

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D – 54 of 2023

(*Gulzar alias Waseem Khan Samati machi versus The State*)

Present:

**Mr. Muhammad Iqbal Kalhoro, J.**

**Mr. Arbab Ali Hakro, J.**

Date of hearing : **19.03.2024**

Date of decision : **19.03.2024**

Mr. Deewan Dhanraj, Advocate for appellant.

Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

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

**Muhammad Iqbal Kalhoro, J. –** Appellant was arrested on 28.05.2023 at 1200 hours by a police team of Police Station Moro headed by SIP Ali Mardan Lashari from Dodo Sain Graveyard, NHW Road, Moro during patrolling, and 1800 grams of *charas* in the shape of 04 pieces was recovered from his personal search. He was accordingly booked and tried by learned 1<sup>st</sup> Additional Sessions Judge / Special Judge for CNS, Naushahro Feroze, who, in terms of impugned judgment, has convicted and sentenced him to suffer imprisonment for nine (09) years with payment of fine of Rs.1,00,000/- (Rupees one lac), or in default thereof, to undergo SI for 03 months more, however, with benefit of Section 382-B CrPC, which he has challenged by filing of this appeal.

2. Learned Counsel in defense has argued that there are material contradictions in the evidence of witnesses, and more so, complainant and *mashir* in their evidence have clarified that there were in all 04 pieces of *charas* weighing 1800 grams recovered from the appellant. 02 were big pieces and 02 were small weighing 100 grams which were separated as sample for lab report. He further submits that regarding remaining two big pieces, there is nothing on record that any sample from them was retracted and sent to the lab for a report. Hence, at the most, appellant would be saddled with responsibility of possessing 100 grams of *charas*. The punishment of which is up to five years as per new amendment in CNS Act with fine up to forty thousand rupees.

3. This legal position, learned Additional Prosecutor General has failed to controvert, and therefore, has conceded that the conviction and sentence to the extent of possessing 100 grams would be legal in law against the appellant.

4. We have heard the parties and perused material available on record. In this case, the prosecution, in order to prove the charge, has examined 05 witnesses, who have filed relevant documents. Appellant, in his 342 CrPC statement, has simply denied the case.

5. Prosecution's case, as evidenced from deposition of complainant and *mashir*, is that from appellant in all 04 pieces i.e. 02 small and 02 big weighing 1800 grams were recovered. Out of which, 02 small pieces weighing 100 grams were separated and sent for lab report. The evidence of complainant and *mashir* is silent regarding taking any sample from the 02 big pieces of alleged *charas* recovered from the appellant – and there is no therefore representative sample to prove them as *charas*. Hence, it is clear that prosecution's case to the extent of only 100 grams, as per report of chemical analyzer and evidence, has been established. The discrepancies pointed out by learned Counsel in defense otherwise are minor in nature and his request for reduction of sentence in view of prosecution's inability to prove possession beyond 100 grams of *charas* by the appellant is reasonable and sustainable in law, and which, therefore, has not been opposed by learned Additional Prosecutor General.

6. Accordingly, therefore, with consent, this appeal is **dismissed** on merits, however, the appellant is awarded conviction U/S 9(3)(a) of Control of Narcotic Substances (Amendment) Act, 2022, and his sentence is reduced to rigors imprisonment for minimum period of ten (10) months with payment of fine of Rs.20,000/- (Rupees twenty thousand), or in default thereof, to undergo simple imprisonment for a period of fifteen (15) days more, however, with benefit of Section 382-B CrPC also extended to him.

7. The appeal, in above terms, is **disposed of**.

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Abdul Basit