

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Omer Sial

CRIMINAL APPEAL NO.129 OF 2022

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| Appellant | Tahiruddin s/o Rizwan Ali, through Mr. Muhammad Akbar, Advocate. |
| Respondent | The State through Mr. Ali Haider Saleem, Additional Prosecutor General Sindh. |
| Date of Judgment | 23.09.2022 |

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Tahiruddin was tried in the Court of 1st Additional Sessions Judge / Model Criminal Trial Court-I/Special Court (CNS) Karachi Central in Special Case No.1047/2021 under FIR No.529/2021 u/s 6/9(b) of CNS Act 1997, registered at PS Paposh Nagar, Karachi and vide judgment dated 01.02.2022 he was convicted and sentenced to suffer R.I. for five (05) years and six months with fine of Rs.100,000/- and in case of default in payment of fine he shall suffer further S.I. for 15 day. However, the appellant was granted benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per F.I.R. are that on 09.10.2021 at about 0130 hours, SIP Kareem Dad of PS Paposh Nagar, Karachi has arrested accused Tahiruddin son of Rizwan Ali along with co-accused and recovered chars weighing 110 grams from inside Ashatul Quran School ground, Paposh Nagar, Karachi under memo and lodged the instant FIR.

3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 03 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he

denied the allegations levelled against him and claimed false implication by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 01.02.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions stated that he did not press the appeal on merit and the appellant accepted his guilt provided that he was given some reduction in sentence based on following special features/mitigating circumstances :-

- i) The appellant was a young man, who had a large family to support.
- ii) The appellant is a first time offender and capable for reformation.
- iii) By accepting the guilt appellant has shown genuine remorse.
- iv) The appellant had served out a substantial portion of his sentence.

8. Based on the above special features/mitigating circumstances the learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant.

9. We have gone through the evidence and found that the appellant was arrested on the spot and recovered from his possession 110 grams charas. The police had no enmity with the appellant to falsely implicate him in this case and as such we believe their evidence which we find to be reliable trustworthy and confidence inspiring, the recovered charas was sent to chemical analysis which report received as positive, as such we find that the prosecution has proved its case against the appellant beyond any reasonable doubt and maintain his conviction.

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10. With regard to the sentence we note that the appellant was sentenced to suffer R.I. for 05 years and 06 months with fine of Rs.1,00,000/-. According to the guideline laid down in the case of **Ghulam Murtaza v The State** (2009 PLD Lahore 360) based on the recovery of charas the appellant ought to have been sentenced to one (01) year and three (03) months and fine of Rs.9000/-. As such it appears that the appellant has not been sentenced in accordance with the guideline laid down in Ghulam Murtaza case (supra) and there are no aggravating circumstances set out in the judgment which would justify the enhancement of sentence. In the case of Ghulam Murtaza (supra) this court was given discretion to modify the sentence if some special features/mitigating circumstances were available.

11. Based on the mitigating factors raised by learned counsel for the appellant and the no objection of learned Addl. P.G. and especially keeping in view the fact that the appellant has served out a substantial part of his sentence i.e. 05 years and 06 months as per jail roll even though he should have been convicted for 01 year and 03 months, we hereby reduce the appellant's sentence to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.

12. The instant appeal stands disposed of in the above terms.