

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

***Cr. Jail Appeal No. S – 21 of 2019***

**For hearing of main case**

(Jail Roll received)

Mr. Inam Ali Maitlo Advocate for the appellant

Mr. Khalil Ahmed Maitlo, DPG for the State

Date of hearing: 22.11.2019

Date of decision: 22.11.2019

**J U D G M E N T**

**Aftab Ahmed Gorar, J;** Through this Criminal Jail Appeal, the appellant namely Moula Bux alias Nandho S/o Hussain Bux Tanweri, has assailed the impugned judgment dated 19.02.2019 passed by learned II-Additional Sessions Judge, Khairpur, whereby he has convicted and sentenced the appellant u/s 265-H(ii) Cr.P.C for offence u/s 23(i)(a) Sindh Arms Act, 2013 to suffer R.I for three years and to pay fine of Rs.10,000/- (Ten thousand rupees), in case of failure thereof, he shall undergo S.I for one month more. The benefit of Section 382-B Cr.P.C was also extended to him.

2. As per the prosecution the allegation against the present appellant is that on 03.11.2018 he was apprehended by ASI Kaleemullah Niazi at Ali Bahar Wah Bridge and one unlicensed 30-Bore TT Pistol along with two life bullets was recovered from his possession and he could not produce any valid license for the same, hence such mashirnama was prepared at the

spot in presence of mashirs PC Zamir Hussain and PC Tarique Ahmed and then such FIR was lodged at Police Station Pir Wassan.

3. The formal charge was framed against the appellant / accused at (Ex.2) to which they pleaded not guilty and claimed to be tried. The prosecution in order to substantiate its case, examined PW-1 complainant ASI Kaleemullah at (Ex.4), who produced entry No.20, mashirnama of arrest and recovery and FIR at (Ex.4/A to 4/C); PW-2 mashir Zamir Hussain at (Ex.5), who produced memo of inspection of place of vardat at (Ex.5/A); PW-3 I.O / ASI Amanullah Sial at (E.6), who produced police letter at (Ex.6/A) and Forensic Laboratory report at (Ex.6/B) and criminal record of accused at (Ex.6/C). Thereafter side of the prosecution was closed by learned ADPP for the State vide his statement at (Ex.7).

4. The statement of the appellant / accused was recorded u/s 324 Cr.P.C, in which he denied the prosecution allegation and further stated that he is innocent and has falsely been implicated in this false case. He neither examined himself on oath nor any witnesses in defence.

5. Learned trial Court after hearing the learned counsel for the parties convicted the appellant /accused as stated herein above.

6. Learned counsel for appellant mainly contended that appellant is innocent and has falsely been implicated by the police with malafide intentions and ulterior motives. He further contended that evidence adduced by the prosecution at trial was not properly assessed and

evaluated by learned trial Court, though there are sufficient discrepancies in their evidence, which were not considered by the learned trial Judge while passing the impugned judgment. It is further contended that appellant that has also served out major portion of sentence i.e. 01 year and 19 days, therefore, he also prayed for reducing the sentence of the appellant to that of already undergone. In support of his contentions, he relied upon case of **Gul Naseeb v. The State (2008 SCMR 670)** and **Niaz-ud-Din v. The State (2007 SCMR 206)**.

7. Learned Deputy Prosecution General appearing for the State supported the impugned judgment, however, he conceded to the reduction of sentence of appellant to that of already undergone. On query, learned DPG admitted that appellant is not previous convict.

8. I have carefully heard the learned counsel for the parties and scanned the entire evidence. After perusing the evidence of prosecution witnesses, it appears that no doubt complainant and P.Ws being the police witnesses have supported the prosecution case in their examination-in-chief, however, there are material discrepancies in their cross-examination. Moreover, as per jail roll dated 30.10.2019 the appellant has served out his sentence for 01 year and 19 days excluding the remissions earned by him

9. Upshot of the above discussion is that the learned counsel for the appellant has made-out a case for reduction in the sentence of appellant, therefore, while following the dictum laid-down in cases of ***Gul Naseeb and Niaz-ud-Din (supra)***, the above Criminal Appeal of the appellant is partly

allowed. Consequently, while maintaining the conviction of the appellant, the sentence of the appellant inflicted on him is reduced to that of already undergone including sentence of fine amount. Appellant is behind bars. He shall be released forthwith, if not required in any other case. The instant Criminal Jail Appeal stands disposed of in the above terms.

Judge

ARBROHI