

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Arshad Hussain Khan.

CRIMINAL APPEAL NO.169 OF 2022.

Appellant	Gul Bibi w/o. Bismillah through Mr. Nadeem Ahmed Azar, Advocate.
Respondent	The State through Mr. Habib Ahmed, Special Prosecutor ANF.
Date of Judgment	12.12.2022.

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellant Gul Bibi w/o Bismillah was tried in the Court of Special Court-II (CNS) Karachi in Special Case No.24/2020 arising out of Crime No.08/2020 u/s. 6/9(c) r/w Section 14/15 of CNS Act, 1997 registered at P.S. ANF-Clifton, Karachi and vide impugned judgment dated 28.02.2022 convicted under section 265-II(2), Cr.P.C. for committing an offence punishable under section 6/9-C read with section 14 & 15 of the Control of Narcotics Substances Act, 1997 and was sentenced to suffer R.I. for Twelve (12) years and six months (06) along with fine of Rs.30,000/-. In case of default in payment of fine, she was ordered to suffer S.I. for Six (06) months more. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. Brief facts of the prosecution case are that on 14.02.2020 at about 15:15 hours Hub River Road near Quetta Zalzal Hotel, Karachi Complainant Inspector Erum Yaqoob of PS ANF Clifton, Karachi alongwith other ANF officials arrested lady Gul Bibi and recovered a shoulder bag of green color from her possession containing 10 packets of Charas wrapped in yellow solution tape weighing 12.500 Kgs. After observing required formalities at the spot, the arrested lady accused, recovered contraband Charas was brought at PS where FIR was lodged.

3. After usual investigation, the challan was submitted against the appellant who pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 04 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which she claimed false implication however, neither she gave evidence on oath nor called any DW in support of her defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellant as set out earlier in this judgment; hence, the appellant has filed this appeal against her convictions. The facts and evidence concerning this case have been well set out in the impugned judgment and there is no need to reproduce the same in order to avoid unnecessary repetition and duplication.

6. At the very outset, learned Special Prosecutor, ANF has submitted that the appellant had not been sentenced in accordance with law based on the amount of recovery made and that this matter ought to be remanded to the concerned trial Court for re-hearing the parties and thereafter either acquit the appellant or pass the conviction and sentence on merit in accordance with law.

7. Learned counsel for the appellant had no objection to this proposition. Accordingly we hereby set-aside the impugned judgment and remand the case back to the Judge, Special Court No.II (CNS) Karachi for limited purpose of hearing the parties and then passing a fresh judgment in accordance with law. This exercise should be completed by the concerned trial Court within the period of three months from the date of this order.

8. A copy of this order shall be sent through facsimile to the Judge, Special Court-II (CNS) Karachi for compliance alongwith R&P's.

9. The appeal stands disposed of in the above terms.