

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.D-29 of 2018

PRESENT:

Mr. Justice Abdul Maalik Gaddi.
Mr. Justice Khadim Hussain Tunio.

Date of hearing: 14.01.2020.

Date of decision: 14.01.2020.

Mr. Ayaz Ali Gopang, Advocate for appellant.
Ms. Rameshan Oad, A.P.G. for the State.

J U D G M E N T

ABDUL MAALIK GADDI, J – Through this appeal, the appellant has assailed the legality and propriety of judgment dated 22.11.2017 passed by learned Special Judge (Narcotics), Shaheed Benazirabad in Special Narcotic Case No.161/2017, whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in Point No.2 of the impugned judgment. For the sake of convenience, it would be proper to reproduce Point No.2 of the impugned judgment which reads as under:-

“In view of the findings of point No.1 it is proved that accused has committed offence punishable u/s 9 (C) CNS Act 1997 by keeping 7000 grams of charas in his possession, hence he is found guilty. Accordingly he is convicted in this case. The accused is sentenced Rigorous Imprisonment for 05 years and fine of Rs.20,000/- (twenty thousand). In default of fine payment he will suffer 06 months more Simple Imprisonment. The benefit of section 382-B Cr.P.C is also extended to him. He is present in custody and remanded back to the District Prison, Shaheed Benazirabad to serve the aforesaid sentence.”

2. Facts of the case as stated in the FIR are that on the relevant date 7000 grams of Charas was recovered from the possession of appellant in presence of mashirs, as such appellant was arrested on spot. Recovered alleged property was sent to Chemical Examiner for examination and report, which was also found positive.

3. Learned counsel for the appellant submitted that though on merits the appellant has a good case for acquittal, but according to him the appellant is facing agony of protracted trial since last about three years, therefore, he would be satisfied and shall not press the instant appeal if the sentence awarded to the appellant by the learned trial court is reduced to the period which the appellant has already remained in jail. He further submits that the appellant has also repented and undertakes not to repeat such an abrasive act in future.

4. Learned A.P.G. has also raised no objection on the above proposition.

5. We have perused the impugned judgment so also material available on record. The trial court has recorded the conviction while relying upon the evidence of complainant SIP Zafar Ali Khoso, mashir ASI Mubeen Ahmed and PC Rajab Ali. Their evidence is not shattered during the cross examination in any manner nor any material helpful to the appellant/accused has been brought on record. As per report of the chemical examiner the sample sent to him was charas, as such the findings of the trial court does not suffer from any infirmity nor the same are based upon misreading and non-reading of the evidence hence the impugned judgment does not call for interference by this court.

6. Jail roll of appellant on record shows that appellant has remained in jail for about four years including remissions and the unexpired portion of his sentence is 01 year 01 month and 25 days which is sufficient punishment in the circumstances of the case. Since according to learned counsel, the appellant has repented and has undertaken not to repeat such an abrasive act in future, the appellant is the first offender and has no past criminal history against him as per available record. The offence pertains to 25.02.2017 and the appellant apart from having faced the agony of trial has also been

pursuing the proceedings of this appeal for last about 11 months, it means he is pursuing his case for the last three years. It is stated by learned counsel for the appellant that appellant is the sole bread winner and supporter of his family therefore, under the circumstances he needs one more chance for his rehabilitation

7. Consequently, the conviction is maintained, however, the sentences awarded to the appellant by the Trial Court is reduced to one which the appellant has already undergone. However, the fine amount of Rs.20,000/- (twenty thousand) shall be paid by the appellant in terms of impugned judgment of trial court.

8. With the above modification in the sentence, the appeal is dismissed. Appellant is in custody, he shall be released after payment of fine imposed by trial court through impugned judgment dated 22.11.2017 or on serving out the sentence of SI for 06 months on account of non-payment of fine.

JUDGE

JUDGE

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