

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Jail Appeal No. S – 104 of 2022

(Muhammad Asif Chandio versus The State)

Date of hearing : **22.01.2024**

Date of decision : **22.01.2024**

Mr. Rukhsar Ahmed M. Junejo, Advocate for appellant.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – Having been convicted and sentenced U/S 24 of Sindh Arms Act, 2013, to suffer RI for a period of seven years and to pay fine of Rs.50,000/-, or in default, SI for further one year for possessing an unlicensed Kalashnikov along with a magazine containing 05 live bullets, appellant has preferred this appeal against the impugned judgment dated 25.10.2022 passed by learned Additional Sessions Judge-II, Naushahro Feroze in Sessions Case No.605/2022 (Re: The State versus Muhammad Asif Chandio), arising out of Crime No.162/2022, registered at Police Station Kandiaro.

2. As per brief facts, on 01.08.2022, SIP Riaz Hussain Mahessar along with his team, while patrolling, pursuant to receiving spy information about availability of accused Asif, an absconder of Crime No.141 of 2022 U/S 397 PPC of same Police Station, duly armed with a Kalashnikov in a garden owned by Musharaf Pathan, he proceeded to the specified location, found him available there with a Kalashnikov and apprehended him. The weapon, upon inspection, was found loaded with five live bullets of 7.62 bore. The captive failed to produce the license. They seized the weapon and live bullets, and sealed them at the spot. As the accused was also wanted in Crime No.141/2022 of Police Station Kandiaro, he was formally arrested and the details of arrest and recovery were documented. Subsequently, the accused and the recovered items were brought at the Police Station, where the complainant lodged an FIR against him U/S 24 of the Sindh Arms Act 2013.

3. After completion of investigation and submission of Challan, the trial against the appellant was commenced with a formal charge, and he pleaded not guilty. Thereafter, prosecution examined as many as three witnesses, who have produced all the necessary documents. Appellant, in

his statement U/S 342 CrPC, has denied the allegations; however, neither he examined himself on oath, nor led any defence evidence. At the conclusion, the trial Court vide impugned judgment has convicted and sentenced the appellant, as above. Hence, this appeal.

4. Learned defence Counsel, at the very outset, submits that he would not press the appeal on merits if period of sentence the appellant has spent in jail is treated as a sentence to him and the appeal is accordingly disposed of. Learned Additional Prosecutor General has recorded no objection to this proposal.

5. I have considered request of learned defence Counsel and perused material available on record. Prosecution witnesses have supported the story narrated in the FIR. The appellant, when arrested, although was in possession of a Kalashnikov loaded with five live bullets, but admittedly no attempt of firing was made by him. In cross-examination of witnesses, no worthwhile contradiction to impair evidentiary value of their statements has come on record.

6. The jail roll of the appellant, received on date i.e. 22.01.2024, shows that he has remained in jail substantially for 01 year, 05 months & 21 days, has earned remissions of 03 years, 07 months & 13 days, his unexpired portion is only 02 years, 10 months & 26 days including sentence for failure to pay fine. The appellant therefore has already undergone 05 years, 01 month & 04 days. The punishment provided U/S 24 of Sindh Arms Act, 2013, is up to 10 years. Hence, there is no legal impediment or otherwise in acceding to the request of learned defence Counsel particularly when it has not been opposed by learned Additional Prosecutor General appearing for the State, and there is no record that he is a previous convict.

7. Consequently, in view of above discussion, the appeal on merits is **dismissed**. The conviction awarded to appellant U/S 24 of Sindh Arms Act, 2013, is **maintained**; however, the sentence is **reduced** into the period already undergone by him including the period he has to suffer in default of payment of fine. The appellant shall be released forthwith if he is not required in any other custody case.

The appeal is **disposed of** along with pending application, in the above terms.