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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-55 of 2024

Crl. Appeal No.D-60 of 2024

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Appellant : Shafqat Ali son of Ghulam Muhammad Jatt,
through Mr. Chaudhry Amir Nadeem, Advocate.

The State : through Mr. Ali Anwar Kandhro, Additional
Prosecutor General.

Date of hearing : 29.04.2025

Date of Judgment : 29.04.2025.

JUDGMENT

MUHAMMAD SALEEM JESSAR, J.- Through captioned appeal, appellant Shafqat Ali son of Ghulam Muhammad Jatt has assailed the judgment dated 23.08.2024, passed by learned I-Additional Sessions Judge/MCTC/Special Judge for CNSA, Shikarpur, in Special Case No.333/2024, Re-State v. Shafqat Ali Jatt, vide Crime No.03/2024 of Police Station Excise Circle Shikarpur, under Sections 9(2)(4) and 9/B, CNSA (Amended Act, 2022). After full dressed trial, the appellant was convicted and sentenced to suffer imprisonment for 07 years (R.I) and to pay fine of Rs.30,000/- (Thirty thousand rupees) or in default thereof shall suffer S.I for six months more. However, the trial Court has extended benefit of section 382-B, Cr.P.C.

2. Facts of the prosecution case, as per FIR, are that on 21.05.2024, complainant Muhammad Ayoub Buriro lodged FIR alleging therein that on the very day he along with E.D Qadir Bux, E.C Bashir Ahmed, E.C Muhammad Punhal and E.C Sikandar Ali, left PS in Government vehicle for the recovery of Narcotics on spy information, when they reached the place of information, they noticed a coach coming from Jacobabad, to which they gave signal through torch light. It was same Sada

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Bahar Coach, which was informed by spy informer and was going from Quetta to Bahawalpur. They entered the Coach and found present accused sitting on seat No.17 to be same person as informer had told about his identity. On enquiry, he disclosed his name as Shafqat Ali. Complainant appointed E.D Qadir Bux and E.C Bashir Ahmed as mashirs. During his personal search, his original CNIC, one ticket and three notes of Rs.1000/- were secured from right side pocket of his shirt. On further search, they also recovered one white plastic shopper from right side fold of shalwar. They opened white plastic shopper and found two shoppers placed in it and in one shopper heroin powder was found lying, while in the other ice was placed. They weighed the ice and heroin. The weight of ice became 200 grams, while heroin powder was also 200 grams in weight. Thereafter, complainant sealed ice and heroin in separate parcels. He also sealed ticket, CNIC and three notes of Rs.1000/- in separate parcel. Thereafter, they brought accused and case property at Excise Circle Shikarpur where complainant registered FIR on behalf of State to the above effect.

3. Mr. Chaudhry Amir Nadeem, learned counsel for the appellant, while arguing the appeal, submits that the appellant allegedly was captured from inside Coach detailed under the FIR; however, neither its driver nor cleaner and nor even co-passengers were examined by the I.O and even their details have not been given by the complainant in the memo of recovery and arrest to the effect that which passengers were travelling and what were their names. He; therefore, submits that to this discrepancy vitiates entire episode of the prosecution case, which creates doubt and entitles the appellant for acquittal by way of benefit. Hence, prays for grant of instant appeal.

4. Mr. Ali Anwar Kandhro, learned Addl. P.G., appearing for the State, opposes the appeal; however, when confronted with above factual position of the record, submits that at the most the appellant could be given leniency by dismissing instant appeal on merits, whereby the impugned judgment may be maintained and sentence awarded to him may be modified to the period he has already undergone, to which the learned counsel for the appellant has recorded no objection.

5. Admittedly, the evidence so adduced by the prosecution is in sequence and in consonance with the parameters of the prosecution; however, discrepancy as pointed out by learned counsel for the appellant is alarming and entitles the appellant to grant of some leniency. In all fairness

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and deficiency so committed by the complainant while conducting the search and thereafter investigation, the mitigating circumstances do exist; hence, in our considered view, the appellant deserves the leniency as proposed by learned Addl. P.G. appearing for the State and no objection raised by the learned counsel for the appellant.

6. Keeping in view the above situation, the appeal filed by the appellant is dismissed as not pressed and the impugned judgment to the extent of conviction is maintained; however, the sentence awarded to the appellant is modified and reduced to a period already undergone. The fine amount imposed by the trial Court is remitted. The appellant is confined in jail. He shall be released forthwith, if not required to be detained in any other case. This judgment shall not operate as judgment in rem, as the sentence has been modified under mitigating circumstances.

7. Since the appellant through jail has filed Crl. Jail Appeal No.D-60 of 2024 for the same relief in the captioned crime by assailing the aforesaid judgment, which in the aforesaid circumstances has become infructuous and accordingly dismissed.

~~Judge~~

Mishra
Judge

M.Y.Panhwar/**