

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Criminal Jail Appeal No.D-87 of 2024

Before;

Mr. Justice Jawad Akbar Sarwana.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Appellant: Saif Ali son of Jaffar Hussain, Through Mr. Imtiaz Ali Abbasi, Advocate.

The State: Ms. Rameshan Oad, D.P.G.

Date of hearing: 06.05.2026

Date of decision: 20.05.2026

JUDGMENT

Syed Fiaz ul Hassan Shah, J: Through this appeal, the appellant has challenged the judgment dated 11.10.2024, passed by learned Model Criminal Trial Court-I/Special Judge Control of Narcotics Substance Act, Hyderabad, in Special Case No.179 of 2024, Re: State vs. Saif Ali, bearing U/ss 9(1), 6-() CNS Act, 1997/2022 PS Tando Yousuf, Hyderabad, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant to suffer R.I for four (04) years along with fine Rs.200,000/- (Two hundred thousand). In case of default in payment of fine the accused shall undergo S.I for one year more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. The facts in brief necessary for disposal of instant Criminal Appeal are that on 13.04.2024 police party of PS Tando Yousuf headed by ASI Manzoor Ali Phanwar left the PS vide DD entry No.17 at 1600 hours and during area patrolling when they reached at Badin railway tracks, near sewerage water pump Badin Chali, Hyderabad they noticed one suspect. On such at about 1700 hours the police party apprehended the suspect and conducted his body search. During body search the police party found one shopper from the side pocket of the accused. On checking of the shopper the ASI (PW-1)

found 120 grams ICE (METHAMPHETAMINE) from it. On inquiry, accused disclosed that he is selling crystal ICE/METH. Due to non availability of private mashirs the complainant appointed PCs Ghulam Nabi and PC Mir Muhammad as mashirs of arrest and recovery and prepared such memo of arrest and recovery (Exh.3/B) and sealed the recovered ICE. Thereafter, the accused and recovered ICE/METH was brought at PS where the complainant registered the FIR.

3. After registration of FIR the investigation was entrusted to SIP Khair Muhammad Channa. During investigation I.O /PW-4 deposited sealed parcel in malkhana of PS through incharge WASI/PW-3 Rajab Ali vide such malkhana entry No.23 (Exh.5/A). On 15.04.2024, sealed parcel of ICE (METHAMPHETAMINE) was sent to the laboratory for its examination through PC/PW-2 PC Ghulam Nabi vide entry No.11 at 0815 hours. The courier/PW-2 deposited the sample parcel of the ICE (METHAMPHETAMINE) on same date viz. 15.04.2024 and obtained such receipt from the office of chemical examiner, Karachi. He returned back to PS Tando Yousuf, Hyderabad where the I.O/PW-4 recorded his statement under section 161 Cr.P.C. On conclusion of the investigation SIP/I.O found the accused as guilty and submitted charge sheet against the accused.

4. After procedural formalities, copies of documents were supplied to the accused vide Ex.1 in compliance of section 265-C Cr.P.C, and charge was framed against the accused vide Ex.2 in compliance of section 265-D Cr.P.C, to which accused pleaded not guilty and claimed to be tried vide his plea at Ex.2/A, to which in compliance of section 265-E Cr.P.C.

4. At the trial, the evidence of prosecution recorded in compliance of section 265-F Cr.P.C, wherein prosecution examined P.W No.1 complainant / ASI Manzoor Ali Phanwar at Exh.03. He produced roznamcha entries, memo of arrest and recovery and copy of FIR at Exh.3/A to Exh.3/C respectively. The evidence of P.W-02 mashir/courier PC Ghulam Nabi was recorded at Exh.4. He produced memo of site inspection, departure entry No.11, sample receipt, letter to chemical examiner and arrival entry No.36 at Exh.4/A to Exh.4/E

respectively. Evidence of P.W-3 malkhana incharge/WASI Rajab Ali recorded at Exh.5 and P.W.04-SIP Khair Muhammad Channa, the investigating officer at Exh.6. He produced departure and arrival entries for site inspection, chemical examiner report, CRO of the accused at Exh.6/A to Exh.6/C respectively. Thereafter learned A.P.G closed the side in evidence of prosecution vide statement at Ex.7.

5. The statement of accused Under S. 342 of Cr.P.C was recorded vide Ex.8 wherein he denied the allegations of the prosecution case and pleaded his innocence. However, the accused did neither examine himself on oath, nor desired to produce witness in his defense.

6. Learned counsel for the appellant argued that the appellant/accused is innocent and has falsely been implicated in this case; that register-XIX was not and no permission obtained for photocopy as per police rules and as per prescribed proforma must be eight columns; that the alleged place of incident is commercial thickly populated area and police has not given any explanation for non-joining independent witness; that no private witnesses have been associated as Mashir in this case; therefore, there is violation of section 103 Cr.P.C. He lastly argued that there are several contradictions, lacunas, and legal infirmities in the evidence of prosecution witnesses but the learned trial Court did not consider the same hence, he prayed for that the impugned judgment may be set-aside and the appellant may be acquitted.

