

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Special CrI. Jail Appeal No.D-132 of 2022

Before:-

Mr. Justice Irshad Ali Shah.

Mr. Justice Zulfiqar Ali Sangi

Appellant: Hizbullah son of Nasrullah Kakar through
Mr. Abdul Baqi Jaan Kakar, advocate.

The State: Mr. Zulfiqar Ali Jatoi, Additional P.G.

Date of hearing: 01-02-2024

Date of judgment: 01-02-2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant with rest of the culprits was found in possession/transporting 200 kilograms of charas through Truck, for that the present case was registered. On conclusion of trial, the appellant was convicted u/s 9(c) CNS Act and sentenced to undergo imprisonment for life and to pay fine of Rs.200,000/- and in default whereof to undergo simple imprisonment for six months with benefit of Section 382-B CrPC by learned 1st. Additional Sessions Judge/Special Judge (CNS) / MCTC, Khairpur vide judgment dated 16.11.2022 which he has impugned before this Court by preferring instant Jail Appeal.

2. At the very outset, it is stated by learned Addl. PG for the State that on conclusion of trial, the charge against the appellant was amended and then evidence already recorded was adopted which is against the spirit of law, which has not only prejudiced the *State* but the appellant in his defence seriously. By contending so, he sought for setting aside of the impugned judgment with direction to learned trial Court to record evidence of the witnesses afresh on amendment so made in the charge and then to dispose of the case in accordance with law afresh.

3. Learned counsel for the appellant was fair enough to say that he would be having no objection to remand of the case for the purpose provided the appellant who is Juvenile Offender is admitted to bail on his furnishing surety.

4. Heard arguments and perused the record.

5. As per Section 231 Cr.P.C whenever the charge is altered or amended, the witnesses already examined are to be recalled and re-examined on the alteration or addition so made in the charge. Instead of doing so, the evidence already recorded has been adopted by learned trial Court, such omission being incurable in terms of Section 537 Cr.P.C has occasioned in failure of justice and is against the spirit of law and fair trial as is prescribed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973; consequently, the impugned judgment is set aside with direction to learned trial Court to recall and re-examine the witnesses on alteration / amendment so made in the charge and then to make fresh disposal of the case in accordance with law without being influenced by earlier findings, preferably within 03 months after receipt of copy of this judgment.

6. The appellant, however, may file application for his release on bail; same if is filed to be disposed of in accordance with law on its own merits by learned trial Court.

7. The instant Criminal Jail Appeal is disposed of accordingly.

Judge

Judge