

**IN THE HIGH COURT OF SINDH, KARACHI**  
**Crl. Appeal Nos. 856 of 2024**

**Present:**

***Justice Zafar Ahmed Rajput.***

***Justice Tasneem Sultana.***

Appellants : (1). Niaz Muhammad s/o Sardar Muhammad  
(2). Kaleemullah s/o Shahid Khan, both  
through M/s. Mallag Assa Dashti and Niaz  
Ahmed, Advocates

Respondent : The State, through Mr. Habib Ahmed,  
Special Prosecutor, A.N.F.

Date of hearing : 22.05.2025  
Date of order : 26.05.2025

**JUDGMENT**

**ZAFAR AHMED RAJPUT, J:** - This Crl. Appeal is directed against the Judgment, dated 20.12.2024, passed by the Special Court-II (CNS), Karachi (**Trial Court**) in Special Case No. 04 of 2019, arisen out of F.I.R. No. 26 of 2018, registered at P.S. A.N.F., Clifton, Karachi under section 6/9 (c), 14, 15 of the Control of Narcotic Substances Act, 1997 ("**Act**"), whereby the appellant **Niaz Muhammad** has been convicted for offence under section 9 (c) of the Act and sentenced to suffer R.I. for fourteen (14) years and to pay a fine of Rs.100,000/- or, in default thereof, he should undergo S.I. for six (06) month more, while appellant **Kaleemullah** has been convicted for offence under section 9 (c) read with sections 14/15 of the Act and sentenced to suffer R.I. for seven (07) years and to pay a fine of Rs.50,000/- or, in default thereof, he should undergo S.I. for three (03) month more. The amount recovered from him was ordered by the Trial Court to be forfeited to Government.

2. As per prosecution case, on 05.12.2018, SI Mamoon-ur-Rasheed of PS ANF-Clifton, Karachi was present in his office when he received spy information that notorious drug seller Niaz Muhammad would deliver crystal Ice and intoxicant tablets to his customer at Kosar Masala, near Darya Lal Street, Jodia Bazar, Karachi. Upon receiving such information, SI Mamoon-ur-Rasheed, along with his sub-ordinate staff, reached the pointed place at 1615 hrs., and arrested the appellant Niaz Muhammad on being recovered from him crystal Ice weighing 1000 grams (*declared by the chemical examiner as "Methamphetamine 98%"*) and intoxicant tablets in orange and gray colours, total 410 grams (*declared by the chemical examiner as "MDMA 90%"*), while Rs. 18,97,000/- were recovered from appellant Kaleemullah; for that the appellants were booked in the aforesaid F.I.R. After usual instigation, police submitted the charge-sheet against the appellants who, pursuant to a full-fledged trial, were convicted and sentenced by the Trial Court, as mentioned above, vide impugned judgment.

3. At the very outset, learned counsel for the appellants has contended that under instructions he does not press this Appeal on merit on behalf of appellant Niaz Muhammad, however, he seeks reduction of his sentence on the ground that he is not previously convicted of any offence and he is the only bread earner for his family. He, however, press this Appeal on behalf of appellant Kaleemullah as prosecution has failed to prove recovery of any contraband article from him.

4. Learned Special Prosecutor A.N.F while conceding to the fact that there is no criminal record of appellant Niaz Muhammad, has not opposed the proposition of learned counsel for the appellants. He, however, has

maintained that the appellant Kaleemullah was having the recovered amount for purchasing and receiving Ice and intoxicant tablets from appellant Niaz Muhammad.

5. We have heard the learned counsel for the appellants as well as learned Special Prosecutor A.N.F and perused the material available on the record with their assistance.

6. It appears that in order to substantiate the charge against the appellants, the prosecution has examined as many as four witnesses; out of them, PW-1, SI Mamoon-ur-Rasheed, is the complainant and investigation officer while PW-2, ASI Munawar Hussain, is a mashir of recovery and arrest. None of them has deposed if he heard any conversation between the appellants. Nothing has been brought on record through cogent evidence to support the prosecution case that the appellant, Kaleemullah, participated in, associated or conspired to commit, attempted to commit, aided, abetted, facilitated, incited, induced or counselled the commission of any offence within the meaning of section 14 of the Act. Even the charge framed by the Trial Court against the said appellant does not contemplate so. Hence, we are of the considered view that the prosecution has failed to prove its case against the appellant Kaleemullah beyond reasonable doubt.

7. As regards the case of appellant Niaz Muhammad, it appears from the record that although the prosecution has claimed in the F.I.R. that he is a notorious drug seller, yet it is an admitted position that there is no previous record showing that he was ever implicated in any such like offence and/or any other offence/case.

8. “Methamphetamine” and “MDMA” have been defined in the Schedule to the Act respectively at Serial Nos. 48 and 41 as “psychotropic substance”. The instant case was registered on 05.12.2018 under the Act. Section 9 of the Act was amended by the Control of Narcotic Substances (Amendment) Act 2022, promulgated on 6<sup>th</sup> September, 2022. Before being amended, punishment provided for an offence falling under section 9 (c) of the Act was sentence of death, imprisonment for life or imprisonment for a term which *may extend to* fourteen years and fine upto one million rupees, if the quantity of narcotic drug, psychotropic substance or control substance exceeded the limit of one kilogram.

9. We are mindful that the object of awarding punishment for any offence is threefold: to exact retribution, to serve as a deterrent and to contribute to the strengthening of society through the reformation of the offender. The law, in its wisdom, draws a clear distinction between categories of offences. Some attract mandatory punishments, denoted by the expression “*not less than,*” whereas others are governed by flexible terms such as “*may extend to*” or “*may extend up to.*” This legislative variation is not without purpose. It underscores the obligation of the courts to consider the attending circumstances in the latter category. These are offences where the law permits judicial discretion, recognizing that the offender may benefit from the opportunity for reformation through imposition of a reduced sentence.

10. In the case of Niaz-ud-Din v. The State (2007 SCMR 206) the Apex Court in a case of recovery of 5-kilogram heroin reduced sentence of imprisonment from 10 to 6 years considering that the accused was not

previously convicted and there was no instance of his involvement in drug trafficking, hence, he was given a chance in his life to rehabilitate himself. Since the appellant Niaz Muhammad is neither previously convicted of any offence nor is there any instance of his involvement in narcotics cases, we are inclined to give him an opportunity for reformation. We, therefore, deem it appropriate to reduce his sentence awarded by the Trial Court i.e. R.I. for fourteen (14) years to R.I five (05) years; however, the fine amount i.e. Rs.100,000/-and sentence in default thereof i.e. S.I. for SIX (06) months shall remain intact. The appellant Niaz Muhammad shall be entitled for the benefit of section 382-B, Cr.P.C.

**11.** For what has been discussed above, instant Crl. Appeal stands allowed by setting aside impugned judgment to the extent of appellant Kaleemullah; he is acquitted of the charge and he is directed to be released forthwith if his custody is not required by any Court in any other case/crime. The amount of Rs. 18,97,000/-, recovered from him shall be released to him. However, instant Crl. Appeal to the extent of appellant Niaz Muhammad stands dismissed by maintaining his conviction recorded vide impugned judgment with above modification in his sentences.

JUDGE

JUDGE