

THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeals No.141 & 142 of 2024

Criminal Jail Appeal No. 418 of 2024

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

Appellants: Jabir Syed and Ibrahim through M/s Muhammad Jameel and Zulfiqar Ali Shaikh advocates

Abdul Ghaffar Khan through Mr. Ubedullah Ghoto advocate

Respondent: The State through Mr. Mumtaz Ali Shah Assistant Prosecutor General Sindh

Date of Hearing: 11.11.2024

Date of decision: 11.11.2024

J U D G M E N T

SALAHUDDIN PANHWAR, J.-Appellants **Jabir Syed son of Lal Syed, Ibrahim son of Malik** and **Abdul Ghaffar Khan son of Haji Khan Muhammad** were tried by learned Special Judge Narcotics/MCTC-02 Karachi Central in Special Case No. 898/2021 arising out of FIR No.769/2021, registered under Section 9(c) CNS Act 1997 at Police Station Shahrah-e-Noor Jehan, Karachi, whereby after regular trial, vide judgment dated 27.01.2024, the appellants were convicted under Section 9(c) CNS Act 1997 and sentenced to suffer imprisonment of life with fine of Rs.500,000/- each, in default whereof appellants were directed to suffer 10 months' SI. Appellants were also extended benefit of Section 382-B, Cr.P.C.

2. Briefly, the prosecution case is that on 11.09.2021, a police party headed by SIP Imdad Ali Solangi of PS Shahrah-e-Noor Jehan along with his subordinate staff left PS for patrolling and during patrolling at about 0130 hours, at main road, opposite to Paposh Nagar graveyard, adjacent to Banaras Bridge, police party noticed three persons coming on two motorcycles from Banaras side having nylon sacks, they were stopped by the police and on enquiry, they disclosed their names as Abdul Ghaffar and Jabir Syed they were sitting on one motorcycle while other accused person sitting on another motorcycle disclosed his name as Ibrahim. Police recovered nylon sack from the possession of accused Abdul Ghaffar which was containing 42 packets of

charas wrapped with white tap, which was weighed it became 50 KG out of which 02 KG were separated as sample; from the possession of accused Jabir Syed police recovered sack and found 32 packets of charas wrapped with white and yellow taps which was weighed and it became 40 KG, out of which 02 KG were separated as samples and from the possession of accused Ibrahim recovered a sack which was containing 03 brown colored packets of charas marked as Cafino Coffee and 10 white colored packets of charas marked as KAALEH milk, 21 other packets of charas were wrapped with white and yellow colored tape, total 34 packets, weight of which became 40 KG out of 01 K.G was separated as sample. Charas recovered from the possession of accused was sealed at the spot for chemical analysis and such mashirnama was prepared in presence of mashirs, then accused and case property were brought at PS where aforementioned FIR was lodged against them on behalf of state.

3. During investigation, samples were sent to the chemical examiner and received positive report. After completing all the formalities, challan was submitted against the appellants under section 9(c) of CNS Act 1997. Upon indictment, accused pleaded not guilty and claimed their trial.

4. At trial, prosecution examined four witnesses. Thereafter, prosecution side was closed.

5. Trial Court recorded statements of accused under Section 342 Cr.P.C in which appellant claimed their false implication in the present case and denied the prosecution allegations. Appellants neither examined themselves on oath under section 340(2) Cr.P.C in disproof of the prosecution allegations nor led any evidence in their defense.

6. After hearing the learned counsel for the appellants and prosecutor, and while examining the evidence, learned Trial Court, vide judgment dated 27.01.2024, convicted and sentenced the appellants as detailed above. Hence, appellants Jabir Syed and Ibrahim have filed appeals through counsel, whereas, appellant Abdul Ghaffar preferred Jail appeal against the convictions and sentences recorded against them.

7. Learned counsel for the appellants after arguing the appeals at length, did not press the appeals on merits but submit that lenient view in the sentence of the appellants may be taken. They further submitted that appellants are first offenders and only bread earners of their families.

8. Learned Assistant P.G submitted that prosecution has succeeded in proving its case against the appellants. However, recorded no objection, in case, sentence is reduced to some reasonable extent.

9. We have carefully heard learned counsel parties and re-examined the entire evidence as well as other material produced at trial. From perusal of evidence, it transpires that prosecution has successfully proved its case against the appellants beyond any shadow of reasonable doubt. Evidence of police officials on material particulars of the case is trustworthy and confidence inspiring. It is a matter of record that prosecution witnesses were subjected to the lengthy cross-examination but nothing favourable to the accused except minor discrepancies could be extracted. Prosecution has also successfully proved safe custody and safe transmission of the charas to the chemical examiner and received a positive report. In these circumstances, we have no hesitation to hold that Trial Court has rightly appreciated the evidence according to settled principle of law; thus, the conviction and sentence recorded by the trial Court vide judgment dated 27.01.2024 require no interference by this Court. Resultantly, the conviction is maintained.

10. In the present case, we have found negligence on the part of the investigation as it has come on record that SIP Imdad Ali Solangi took out 02/02 K.Gs of charas as samples from the charas recovered from appellants Abdul Ghaffar and Jabir Syed whereas separated 01 K.G as sample from the charas recovered from appellant Ibrahim, which appears to be violative of settled principle of law as laid down in the case of Ameer Zeb vs.The State (PLD 2012 S.C 380), wherein it was held that samples has to be separated from each and every packet of the narcotics substance recovered and each such sample has to be tested by the chemical examiner separately. Thus, the Apex Court considered the charas recovered from the possession of the accused for the purpose of conviction and sentence. However, in the present case, the counsel for the appellants did not press appeals on merits and have prayed for taking lenient view in the sentences of the appellants keeping in view the fact that appellants are first offenders, not previously convicted, having no criminal record and are said to be the sole bread earners of their families, which is not objected by learned Assistant P.G.

11. With regard to the *Quantum of punishment*, it would not be out of place to mention here that it 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. Award of punishment is 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. 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 the case of **State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force vs. Mujahid Naseem Lodhi (PLD 2017 SC 671)**, the Apex Court has 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.*". Therefore, in these peculiar circumstances, while relying upon the judgment of the Apex Court, a case for reduction of the sentence of the appellants is made out.

12. For the above stated reasons, appeals are dismissed on merits, however, sentence of the appellants awarded by learned trial Court vide judgment dated 27.01.2024 is reduced to one already undergone. With regard to the fine, it is also reduced from Rs.500,000/- each to Rs.100,000/- each, in case of default in payment of fine, appellants shall suffer S.I for 06 months instead of S.I for 10 months. Benefit of Section 382(b) Cr.P.C is also extended to the appellants.

13. Subject to above modification in the sentence, the Appeals are disposed of in the above terms.

14. Office to place a copy of this order in the connected matters.

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