

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Jail Appeal No. D – 167 of 2019

(Ravi Kumar versus The State)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **13.02.2024**

Date of decision : **13.02.2024**

Mr. Imdad Ali Malik, Advocate for appellant.

Mr. Mohsin Ali Khan, Special Prosecutor ANF.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – This appeal is filed by appellant challenging a judgment dated 17.08.2019, passed by learned Additional Sessions Judge-III / MCTC-II, Sukkur in a Special Case No.82/2012 (*Re: The State versus Ravi Kumar Chawla*), arising out of Crime No.16/2012, registered at Police Station ANF Sukkur, whereby the trial Court has convicted and sentenced him for an offence U/S 9(c) of CNS Act, 1997, to undergo imprisonment for life with fine of Rs.1,00,000/-, or in default in such payment, to suffer simple imprisonment for one year more, however, with a benefit of Section 382-B CrPC.

2. Briefly, facts are that after receiving spy information about smuggling of a huge quantity of narcotics by inter-provincial smuggler Shah Jee through his agent Ravi Kumar in a white colour Car (Toyota Probox) bearing registration No. AWS-581, a team of ANF headed by Inspector Ghulam Abbas of Police Station ANF, Sukkur arrived near Government College of Physical Education situated at Shikarpur Road, Sukkur on 12.11.2012. At about 1430 hours, the said car was spotted coming from Shikarpur side, driven by the appellant, who seeing the ANF tried to escape but was apprehended. He voluntarily produced a white colour plastic bag from underfoot mat of front seat and four white plastic bags from dickey of the car. All the bags were filled with *charas* available in shape of slabs packed in plastic foil packets. One bag was having 28 such packets, while remaining four bags were containing 40 similar packets. Each packet was weighing one kilogram, hence, a total of 188 kilograms of *charas* was secured, which was sealed at the spot for

examination by the chemical examiner. Subsequently, appellant was arrested and his arrest and recovery of *charas* were duly documented, and finally, FIR was registered against him.

3. After submission of Challan, a formal charge was framed against the appellant, to which he pled not guilty and claimed trial. Hence, prosecution examined Sub-Inspector Salman, a witness / *mashir*, as PW-1 and complainant Inspector Ghulam Abbas as PW-2, who produced all the necessary documents including memo of arrest and recovery, arrival / departure entries, FIR, report of chemical examiner etc. Thereafter, appellant's statement U/S 342 CrPC was recorded, wherein he denied the prosecution's case. The appellant also examined himself on oath and cited Pooja Kumari and Mst. Sarla as defense witnesses, but later on, he did not examine them. Then vide judgment dated 16.03.2016, appellant was convicted and sentenced to suffer rigorous imprisonment for life with a fine of Rs.1,00,000/-, and in default, to undergo simple imprisonment for one year more, however, with a benefit of Section 382-B CrPC.

4. The matter then came up before this Court in Criminal Appeal No. D-68 of 2016, and vide judgment dated 14.03.2019, the impugned judgment was set aside and the matter was remanded to the trial Court with a direction to re-examine the appellant on oath and to provide him a fair chance to examine Shirimiti Pooja Kumari and Sarla in his defence and then to re-write judgment after hearing all concerned.

5. In the second round, after recording statement of appellant on oath and examining Pooja Kumari in his defense, as the appellant chose not to examine the second witness Sarla, and hearing the parties afresh, the trial Court convicted and sentenced the appellant in the terms as above through impugned judgment. Hence, this appeal.

6. The jail role of the appellant dated 27.01.2024 shows that he has remained in jail substantially for 11 years, 03 months & 01 day, has earned remissions of 11 years & 01 month, and his unexpired portion is only 03 years, 07 months & 29 days including a sentence for failure to pay fine.

7. Learned Counsel for the appellant has submitted that since only a short period of time in the appellant's sentence has remained, he would not press the appeal on merits, if the amount of fine and the period, in default of which the appellant has to suffer, is reduced, enabling the

appellant to pay the fine and get released after serving the entire sentence of life imprisonment.

8. Learned Special Prosecutor ANF has, however, opposed this proposal, but has conceded that this question is essentially of discretion of the Court.

9. The general rule embodied U/S 33 CrPC, prescribing period of imprisonment in default of fine, states that the period of imprisonment awarded in default of payment of fine shall not exceed one fourth of the period of imprisonment, which the Court is competent to inflict as punishment for the offence, and further, such imprisonment may be in addition to substantive sentence of the imprisonment for the maximum term awarded by the Court. It is clear that only the upper limit of the maximum period of sentence in default of fine has been enforced by the scheme U/S 33 CrPC, and it has been made clear that the Court is not competent to impose a sentence beyond one fourth of maximum punishment of the offence in default of payment of fine, whereas, the minimum limit in the period to be imposed for default in payment of fine has been left to the discretion of the Court. The request made in defense is not to upset findings of the trial Court over merits of the case and maximum period of sentence awarded by the trial Court, but to the extent of fine amount and the period which the appellant has to suffer in default thereof.

10. As has been explained above, it is within the domain of the Court to impose a particular period upon the convict to suffer in default of fine, which, however, in no case, shall be more than one fourth of the actual imprisonment provided under the offence. Section 9(c) of CNS Act confers jurisdiction over the Court to impose fine, in addition to penalty of death or imprisonment for life or imprisonment for a term which may extend to fourteen years, which may be up to one million rupees. Section 18 of CNS Act prescribes that where no amount of minimum fine has been fixed, the Court shall impose the fine keeping in view the quality and quantity of the narcotic drug etc. involved in the commission of such offence. The CNS Act is clear that it is the Court which has to determine imposition of fine on the accused as per facts of the case, and there is no restriction over it in this respect.

11. In view of above position, we see no legal or otherwise any impediment in accepting the request of appellant's Counsel, as noted

above. Consequently, the appeal is **dismissed**, and the imprisonment for life awarded by the trial Court to the appellant U/S 9(c) of CNS Act, 1997 is maintained. However, the amount of fine imposed is reduced from Rs.1,00,000/- (*Rupees one lac*) to Rs.40,000/- (*Rupees forty thousand*), and in case of its default, four months simple imprisonment shall be suffered by the appellant in addition to life imprisonment.

This appeal is **disposed of** in the above terms.

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Abdul Basit