

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Appeal No.D-179 of 2019

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Khadim Hussain Tunio.

Appellant: Through Mr. Sameeullah Rind, Advocate.

The State: Through Mr. Muhammad Ayoob Qassar, Special
Prosecutor, Anti-Narcotics Force.

Date of hearing: 20.05.2020

Date of decision: 20.05.2020

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Appellant Muhammad Hashim was arrested on 13.07.2017 at 0630 hours by Sub-Inspector Syed Salman of P.S. ANF Hyderabad patrolling along with his staff on a tipoff and from his possession 1200 grams of Charas was recovered. Such memo was prepared on the spot and the appellant was booked in the present case.

2. During the trial, prosecution examined Mashir ASI Qurban Hussain, SI Syed Salman, who is complainant and Investigation Officer of the case, SI Sami Hayat and Constable Shoukat Ali, who produced all the relevant documents including report of the chemical examiner. The trial Court after recording the statement of appellant under section 342 Cr.P.C. has decided the case vide impugned judgment dated 02.10.2019 convicting the appellant under Section 9(c) CNS Act, 1997 to undergo for four (04) years and to pay fine of Rs.100,000/- and in case of default thereof to further undergo S.I. for four (04) months. The appellant has been, however, extended benefit contemplated under section 382-B Cr.P.C. Hence, this appeal.

3. Learned counsel for the appellant after arguing the appeal on merits at some length submits that appellant is the first offender, therefore, if the period of sentence already undergone by him is treated as sentence, he will not press the appeal on merits.

4. Learned Special Prosecutor ANF has recorded objection but has not denied that the appellant is the first offender and has been sufficiently punished.

5. We have considered submissions of parties and perused the material available on record. The prosecution witnesses have supported the case against the appellant on all salient features viz-a-viz his arrest at the spot, recovery of alleged Charas from him, etc. The chemical report is also in positive and it shows that property was received by the Chemical Examiner in a sealed condition which establishes its safe transmission. However, it is an admitted fact that the appellant is the first offender and no case of like nature or otherwise has ever been registered against him. The jail roll received on 02.05.2020 shows that the appellant has remained in jail for 07 months and 21 days and has earned remission of 04 months and 06 days and if 18 days lapsed since are added, his present sentence will become 12 months and 15 days. We are of the view that the punishment appellant has already undergone is sufficient for a first offender like appellant particularly when learned defence counsel has disclosed that the appellant is remorseful of his past and wants to improve himself. While considering these facts, we see no impediment legal or otherwise to accede to the request of learned defence counsel for reduction of sentence.

6. Accordingly, this criminal appeal is dismissed on merits, however, sentence of the appellant is reduced to the period already undergone by him. The fine amount is also reduced from Rs.100,000/- to Rs.10,000/- and in default thereof he shall suffer one month more.

7. The appeal is disposed of in the terms as stated above.

JUDGE

JUDGE

Muhammad Danish Steno*