

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D – 206 of 2019
(*Jahangir Khan Kakar versus The State*)

Spl. Cr. Appeal No. D – 208 of 2019
(*Muhammad Yakoob Kakar versus The State*)

Present:

Mr. Muhammad Iqbal Kalhoro, J.
Mr. Arbab Ali Hakro, J.

Date of hearing : **28.02.2024**

Date of decision : **28.02.2024**

Mr. Imdad Ali Malik, Advocate for appellant.
Mr. Muhammad Farooq Ali Jatoi, Special Prosecutor ANF.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – Both these appeals, being interconnected, arising out of same crime, are heard and decided together.

2. Appellants have assailed judgment dated 12.09.2019, passed by learned Additional Sessions Judge-III / Model Criminal Trial Court-II, Sukkur in a Special Case No.08/2013 (*Re: The State versus Muhammad Yaqoob and others*), emanating from Crime No.21/2013, registered at Police Station ANF Sukkur U/S 9(c) of Control of Narcotic Substances Act, 1997, whereby they have been convicted and sentenced to suffer imprisonment for life with payment of fine of Rs.1,00,000/- each, or in default thereof, to suffer simple imprisonment for 01 year more, however, with a benefit of Section 382-B CrPC.

3. Brief facts of the case are that complainant SI/SHO Ali Gul, Police Station ANF, Sukkur on 09.11.2013, after receipt of spy information about a truck registration No.TKA-805 coming from Multan to Karachi via Rohri Toll Plaza with a huge quantity of *charas* for smuggling, constituted a raiding party and proceeded towards pointed place under supervision of AD Incharge Nauman Hanif in a Government vehicle under entry No.06 and reached the site. At about 02:00 a.m., they spotted said truck and stopped it. Two persons were available in it. The driver introduced himself as Muhammad Yaqoob, while other one, the second driver, as Jahangir Khan. When enquired about narcotics, they firstly avoided and

then disclosed it to be hidden in a secret cavity available in the front side of the body of the truck. The secret cavity was found containing 400 foil packets of slabs of *charas*, weighing 01 kilogram each, total 400 kilograms. Out of each packet, 10 grams were separated for chemical analysis in envelopes, numbered as 1 to 400, and then sealed in a sack. The packets with remaining *charas* were also sealed separately in 10 different bags by putting 40 packets in each bag. On personal search of the accused, CNICs, driving licenses, various visiting cards, a mobile phone and cash amount of Rs.400/- and Rs.1000/-, respectively, were secured. From dashboard of the truck, its registration book, route permits in the names of Muhammad Qasim and Mushtarqa Qabail Goods Transport Company Pasheen and a key were recovered. The accused disclosed that the contraband material and the truck were handed over to them by one Naimatullah, resident of Karachi South. They were formally arrested under a memo and brought at Police Station along with case property, where FIR was registered.

4. After submission of Challan, a formal charge was framed against the appellants and co-accused Agha Badaruddin, since acquitted U/S 249-A CrPC vide order dated 18.03.2015 passed by learned Sessions Judge, Sukkur, to which they pleaded not guilty and claimed trial. Whereas, accused Naimatullah Jan was declared as proclaimed offender.

5. In order to prove its case, prosecution examined two witnesses i.e. complainant/IO Ali Gul Soomro and *mashir*/ASI Afzal Nazeer, who produced various documents including entries, memo of arrest and recovery, memo of arrest and recovery, letters, chemical laboratory report, CDR of arrested accused and absconders, notices U/S 160 CrPC to Mushtarqa Qabail and Muhammad Qasim etc. Then, statement of appellants U/S 342 CrPC were recorded, wherein they denied the allegations leveled against them and produced their school leaving certificate and appointment letter, respectively. Appellant Jahangir Khan also examined Bashir Ahmed and Ameenullah as defense witnesses; the former produced leave application of appellant Jahangir Khan during his evidence. Finally, the trial Court convicted and sentenced the appellants vide impugned judgment. Hence, this appeal.

6. The jail role of appellant Jahangir Khan received through a letter dated 27.10.2023 reflects that he has served substantive sentence of 10 years & 08 months, has earned remissions of 12 years, 10 months & 18

days, and his unexpired portion including a sentence for failure to pay fine is only 03 years, 01 month & 04 days. Similarly, jail roll of appellant Muhammad Yaqoob shows that he has remained in jail substantially for 10 years & 08 days, has earned remissions of 12 years, 08 months & 05 days, and his unexpired portion is only 03 years, 03 months & 17 days including a sentence for failure to pay fine.

7. Learned Counsel for the appellants has submitted that since only a short period of time in the appellants' sentence has remained, he would not press the appeal on merits, if the amount of fine and the period, in default of which the appellants have to suffer, is reduced, enabling the appellants to pay the fine and get released after serving the entire sentence of life imprisonment.

8. Learned Special Prosecutor ANF has, though, opposed this proposition, but has conceded that this question in essence is 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 appellants have to suffer in default thereof.

10. The above discussion shows that 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. For above reasons, we see no legal or otherwise any impediment in accepting the above request of learned Counsel for appellants. Accordingly, the appeal is **dismissed**, and the appellants' sentence of imprisonment for life given by the trial Court U/S 9(c) of CNS Act, 1997 is maintained. The fine amount imposed upon them is however reduced from Rs.1,00,000/- (*Rupees one lac*) each to Rs.40,000/- (*Rupees forty thousand*) each, and in default thereof, four months instead of one year simple imprisonment shall be suffered by them in addition to sentence of life imprisonment.

These appeals are **disposed of** in the above terms. Office to place a signed copy of this order in the captioned connected matter.

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Abdul Basit