

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

***Cr. Jail Appeal No. S – 260 of 2019***

**For hearing of main case**

Mr. Shabbir Ali Bozdar Advocate for the appellant  
Mr. Khalil Ahmed Maitlo, DPG for the State

Date of hearing: 09.12.2019

Date of decision: 09.12.2019

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

**Aftab Ahmed Gorar, J:** Through this Criminal Appeal, the appellant namely Mehdi Hassan Shaikh, has assailed the impugned judgment dated 30.10.2019 passed by learned III-Additional Sessions Judge, Mirpur Mathelo, whereby he has convicted and sentenced the appellant u/s 265-H(ii) Cr.P.C for offence u/s 24 Sindh Arms Act, 2013 to suffer R.I for (03) three years and to pay fine of Rs.2000/- (Two 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. The allegation against the present appellant is that on 09.11.2018, he was apprehended by HC-Aijaz Ali Gadani near Peer Rabato and one unlicensed 30-Bore TT Pistol along with Magazine 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 Deedar Hussain and PC- Manzoor Ahmed and then such FIR was lodged at Police Station Mirpur Mathelo.

3. The formal charge was framed against the appellant / accused at (Ex.2) to which he pleaded not guilty and claimed to be tried. The prosecution in order to substantiate its case, examined PW-1 / complainant HC-Aijaz Ali at (Ex.3), who produced mashirnama of arrest and recovery and FIR at (Ex.3/A to 3/B); PW-2 mashir PC- Deedar Hussain at (Ex.4); PW-3 SIP Shah Muhammad at (Ex.05), who produced memo of inspection of place of vardat, report of Forensic Science Laboratory, medico-legal certificate of appellant and criminal record of the appellant at (Ex.5/A to 5/D) respectively. Thereafter side of the prosecution was closed by learned ADPP for the State vide his statement at (Ex.6).

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, whereas, the alleged pistol has been foisted upon him by the police. 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. It is contended by learned counsel for appellant that the appellant is innocent and has falsely been implicated by the police with malafide intentions and ulterior motives and the alleged pistol has been foisted upon him by the police; that the 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; that the appellant has also served out substantive portion of his sentence, 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 Prosecutor General appearing for the State supported the impugned judgment, however, he conceded to the reduction of sentence of the 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 the appellant has served out the substantive portion of his sentence 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 the bars. He shall be released forthwith, if not required in any other case. The instant Criminal Appeal stands disposed of in the above terms. These are the reasons of my short order dated 09.12.2019.

Judge

ARBROHI