

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

Cr.Appeal.No.D- 63 of 2008

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Muhammad Karim Khan Agha.

Date of hearing: 05.05.2017.
Date of judgment: 05.05.2017.

Appellant Imdad Hussain s/o
Muhammad Hanif by caste Ansari.
(present on bail)

Through Mr. Muhammad Sharif
Siyal, Advocate.

The State:

Through Syed Meeral Shah, D.P.G.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Appellant Imdad Hussain was tried by learned Sessions Judge / Special Court for CNS Nawabshah in Special Case No.131 of 2006. By judgment dated 05.07.2008, appellant was convicted u/s 9(b) of CNS Act, 1997 and sentenced to suffer 04 years RI and to pay the fine of Rs.50,000/- In case of default in payment of fine, appellant has been ordered to undergo SI for one year more. However, the benefit of Section 382-B Cr.P.C. was also extended to the accused.

2. Brief facts of the prosecution case are that on 18.05.2006 SHO Niaz Muhammad Meerani of Railway Police Station Nawabshah on Platform No.2

of the Railway Station Nawabshah arrested the present accused in presence of the mashirs and from his possession recovered heroin and its weight was one kg. Cash of Rs.310/- was also recovered. Thereafter FIR bearing crime No.07/2016 was registered against the accused u/s 9(b) of CNS Act, 1997.

3. During investigation heroin was sent to the chemical examiner. Positive report was received. After completion of investigation challan was submitted against the accused for offence u/s 9(b) of CNS Act, 1997.

4. Trial Court framed charge against accused u/s 9(b) of CNS Act, 1997 to which accused pleaded not guilty and claimed to be tried.

5. At the trial prosecution examined PW-1 Complainant / SHO Niaz Muhammad Meerani at Ex.8. He produced roznamcha entry showing his departure as Ex.8/A, FIR as Ex.8/B, report of chemical examiner as Ex.8/C. PW-2 mashir PC Muhammad Akram Lakho at Ex.6. He produced the mashirnama of arrest and recovery of accused at Ex.6/A. Thereafter, prosecution side was closed at Ex.9.

6. Statement of accused was recorded u/s 342 Cr.P.C.at Ex.10 in which accused has claimed false implication in this case and denied the prosecution allegations. Accused neither examined himself on Oath in disproof of prosecution allegations nor led any evidence in his defence.

7. Learned trial court after hearing the learned counsel for the parties and assessment of the evidence available on record convicted and sentenced the appellant as stated above. Hence this appeal.

8. Mr. Muhammad Sharif Siyal, learned advocate for appellant has contended that the sentence awarded to the appellant by the impugned judgment is not according to the sentencing policy laid down in the case of

Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362). Counsel further submits that the judgment of learned Lahore Court has been endorsed by the Honourable Supreme Court. He further submits that according to the judgment in the case of Ghulam Murtaza (supra), case of recovery of heroin exceeding 600 grams upto 1000 grams, the imprisonment had been prescribed RI for 01 year and 10 months and fine of Rs.15,000/- and in default SI for 05 months. Counsel for the appellant did not press the appeal on merits and submitted that he would be satisfied in case judgment of the appellant is modified in terms of the judgment in the case of Ghulam Murtaza. However, counsel submitted that appellant was arrested on 18.05.2006 and after suspension of the sentence he was release on 30.10.2008.

9. Syed Meeral Shah, D.P.G. appearing for the State recorded no objection in case the appeal is decided in terms of the judgment reported in PLD 2009 Lahore 362 and endorsed in the case of Ameer Zeb v. The State (PLD 2012 Supreme Court 380). So far sentence of appellant is concerned.

10. We have carefully heard the learned counsel for the parties and perused the entire evidence.

11. It appears from evidence that appellant was arrested on 18.05.2006 and one Kg heroin was recovered from his possession. Report of the chemical examiner was positive. Trial Court convicted the appellant u/s 9(b) of CNS Act, 1997 and sentenced him to suffer 04 years RI and to pay the fine of Rs.50,000/- In case of default in payment of fine, appellant has been ordered to undergo SI for one year more. In view of the sentencing policy laid down in the case of Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362) in case of recovery of heroin exceeding 600 grams upto 1000 grams, the imprisonment has been prescribed RI for 01 year and 10 months and fine of Rs.15,000/- and in default SI for 05 months. The judgment in the

case of Ghulam Murtaza has been endorsed by the Honourable Supreme Court in the case of Ameer Zeb v. The State (PLD 2012 Supreme Court 380).

12. In view of the above, the conviction awarded by the trial court is maintained however sentence and the fine are modified to the extent as mentioned in the case of Ghulam Murtaza. Accordingly, it is modified to imprisonment for 01 year and 10 months RI and fine of Rs.15,000/- or in default SI for 05 months. Counsel for the appellant submits that after his arrest the appellant was in custody and after conviction the sentence was suspended on 30.10.2008. Appellant is present on bail. He is taken into custody and remanded to the jail. Benefit of Section 382-B Cr.P.C. is extended to appellant.

Appeal is disposed of in the above terms.

JUDGE

JUDGE

Tufail