

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D – 40 of 2019
(*Jan Muhammad Bangulzai versus The State*)

Spl. Cr. Appeal No. D – 51 of 2019
(*Baqa Muhammad Jatoi versus The State*)

Present:

Mr. Muhammad Iqbal Kalhoro, J.
Mr. Arbab Ali Hakro, J.

Date of hearing : **14.12.2023**

Date of decision : **14.12.2023**

Mr. Imdad Ali Malik, Advocate for appellant in Spl. Cr. Appeal No. D-40 of 2019.

Mr. Israr Ahmed Shah, Associate of Mr. Qurban Ali Malano, Advocate for appellant in Spl. Cr. Appeal No. D-51 of 2019.

Mr. Mohsin Ali Khan, Special Prosecutor ANF.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – By these appeals, appellants have impugned judgment dated 06.03.2019, passed by learned Sessions/Special Judge (CNS), Sukkur in Special Case No.25 of 2013 (*Re: State versus Baqa Muhammad and another*), arising out of Crime No.04 of 2013, registered at Police Station ANF Sukkur, awarding them rigorous imprisonment for life with fine of Rs.1,00,000/- (*Rupees one lac*) each, or in default, to suffer simple imprisonment for one year more for offence punishable U/S 9(c) of CNS Act, 1997, however, with a benefit of Section 382-B CrPC.

2. As per brief facts, on 22.02.2013 at about 0715 hours, in pursuance of some spy information, appellants found travelling in a truck No. TKL-427 at Railway Flyover, Naz Bypass Road, Sukkur were apprehended. From search of five sacks from amongst all the sacks available in the truck, purportedly loaded with rice, on pointation of the appellants, 189 kilograms of *charas* in 189 packets each weighing one kilogram, was recovered. Ten packets from each sack, a total of 50 kilograms, were separated for examination by the chemical examiner. Accordingly, appellants were arrested by ANF Police. Their arrest and recovery of *charas* from them were duly documented by the police, and consequently, FIR was registered against them.

3. After submission of Challan and appellants assertion to plead not guilty, the trial was commenced, in which prosecution examined complainant Inspector Tahir Ahmed as PW-1 and *mashir* HC Abdul Hafeez as PW-2. Both the witnesses have filed in their evidence all the necessary documents including FIR, memo of arrest and recovery, chemical lab report etc. The appellants, in their statements U/S 342 CrPC have denied prosecution's case. The learned trial Court, however, vide impugned judgment dated 06.03.2019, has convicted the appellants for keeping in possession 50 kilograms of *charas*, which was sent to chemical analyzer for examination, and sentenced them U/S 9(c) of CNS Act, 1997, to suffer rigorous imprisonment for life and to pay fine of Rs.1,00,000/- (*Rupees one lac*) each, or in default, to suffer simple imprisonment for one year more, however, with a benefit of Section 382-B CrPC.

4. Today, we have received jail role of both the appellants, which indicates that both of them have remained in jail substantially for 10 years, 09 months & 22 days, have earned remissions of 13 years & 04 days, their unexpired portion is only 02 years, 02 months & 04 days including a sentence for failure to pay fine.

5. Both the learned Counsel appearing for appellants have submitted that since only a short period of time in the sentence of the appellants has remained, they would not press the appeals on merits, if the amount of fine and the period, in default of which the appellants are to suffer, is reduced, enabling the appellants to pay the fine and get released after serving the entire sentence of life imprisonment.

6. Learned Special Prosecutor ANF has, however, opposed this proposal, but has conceded that this question is essentially of discretion of the Court.

7. The general rule embodied U/S 33 CrPC, prescribing period of imprisonment in default of fine, states that the period of imprisonment awarded in default of payment of fine shall not exceed one fourth of the period of imprisonment, which the Court is competent to inflict as punishment for the offence, and further that such imprisonment may be in addition to substantive sentence of the imprisonment for the maximum term awarded by the Court. It is clear that only the upper limit of the maximum period of sentence in default of fine has been enforced by the scheme U/S 33 CrPC, and it has been made clear that the Court is not competent to impose a sentence beyond one fourth of maximum punishment

of the offence in default of payment of fine, whereas, the minimum limit in the period to be imposed for default in payment of fine has been left to the discretion of the Court. The request made in defense is not to upset findings of the trial Court over merits of the case and maximum period of sentence awarded by the trial Court, but to the extent of fine amount and the period which the appellants have to suffer in default thereof.

8. As has been explained above, it is within the domain of the Court to impose a particular period upon the convict to suffer in default of fine, which, however, in no case, shall be more than one fourth of the actual imprisonment provided under the offence. Section 9(c) of CNS Act confers jurisdiction over the Court to impose fine, in addition to penalty of death or imprisonment for life or imprisonment for a term which may extend to fourteen years, which may be up to one million rupees. Section 18 of CNS Act prescribes that where no amount of minimum fine has been fixed, the Court shall impose the fine keeping in view the quality and quantity of the narcotic drug etc. involved in the commission of such offence. The CNS Act is clear that it is the Court which has to determine imposition of fine as per facts of the case. Therefore, we see no legal or otherwise any impediment in accepting the request of appellants' Counsel, as noted above. Consequently, the appeals are **dismissed**, and the imprisonment for life awarded by the trial Court to the appellants U/S 9(c) of CNS Act, 1997 is maintained. However, the amount of fine imposed is reduced from Rs.1,00,000/- (*Rupees one lac*) to Rs.40,000/- (*Rupees forty thousand*), and in case of its default, four months simple imprisonment shall be suffered by the appellants in addition to life imprisonment.

Both the appeals are **disposed of** in the above terms. Office to place a signed copy of this order in the captioned connected matter.

J U D G E

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Abdul Basit