

IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD

Cr. Appeal No.D-127 of 2021

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Muhammad Saleem Jessar,

Appellant : Muhammad Qasim through Mr. Mushtaque Ali Tagar, Advocate

State : Through Agha Abdul Nabi, Special Prosecutor ANF

Date of hearing : 21.06.2023
& Judgment

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- This criminal appeal is directed against the judgment dated 28.09.2021, passed by the learned 3rd Additional Sessions Judge / Special Judge CNS Hyderabad in Special Case No.174 of 2015 (re: The State V Muhammad Qasim), emanating from Crime No.30 of 2015, registered at Police Station ANF Hyderabad, under section 9-C of CNS Act, 1997, whereby the accused / appellant Muhammad Qasim has been convicted u/s 9-C and sentenced to RI for two (02) years along with fine of Rs.1,00,000/-; however, in case of default he shall suffer SI for six months more. Benefit of section 382-B Cr.P.C was also extended to the accused.

2. Facts of the prosecution case in brief, are as under:

“ On 30.10.2015 complainant was available on police station when he received information that accused Qasim, having Chars, is available at WadhuWah Bus Stop Main Superhighway for delivering the same to someone; on receiving such information he along with his subordinate staff left the police station under entry No.12 at 1645 hours and reached at the pointed place at 1700 hours and found a person available there having black colour shopping bag; that said person was apprehended at the spot, who disclosed his name as Muhammad Qasim; that they recovered one polythene bag from his possession, which was checked and 26 big and small pieces of Chars were found therein; that recovered Chars was weighed, which became 1100 grams; from the personal search of accused they recovered cash amount of Rs.360/-; that whole recovered Chars was sealed for

chemical examination and accused was arrested and such memo was prepared which was signed by HC Muhammad Umer and PC Kashan, then accused and recovered case property were brought at police station and subject FIR was lodged."

3. After usual investigation, police submitted challan of the case before the concerned Court. After completing necessary formalities, learned trial court framed charge (Ex.2) against accused to which he pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution has examined as many as 03 witnesses and exhibited numerous documents and other items and thereafter prosecution side was closed at Ex.6.

5. The statement of the accused/appellant was recorded under Section 342 Cr.P.C. at Ex.7, in which he denied the allegations leveled against him and claimed his false implication on account of enmity. However, he neither examined himself on oath nor produced any witness in his defence.

6. On conclusion of the trial, learned trial court after hearing learned counsel for the parties and appraisal of prosecution evidence brought on record, convicted and sentenced the accused / appellant, as mentioned in the preceding paragraph of this judgment; hence, the appellant has preferred this appeal against his conviction.

7. The evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. At the very outset, learned counsel for the appellant under instructions of the appellant has stated that he did not press this case on merits in respect of his conviction and admitted his guilt in respect of the same provided that he would be given some reduction in sentence based on the following mitigating circumstances:-

- a) That the appellant is first time offender and is capable of reformation.
- b) That the appellant is young man with a large family to support.
- c) That the appellant has been arrested with a relatively minor amount of charas being 1100 grams and his sentence is short one.
- d) That by admitting his guilt the appellant has shown genuine remorse and saved the precious time of this Court.

9. Learned Special Prosecutor ANF has objected to any reduction in sentence in respect of the offence under which the appellant stands convicted.

10. We have gone through the evidence on record and find that the appellant was caught red handed with an amount of 1100 grams of charas in his possession; that the arresting officer and mashir of arrest and recovery have no enmity or ill will against the appellant to falsely implicate him in this case and that their evidence is on the same lines and we find the same reliably, trustworthy and confidence inspiring and believe the same. The recovered narcotic was chemically examined which produced a positive report, as such, we find that the prosecution has proved its case beyond a reasonable doubt and maintain the conviction of the appellant.

11. With regard to sentencing based on the mitigating circumstances raised by the appellant as mentioned earlier in this judgment, we find that this is a fit case to reduce the sentence of the appellant therefore, by exercising our discretion we hereby reduce the sentence of the appellant to the time already undergone in custody and waive off any fine payable by him. The appellant is present on bail; his bail bond stands cancelled and surety discharged.

12. The instant appeal stands disposed of in the above terms.

Hafiz Fahud