7. On the other hand, learned D.P.G for the State supported the impugned judgment by submitting that the accused was arrested on the spot with a huge quantity of recovery of 120 grams Ice (Methamphetamine). Section 103 Cr.P.C is not applicable in cases of recovery of narcotics. She further argued that all the prosecution witnesses have supported the case and produced all the relevant record; therefore, appeal may be dismissed.

8. We have heard the counsel for the parties and perused the record. The evidence of the prosecution witnesses is consistent,

confidence-inspiring, and corroborates the recovery memorandum (Exhibit 3/B). PW-1, ASI Manzoor Ali, testified that 120 grams of methamphetamine ("ice") was recovered from the possession of the appellant and handed over to the Investigation Officer, SIP Khair Mohammad Channa. PW-2, PC Ghulam Nabi, confirmed the recovery and stated that the memorandum of recovery (Exhibit 3/B) was prepared at the crime scene, which he signed as one of the mashirs. He further testified that the case property was handed over to the Investigation Officer and that on 15.04.2024 he deposited the property in the chemical laboratory. PW-3, WASI Rajab Ali, confirmed that on the day of recovery he received the case property from SIP Khair Mohammad and deposited it in the Malkhana vide Entry No. 23 of Register No. 19. PW-4, SIP Khair Mohammad, the Investigation Officer, produced the Chemical Analysis Certificate (Exhibit 6/B), which confirmed that the recovered contraband was methamphetamine.

9. We have noted that the learned Trial Court passed sentence under Section 9(2) of the Control of Narcotic Substances Act, 1997, as amended by the Federal Amendment Act, 2022. However, the Province of Sindh, through the Sindh Amendment Act, 2021, had already amended the CNS Act, 1997 to the extent of Sindh, thereby empowering the provincial police to take action under the Sindh Amendment Act, 2021. Conversely, under the Federal Amendment Act, 2022, only the Anti-Narcotics Force (ANF) was authorized to act. Therefore, the Sindh Police was not competent to register the case or prosecute under the Federal Amendment Act, 2022. The proper legal course was to proceed under the Sindh Amendment Act, 2021, which prescribes sentences for contraventions of Section 6 according to specified categories.

10. Accordingly, the sentence passed under the Federal Amendment Act, 2022 does not apply to the present case, as the Sindh Amendment Act, 2021 was fully in force at the relevant time. Nonetheless, the prosecution has proved the case beyond reasonable doubt.

11. In view of the above discussion, we are of the considered view that the conviction of the appellant recorded under Sections 6/9(1) column 6(b) and 6/9(2) of the CNS Act, 1997, as amended through the Federal Amendment Act, 2022, was not in accordance with law. On the date of occurrence, the Sindh Amendment Act, 2021 was holding the field within the Province of Sindh, and the present case was not initiated by any Federal Agency such as ANF or Pakistan Customs. Under clause (s) of Section 2 of the Sindh Amendment Act, 2021, heroin and methamphetamine (ICE) fall within Category (ii) of "narcotic drug." Consequently, the conviction of the appellant is converted and maintained under Section 9(c) of the CNS Act, 1997, as amended through the Sindh Amendment Act, 2021.

12. The object of punishment is not merely retribution but also deterrence and reformation. The legislature has distinguished between offences carrying mandatory minimum punishments and those where discretion is left with the Court through the expression "may extend to." In such cases, the Court must consider the peculiar facts and circumstances to ensure justice and afford the offender an opportunity for rehabilitation. Reference may be made to *Niaz-ud-Din v. The State*, (2007 SCMR 206) wherein the Honourable Supreme Court of Pakistan, despite recovery of five kilograms heroin, reduced the sentence considering the absence of prior conviction or evidence of involvement in trafficking, thereby extending an opportunity of reformation.

13. In the present case, PW-1 admitted during cross-examination that the weight of crystal ice/Methamphetamine included the weight of the plastic bag, rendering the recovered quantity borderline in nature. Furthermore, the appellant is not shown to be a previous convict, nor is there material indicating prior involvement in narcotics trafficking. Therefore, taking a lenient view to afford the appellant an opportunity for moral and social reformation, we deem it just and proper to reduce the substantive sentence. Accordingly, while maintaining the conviction of the appellant under Section 9(c) of the CNS Act, 1997, as amended by the Sindh

Amendment Act, 2021, the sentence of imprisonment is reduced from four (04) years to two (02) years rigorous imprisonment.

14. The appeal stands dismissed with the above modification in conviction and reduction in sentence. The appellant shall be released forthwith, if not required in any other case, after completion of the modified sentence.

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Ahmed/Pa,