

THE HIGH COURT OF SINDH AT KARACHI

Spl. Cr. A. T. J. Appeal.No.21 of 2024

**Before: Salahuddin Panhwar
Arshad Hussain Khan, JJ**

Appellant : Irfan @ Lal through Mr. Nazir Ahmed advocate
The Respondent : The State through Mr. Siraj Ali Chandio Addl. A.G
Date of hearing: 17.12.2024
Date of Judgment 17.12.2024

JUDGMENT

SALAHUDDIN PANHWAR, J- Appellant Irfan @ Lal and co-accused were tried by learned Judge, Anti-Terrorism Court No. X, Karachi. After regular trial, vide judgment dated 30.11.2023, the appellant was convicted under Sections 324/353/427 PPC as well as under Section 25 r/w section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to undergo various terms of imprisonments including fines. All the sentences were directed to run concurrently and the appellant was also extended benefit of section 382-B Cr.P.C, whereas, co-accused was acquitted of the charges.

2. At the very outset, the learned Counsel for the appellant contends that he would be satisfied and shall not press instant appeal on merits, if the sentences awarded to the appellant are reduced to one already undergone by him. Learned counsel further submits that appellant is poor person and is only bread earner of his family, as such, while taking lenient view, his sentences may be reduced to one already undergone. Learned Additional Prosecutor General Sindh recorded no objection to such proposal.

3. We have heard learned counsel for the appellant, learned APG and perused the material available on record. In order to satisfy ourselves, we have re-assessed the evidence by the prosecution at trial. In order to prove its case, prosecution has examined 06 witnesses, who have fully supported the prosecution case on its salient features viz. arrest of the appellant on the spot at the time of encounter with police and recovery of unlicensed pistol from the

appellant. However, during encounter appellant received gunshot injury on his right leg. Prosecution witnesses were cross examined at length, but nothing favourable to the appellant could be brought on record. We have therefore, come to the conclusion that prosecution has successfully proved its case against the appellant. It is vehemently argued that appellant is not previous convict and is only bread earner of his family. It is further contended that appellant has served out more than 02 years and 08 months including remission and he may be provided an opportunity to mend his ways and reform himself.

4. Quantum of punishment is not only discretion of the Court, which has to be exercised while considering the circumstances of the case, but also is an independent aspect of Criminal Administration of Justice which, too, requires to be done keeping the concept of punishment in view.

5. Since, appellant is not pressing captioned appeal on merits but seeking reduction of sentences, therefore, we would examine the legality of such plea. Conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the guilty. There are certain offences, the punishment whereof is with phrase "not less than" while there are other which are with phrase "may extend up to". Thus, it is quite obvious and clear that the law itself has categorized the offences in two categories regarding quantum of punishment. For one category the Courts are empowered to award any sentence while in other category the discretion has been limited by use of the phrase 'not less than'. Such difference itself is indicative that the Courts have to appreciate certain circumstances before setting quantum of punishment in first category which appear to be dealing with those offences, the guilty whereof may be given an opportunity of "reformation" by awarding less punishment which how low-so-ever, may be, will be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family/dependents too. A reformed person will not only be a better brick for society but may also be helpful for future by properly raising his dependents. In any event, in the case of State through Deputy Director (Law), Regional Directorate, Anti-

Narcotics Force vs. Mujahid Naseem Lodhi (PLD 2017 SC 671), in the matter of sentence, it is 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.*"

6. In view of above, the convictions and sentences recorded under sections 324/353/427 PPC and u/s 25 read with section 23(i)(a) Sindh Arms Act, 2013 vide judgment dated 30.11.2023 are maintained, but the sentence of the appellant are reduced to the period already undergone by him. With regard to conviction period in lieu of fine, same also include the sentence already undergone by him. Accordingly, appellant shall be released forthwith if not required in any other custody case.

7. Captioned Spl. Criminal A. T. J. Appeal stands disposed of in the above terms.

JUDGE

JUDGE