

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

Criminal Appeal No.D-156 of 2021

*Before:*

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

Appellant: Asif Ali through Mr. Ghulamullah Chang,  
advocate.

Respondent: The State through Mr. Agha Abdul Nabi, Special  
Prosecutor ANF.

Date of hearing: 25.07.2023  
Date of decision: 27.07.2023

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

**KHADIM HUSSAIN TUNIO, J:-** Through captioned appeal, the appellant has challenged the vires of judgment dated 06.12.2021, passed by the learned 1<sup>st</sup> Additional Sessions Judge (MCTC), Kotri in Special Case No. 11 of 2021 (*hereunder referred to as 'impugned judgment'*), emanating from Crime No. 04 of 2021 for an offence punishable u/s 9(c) Control of Narcotics Substances Act 1997 (*hereunder referred to as 'CNSA 1997'*), registered at Police Station ANF Hyderabad whereby he has convicted and sentenced the appellant to suffer rigorous imprisonment for five years and to pay a fine of Rs. 30,000/- 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 Asif Ali was apprehended with a blue plastic shopper in his possession by a contingent of the Anti-Narcotics Force headed by Inspector Naeem Khan after a spy informer pointed him out. The blue colour plastic shopper was searched wherein police found four multicolour foil packets. Three of those packets contained two slabs each and the last packet had a single slab and each slab weighed 500 grams, bringing the total to 3.5 kilos of charas.

3. Once the investigation concluded, a challan was submitted against the appellant and then a formal charge was framed against him to which he pleaded not guilty and claimed trial. The prosecution examined PW-1 Inspector Naeem Khan, PW-2 PC Muhammad Asim Saleem and PW-3 PC Asif Ali. Two of these three witnesses presented various documents and artefacts as evidence, whereupon the statement of accused was recorded u/S 342 Cr.PC. The appellant/accused proclaimed his innocence, asserting that he had been falsely implicated and the case property had been foisted upon him and that he was arrested from his village during a raid at 0400 hours. The appellant initially chose to examine himself on oath and to produce two defence witnesses, but then presented an application where he no longer wished to examine himself on oath and could not produce the defence witnesses either. The trial Court ultimately convicted the appellant and sentenced him to five years of rigorous imprisonment as stated supra.

4. Learned counsel for the appellant chose not to argue the case on merits in the wake of the evidence brought forth by the prosecution and instead prayed for the mercy of the Court on behalf of the appellant while contending that the appellant is remorseful of his past and seeks a chance to change his ways and that he has a family to take care of being the only bread earner, therefore he prays that the sentence awarded to the appellant be converted to one already undergone by him.

5. Mr. Agha Abdul Nabi, Special Prosecutor ANF, has fully supported the impugned judgment.

6. We have heard the learned counsel for the appellant, the learned Special Prosecutor ANF and have perused the record available before us.

7. After a careful scanning of the evidence of the witnesses, we have found that prosecution has constituted an uninterrupted chain of facts ranging from seizure of the contraband to the forensic analysis of the same. All the witnesses are in comfortable unison on all the salient features regarding interception of charas as well as all the steps taken subsequently, therefore prosecution has undeniably discharged its burden of proving the guilt of the appellant. Now coming to the prayer made by the learned counsel for the appellant regarding a reduction in sentence, sentencing is not merely a mathematical exercise or a rigid application of penal provisions. It

is an exercise that requires a careful and considered balancing of myriad factors, both aggravating and mitigating. While deterrent punishment exists to caution society at large and dissuade potential offenders, it is imperative to recognize that punishment also serves a rehabilitative purpose, aiming to reintegrate the offender into society as a responsible and productive citizen. Restorative justice has gained ground in the last few decades precisely because of the growing understanding that punitive measures alone are often insufficient and counterproductive.<sup>1</sup> A person's potential for reformation and rehabilitation, their age, familial responsibilities and absence of a criminal past are all factors that a court can weigh in when deliberating on the quantum of sentence and these are all in favour of the appellant; he has been left at the mercy of this Court and seeks a chance for reformation, he is in his early twenties and has the potential to turn around his life and contribute positively, he is said to be the only bread earner of his family and has no previous criminal convictions to his discredit. Punishment does not make a man better, it only instils fear and revolt.<sup>2</sup> Once a person leaves himself at the mercy of the Court and seeks a chance for reformation, the Courts generally lean towards a lenient view and allow such chance to the accused because if the purpose of punishment was simply destructive; an eye for an eye and a tooth for a tooth, it would leave the world blind and toothless.<sup>3</sup> It is also a well settled principle of law that in *special circumstances*, the Court at its discretion can divert from the norms and standards prescribed in terms of sentencing after assigning cogent reasons.<sup>4</sup>

8. For what has been discussed above, this Court finds that the prosecution has proved the charge against the appellant beyond reasonable shadow of doubt. The decision made by the learned trial Court regarding the culpability of the appellant is just, proper and in conformity with the principles of administration of justice, as such the same does not call for any interference. However, following the discussion above, the sentence awarded to the appellant is reduced to the period already undergone by him. The

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<sup>1</sup> "No punishment has ever possessed enough power of deterrence to prevent the commission of crimes."

Eichmann in Jerusalem: A Report on the Banality of Evil epilogue (1963)

<sup>2</sup> What can largely be achieved by punishment, in man or beast, is the increase of fear, the intensification of intelligence, the mastering of desires: punishment tames man in this way but does not make him "better" – we would be more justified in asserting the opposite.

Genealogy of Morals essay 2, aphorism 15 (1887)

<sup>3</sup> Official Report of the Debates of the House of Commons of the Dominion of Canada, 5 Feb. 1914 & Gandhi and Stalin ch. 6 (1947). "An eye for an eye leaves the whole world blind"

<sup>4</sup> See State through DD Law, Regional Directorate ANF v. Mujahid Lodhi, PLD 2017 SC 671

appellant is present on bail, his bail bond stands cancelled and surety discharged.

9. Captioned criminal appeal stands disposed of in the above terms.

JUDGE

JUDGE