittal or an appeal seeking enhancement of a sentence passed against a convict.....”

The authorization by the Acting Director, Anti-Narcotics Force under **Section 14** of CNS Act for filing Criminal Revision is dated **02.4.2012**, meaning that even authorization to file Revision or appeal was given after the expiry of statutory period of limitation for challenging the impugned order. The appellant neither at the time of filing Revision after a lapse of more than five months from the date of impugned order nor at the time of oral request on **17.9.2018** to convert Revision into appeal has filed any application for condonation of limitation period for filing the appeal. In the absence of any request for condonation of delay or any oral explanation for the delay in filing appeal, we do not find any justification to entertain the hopelessly time barred appeal.

6. Beside the above discussed legal position that the appeal was time barred, the appellants even on merit have no case. The only contention raised by the learned counsel for enhancement of punishment was that the learned trial Court while awarding the punishment of 1 month 7 days already under-gone by Respondent No.2/ accused has failed to follow the law laid down by the Hon'ble Full Bench of Lahore High in the case of Ghulam Murtaza and another vs. the State (**PLD 2009 Lahore 362**). According to learned Special Prosecutor, ANF, the punishment is not in accordance with the guidelines provided in the said judgment of the full bench of Lahore High Court. The ground taken by the learned counsel has already been answered by the Hon'ble Supreme Court in favour of the

Respondent in the case of the State through the Deputy Director (Law), Regional Directorate, Anti-Narcotics Force vs. Mujahid Naseem Lodhi (**PLD 2017 SC 671**). Incidentally, this Supreme Court judgment has been authored by my lord Mr. Justice Asif Saeed Khan Khosa, and he has also authored the judgment of the Lahore High Court full bench in Ghulam Murtaza case supra. In the Hon'ble Supreme Court judgment this contention of the appellant has been repealed and the relevant findings of the Hon'ble Supreme Court are reproduced below:-

5. As regards the prayer made through the present petition regarding enhancement of the respondent's sentence the learned Special Prosecutor, Anti-Narcotics Force has mainly relied upon the judgment handed down by a Full Bench of the Lahore High Court, Lahore in the case of Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362) wherein some guidelines had been laid down vis-a-vis sentencing in cases of narcotic substances and has maintained that the sentence passed by the trial court against the respondent was not in accord with the said guidelines. The said judgment of the Lahore High Court, Lahore had approvingly been referred to by this Court in the case of Ameer Zeb v. The State (PLD 2012 SC 380). **We note that in paragraph No. 10 of the judgment handed down by the Lahore High Court, Lahore in the above mentioned case it had been observed that "in a particular case carrying some special features 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 reasons for such departure."** In the case in hand the trial court had recorded reasons for passing a sentence against the respondent which made a departure from the above mentioned sentencing guidelines. The trial court had observed that the respondent had made a confession before the trial court besides expressing remorse and repentance with an assurance not to deal with narcotics in future. It was also noticed by the trial court that the respondent's co-accused namely Muhammad Suneel had also made a confession before the trial court and on the basis of such confession he was also awarded a sentence which departed from the above mentioned sentencing guidelines but the State had not sought enhancement of his sentence. The High Court had refused to enhance the respondent's sentence and had dismissed an appeal filed by the State in that regard by holding that the above mentioned considerations weighing with the trial court for passing a reduced sentence against the respondent were

appropriate in the circumstances of the present case. 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.

7. In the case in hand the trial court has departed from the guideline provided in the case of Ghulam Murtaza supra which is permissible as held by the Hon'ble Supreme Court in different cases subsequently. The reasoning advanced by the trial Court was confession of guilt before the court and also that Respondent No.2 was of young age being only bread-earner member of the family as well as admittedly first offender.

8. In view of the above discussion of facts and law laid down by Hon'ble Supreme Court coupled with the fact that the appeal was even otherwise hopelessly time barred, we are of the firm view that the instant appeal is liable to be dismissed, therefore, the same is dismissed.

JUDGE

JUDGE

Ayaz Gul