

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Revision No. D -08 of 2020

Before:

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

Applicant: The State/Anti-Narcotics Force
Through Mr.Agha Abdul Nabi,
Special Prosecutor for A.N.F.

Respondent: None present for Abdul Rasheed S/o
Imam Bux Jatoi.

Date of hearing: 19.07.2023
Date of decision: 26.07.2023

JUDGMENT

ARBAB ALI HAKRO, J;- This Criminal Revision Application under Section 435, 439 r/w Section 48 of the Control of Narcotic Substances Act, 1997 ("**the Act of 1997**"), filed by the State/Anti Narcotics Force (applicant herein) for enhancement of sentence awarded to the accused (respondent herein) by the Court of III-Additional Sessions Judge/Special Judge, C.N.S. Hyderabad ("**the trial Court**") in Special Case No.228/2019, whereby, in view of the plea of guilt, the respondent was convicted for an offence under Sections 9(c) of the Act of 1997 and sentenced to suffer R.I. for six (06) months and twenty-six (26) days and to pay fine of Rs.2,000/-, in case of default of payment of fine, he shall undergo S.I for one week more with benefit of section 382-B of Cr.P.C.

2. The record shows that the respondent underwent trial in accordance with the provisions of the Act of 1997. The trial Court framed a formal charge (Ex.12) against the respondent, to

which he entered a plea of not guilty and requested to undergo trial. Afterwards, the respondent submitted an application expressing his intent to enter a plea of guilty in response to the charge. A notice to show cause was formally issued to him and his statement under the purview of Section 342 Cr.P.C. was recorded. After hearing the arguments presented by the counsel for both parties and the examination of pertinent aspects of the case in light of the respondent's admission of guilt, the trial Court, in accordance with its judgment dated 12.02.2020, found the respondent guilty for an offence punishable under Section 9(c) of the Act of 1997 and imposed the sentence as mentioned earlier upon him.

3. We have heard the learned counsel for the parties and have also gone through the record of the case with their valuable assistance.

4. The main contention of the learned Special Prosecutor for A.N.F. is that the trial Court, in its imposition of the punishment for the respondent based on time already served, did not adhere to the legal principles established by the Full Bench of Lahore High Court in the case of **Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362)**. According to the learned Special Prosecutor for A.N.F., the imposed punishment does not align with the guidelines established in the ruling mentioned above. The contentions put forth by the learned prosecutor have already been addressed by the Apex Court in the case of **State through the Deputy Director (Law), Regional Directorate, Anti-**

Narcotics Force v. Mujahid Naseem Lodhi (PLD 2017 SC 671),

wherein it has been held as under: -

"5. As regards the prayer made through the present petition regarding enhancement of the respondent's sentence the learned Special Prosecutor, Anti-Narcotics Force has mainly relied upon the judgment handed down by a Full Bench of the Lahore High Court, Lahore in the case of Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362) wherein some guidelines had been laid down vis-a-vis sentencing in cases of narcotic substances and has maintained that the sentence passed by the trial court against the respondent was not in accord with the said guidelines. The said judgment of the Lahore High Court, Lahore had approvingly been referred to by this Court in the case of Ameer Zeb v. The State (PLD 2012 SC 380). We note that in paragraph No. 10 of the judgment handed down by the Lahore High Court, Lahore in the above mentioned case it had been observed that "in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure." In the case in hand the trial court had recorded reasons for passing a sentence against the respondent which made a departure from the above mentioned sentencing guidelines. The trial court had observed that the respondent had made a confession before the trial court besides expressing remorse and repentance with an assurance not to deal with narcotics in future. It was also noticed by the trial court that the respondent's co-accused namely Muhammad Suneel had also made a confession before the trial court and on the basis of such confession he was also awarded a sentence which departed from the above mentioned sentencing guidelines but the State had not sought enhancement of his sentence. The High Court had refused to enhance the

respondent's sentence and had dismissed an appeal filed by the State in that regard by holding that the above mentioned considerations weighing with the trial court for passing a reduced sentence against the respondent were appropriate in the circumstances of the present case. 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. This petition is, therefore, dismissed and leave to appeal is refused."

5. In the present case, it is evident that the trial Court deviated from the guidelines outlined in Ghulam Murtaza's case. This departure is deemed permissible according to subsequent rulings by the Apex Court, one of which is noted above. The rationale put forth by the trial court was based on the admission of guilt made by the respondent during the trial, in conjunction with his status as a first-time offender and the fact that he is the only support for his family. Even otherwise, it is an admitted fact that prior to the prosecution's obligation to present ocular and / or circumstantial evidence in order to substantiate the accusation against the respondent, the respondent himself, during the course of trial, filed an application before the trial Court requesting permission to admit guilt regarding the charge against him and placed himself at the mercy of the Court in respect of his sentence. It is a common practice that once a person who is involved in a criminal case wants to plead guilty to the charge levelled against him, places himself at the mercy of the Court and

in that eventuality, he becomes a friend of the Court and the Court always takes a lenient view in respect of his sentence. Since the respondent in the instant case has straightaway placed himself at the mercy of the trial Court by submitting an application to allow him to plead guilty, therefore, trial Court has rightly taken a lenient view in respect of his sentence which is neither illegal nor unwarranted in the law. Hence the trial Court has not committed any illegality or material irregularity in the exercise of its jurisdiction vested in it.

6. In view of the above discussion of facts and law, we find no substance in the instant Revision Application, therefore, the same is hereby dismissed. Above are the reasons for the short order dated 19.07.2023.

JUDGE

JUDGE

Shahid