

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

Criminal Appeal No. D-14 of 2023

Before:

Mr. Justice Khadim Hussain Tunio, J
Mr. Justice Arbab Ali Hakro, J

Appellant : Muhammad Yaseen @ Malhar through Mr. Mian Taj Muhammad Keerio, advocate.

Respondent : The State through Mr. Shahzado Saleem Nahiyoan, Addl. Prosecutor General Sindh.

Dates of hearing: 04.07.2023 & 06.07.2023
Date of decision: 11.07.2023

J U D G M E N T

KHADIM HUSSAIN TUNIO, J:- Through captioned appeal, the appellant has challenged the vires of judgment dated 18.02.2023, passed by the learned Additional Sessions Judge-I (MCTC), Matiari in Special Case No.48 of 2022 (*hereunder referred to as 'impugned judgment'*), emanating from Crime No.88 of 2022, registered at Police Station Matiari whereby he has convicted and sentenced the appellant to suffer rigorous imprisonment for nine years and to pay a fine of Rs. 80,000/- and in case of default in payment of fine to suffer simple imprisonment for six months more with the benefit of S. 382-B Cr.PC.

2. The appellant stands charged under S. 9(1) 3(c) of the Control of Narcotics Substances (Amendment) Act, 2022 (*hereunder referred to as 'CNSA'*) for the possession of charas. Allegedly, the appellant was found in suspicious condition at Dargah Pardeh Pir and tried escaping, but was apprehended after escaping a mere 10 paces. A shopper was recovered from him wherein they recovered five pieces of charas and two currency notes of Rs. 500/- secured from his side pocket. The charas, on weighing, became 2200 grams and was sealed on spot for chemical examination.

3. After conducting investigation, the investigation officer submitted challan before the learned trial Court, whereafter it framed a charge against the accused to which he pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove the charge against the accused examined PW-1 ASI Shabir Ahmed (*complainant*), PW-2 PC Muhammad Ameen (*mahir of recovery*), PW-3 SIP Noor Muhammad (*investigation officer*), PW-4 HC Israr Ahmed (*malkhana incharge*) and PW-5 PC Ifran Ali (*property dispatcher*), all of whom produced various documents in their evidence. Thereafter, prosecution side was closed.

5. Statement of accused under S. 342 Cr.PC was recorded in which he denied all the allegations levelled against him by the prosecution and pleaded his innocence while stating that he was falsely involved in the case at the behest of one Ameen Mallah. The accused neither examined himself on oath as provided u/S. 340(2) Cr.P.C nor examined any witnesses in his defence.

6. After hearing the learned counsel for the respective parties, learned Trial Court convicted the appellant as stated above, hence this appeal.

7. It is mainly contended by the learned counsel for the appellant that the appellant has been involved in this case *malafidely* by the police; that the impugned judgment passed by the learned trial Court is opposed to the law and facts and is against the principle of natural justice; that the learned trial Court has failed to appreciate the evidence in its true perspective; that no private person has been associated as mashir of the alleged recovery. In support of his contentions, he cited the cases reported as Azhar Abbas and others v. Haji Tahir Abbas and another (2021 CLC 1351), Javed Iqbal v. The State (2023 SCMR 139), Ahmed Ali and another v. The State (2023 SCMR 781) and Muhammad Hazir v. The State (2023 SCMR 986). However, ultimately the learned counsel for the appellant did pray for a reduction of sentence awarded to the appellant in the backdrop of his old age and him suffering from terminal illness.

8. Conversely, learned Addl. Prosecutor General has fully supported the impugned judgment by arguing that the offence committed by the appellant is hazardous and against the society; that all the prosecution

witnesses have supported the prosecution case, hence, the impugned judgment is well-reasoned and does not call for any interference.

9. We have given due consideration to the submissions made by the learned counsel for the appellant as well as learned Addl. Prosecutor General and have perused the material available on the record.

