

5

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-52 of 2023

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Jawad Akbar Sarwana

Appellants : Karamullah son of Muhammad Usman Rind,
through Mr. Habibullah G. Ghouri, Advocate.

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

Date of hearing : 27.03.2024

Date of Order : 27.03.2024.

JUDGMENT

MUHAMMAD SALEEM JESSAR, J.-Through captioned appeal, appellant Karamullah son of Muhammad Usman Rind has challenged the judgment dated 22.06.2023, passed by learned I-Additional Sessions Judge/Special Judge for Control of Narcotic Substance, (MCTC), Shikarpur, in Special Case No.243/2022, Re-State v. Karamullah Rind vide Crime No.220/2021 of Police Station New Foujdari, under Section 9(c), Control of Narcotic Substances Act, 1997, whereby the appellant was convicted and sentenced to suffer imprisonment of 14 years R.I and to pay fine of Rs.5,00,000 (Five hundred thousand rupees) or in default thereof, shall suffer six months S.I more by extending him a benefit of section 382-B Cr.P.C.

2. Facts of the prosecution case, as per FIR, are that on 19.11.2021, complainant along with his subordinate staff namely PC Salman Ahmed, PC Amanullah and DPC Rafique Ahmed left the PS in a

Police Mobile bearing registration No.SPT-172, vide Roznamacha entry No.21 at 1200 hours, for snap checking and when, they reached near Jari bridges situated on main highway road leading from Shikarpur to Larkana, where, they had started snap checking. In the meanwhile, they had received spy information that one accused Karamullah Rind was coming on a Motorcycle from the side of Shikarpur; on search of Motorcycle, heroin powder was found from the side covers of Motorcycle, which the appellant was carrying towards Garhi Yasin. The complainant conveyed such information to his subordinate staff and directed them to be alert. At about 1300 hours, they saw that one person was coming on a Motorcycle from the side of Shikarpur, who on seeing them in a Police uniform, had immediately parked his Motorcycle on the southern side of main road. Since the complainant party had already clue about the name and identification of the accused, hence they saw and identified him to be the same accused Karamullah, who after throwing his Motorcycle, ran away towards the agricultural field side and after taking shelter of trees and canals, he succeeded in fleeing away. Per complainant, they had also chased behind the accused to arrest him but could not succeed and then they returned back on the point, where, Motorcycle was parked. Since no private persons were available there, as such the complainant had associated PC Salman Ahmed and PC Amanullah and then opened side covers of the Motorcycle and found four parcels of cloth from both sides of the Motorcycle. On further search of the Motorcycle, they had also found one parcel of cloth beneath the seat of Motorcycle, total five sealed parcels. They had opened all the five parcels of cloth and found one shopper bag in each parcel, wherein, Khaki colour envelopes were available and on opening said envelopes, they found heroin in all the five envelopes. Of them four were of small in size and one was big and on weighing small parcels, each bag contained 500 grams of heroin,

while big parcel contained 1000 grams of heroin, total three kilograms heroin. They had also checked the Motorcycle and found it without registration number and its chasis and engine were also erased. Thereafter the complainant had prepared such mashirnama in front of the same mashirs and obtained their signatures thereon. Then they brought accused and case property to PS where he was booked in the aforesaid case.

3. After that FIR was lodged and whole quantity of heroin was sent for chemical analysis. According to the report in this regard, the presence of the respective Narcotic Substance (heroin) was proved. After completion of usual investigation, a final report/charge sheet was filed against the accused, by showing him as absconder.

4. Learned counsel for the appellant submits that nothing incriminating article was recovered from the exclusive possession of the appellant; however, per prosecution case at the time of alleged incident the appellant was intercepted by the police but he succeeded in making his escape good by throwing the alleged motorcycle which later was found containing heroin powder in two cloth parcels from one side of motorcycle and two parcels from another side. He next submits that the police have not disclosed whether the appellant at the time of alleged incident was having any weapon or restricted by making fires, even then the police who was less with sophisticated weapons did not follow to apprehend him hence all these lacunas show the police in order to take shield from the superiors had cooked up instant case against the appellant which has no independent legs to stand upon.

5. Besides above all discrepancies, learned Counsel for the appellant has stated that the appellant would be satisfied and will not press instant appeal on merits, if the sentence awarded to him by the

learned trial Court is reduced to the imprisonment, which the appellant has already undergone/served.

6. Learned Additional Prosecutor General concedes to the above request made by learned Counsel for the appellant.

7. I have perused the impugned judgment, so also the record.

8. According to the jail roll of appellant furnished by the jail authorities on 26.02.2024, the appellant has served total sentence of 01 year, 03 months and 15 days, excluding remission; the alleged heroin powder was also not recovered from his possession; at the time of alleged incident; the police was less with sophisticated weapons but did not follow the accused/appellant to apprehend him. Therefore, in our view, the mitigating circumstances do exist for considering the request of the appellant for reduction of sentence awarded to him by the trial Court. Furthermore, the appellant has no past criminal history.

9. Keeping in view the above situation, the appeal filed by the appellant is dismissed as not pressed; 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.


Judge


Judge

M.Y.Panhwar/**