10. Upon careful examination of the evidence presented before this court, it is manifest that they form a cohesive and consistent thread of factual narrative, spanning from the seizure to the scientific analysis of the contraband so recovered. The witnesses harmoniously corroborate each critical aspect concerning the interception of the charas and the procedural steps adopted in its aftermath. The entirety of the case property was meticulously sealed and dispatched to the chemical examiner, a measure we deem to be commensurate with the requirements for establishing forensic corroboration. At the time of apprehension, the appellant was discovered in possession of a plastic bag, wherein 2200 grams of charas were recovered, thus implicating him directly in the possession of the aforementioned quantum of narcotics. We have also scrutinised the chemical examiner's report in the court record as Ex. 5/F. We find that it robustly affirms the testimonies of the police officials, thereby forming an indubitable nexus with the findings of the chemical examiner's report. It is also noted that the charas was seized on 16.10.2022 and the entirety of the confiscated case property was submitted for review to the chemical examiner on the 18th of the same month. This transit was carried out by PC Irfan Ali, who has been cross-examined by the prosecution. Furthermore, PW-4, the incharge of the malkhana, Head Constable Israr Ahmed, has testified, establishing the secure custody of the retrieved narcotics. The chemical examiner's analysis did not indicate any signs of tampering with the sealed parcel containing the narcotics recovered from the appellant, thereby yielding a positive result in the report. A temporal delay of two days in submitting the charas for analysis becomes immaterial, as the secure custody of the property during the intervening period is corroborated by Entry No. 88 (wrongly mentioned as 82) of Register No. 19, as noted in Ex. 6/A. Thus, the charas retrieved from the appellant's possession has been substantiated to a standard satisfying actuality. As far as the defence plea raised by the appellant that charas has

been foisted upon him at the behest of one Ameen Mallah is concerned, the appellant produced an application filed by him before the Justice of Peace Matiari. Suffice it to say that merely producing the said application without establishing a nexus between the concerned police officials involved in the appellant's case and one Ameen Mallah is of no help to the appellant against whom sufficient evidence is available for his culpability. Therefore, the defence plea has rightly been disbelieved by the learned trial Court as it does not appeal to a prudent mind. The evidence of the prosecution witnesses who are all police officials is also found by us to be in perfect unison with each other, being good witnesses as any other private witness controverting the contention of the learned counsel for the appellant regarding no private witnesses being involved. In this respect, reliance is placed on the case of **Hussain Shah and others v. The State (PLD 2020 SC 132)**.

11. It is a matter of record that the appellant is not a previous convict. He is also said to be suffering from some terminal illness, although no proof for the same has been brought forth. The appellant also appeared rather remorseful of his past and has showed willingness for improvement in what may possibly be the final years of his life being 62 years old. It is an incontrovertible tenet of jurisprudence that under extraordinary circumstances, the Court retains discretionary authority to deviate from the prescribed standards of sentencing, provided it articulates compelling and reasoned justification for such deviation, holding the supreme jurisdiction in meting out sentences for crimes. The aim of this prerogative is prescribe a sentence that is tailored to the unique circumstances of each case and that upholds the overarching principles of justice, fairness, and proportionality. The exercise of this discretion is predicated on the principle that justice is not a mechanistic or formulaic application of the law. Instead, it is a fluid, dynamic and sensitive process that must accommodate the nuances of each case, the relevant mitigating and aggravating factors and the interplay of societal, individual, and legal considerations. Therefore, even as statutory guidelines and precedents offer a framework for sentencing, the Court is vested with the authority to adjust these within the bounds of justice, ensuring that the punishment aligns with the severity of the crime and that it serves both the punitive and rehabilitative purposes of criminal law. In this

respect, reliance is placed on the case law reported as **State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force v. Mujahid Lodhi (PLD 2017 SC 671)** wherein it has been held that:-

“The exercise of jurisdiction and discretion in the matter of the respondent's sentence by the trial court and the High Court have not been found by us to be open to any legitimate exception, particularly when the reasons recorded for passing a reduced sentence against the respondent and for making a departure from the above mentioned sentencing guidelines have been found by us to be proper in the peculiar circumstances of this case.”

12. As per the jail roll of the appellant, he has served out a sentence of eight months and twenty days while subsequently earning a remission of one year, four months and one day. The appellant was awarded a sentence of nine years and an additional six months in case of non-payment of fine. Given that the prosecution has conclusively established its case against the appellant, this criminal appeal stands dismissed on the merits thereof. In light of these circumstances, this particular case, we believe, necessitates the exercise of our judicial discretion to deviate from the customary parameters of sentencing when determining the appropriate quantum of punishment. In acting upon such discretion, the sentence of the appellant is hereby reduced to five years. The fine amount along with the sentence in default, however, shall remain intact. Benefit of S. 382-B Cr.PC is also maintained for the appellant.

13. Appeal in hand stands disposed of in the above terms.

JUDGE

JUDGE