

IN THE HIGH COURT OF SINDH, KARACHI
Criminal Appeal No. 629 of 2023

Before:
Acting Chief Justice Zafar Ahmed
Rajput
Justice Miran Muhammad Shah

Appellant : Mushtaq Ali s/o Meraj, through M/s. Abdul
Jalil Khan Marwat & Waseem Ali Dahri,
Advocates

Respondent : The State, through Mr. Mumtaz Ali Shah,
Assistant Prosecutor General (**APG**), Sindh

Date of hearing : 08.10.2025
Date of order : 08.10.2025

JUDGMENT

ZAFAR AHMED RAJPUT, ACJ. - This CrI. Appeal is directed against the Judgment, dated 28.10.2023, passed in S. Case No. 3806 of 2022, arisen out of FIR No. 366 of 2022, registered at P.S. Quaidabad, Malir, Karachi under sections 6/9 (c) of the Control of Narcotic Substances Act, 1997 (**Act of 1997**”), whereby the Addl. Sessions Judge-IV/Special Judge (CNS), Malir, Karachi (**“Trial Court”**) convicted the appellant/accused for the said offence and sentenced him to suffer R.I for ten (10) years and to pay a fine of Rs. 100,000/-, and/or in default thereof, he should undergo S.I. for three (03) months more. The benefit of section 382-B, CrPC has, however, been extended to him.

2. It is alleged that, on 29.06.2022 at 0250 hrs., a police party headed by SIP Nadeem Riaz of P.S. Quaidabad, Malir, Karachi arrested the appellant at Main Bazar Street, D- Area, Old Muzaffarabad Colony, Landhi, Karachi for possessing 1065 grams charas; for that, he was booked in the aforesaid FIR. After usual investigation, police submitted the charge-sheet against the appellant. The Trial Court framed the charge against him for the offence under sections 6/9 (c) of the Control of Narcotics Substances Act (Sindh Amendment) Act, 2021 (**“Sindh Amendment Act, 2021”**), to which he

pleaded not guilty, which followed his full-dressed trial, conviction and sentence, as mentioned above, vide impugned judgment.

3. Learned counsel for the appellant contends that the appellant was charged by the trial court under Sindh Amendment Act, 2021 but convicted under sections 6/9 (c) of the Act of 1997, which was not applicable on him, as on the day of alleged offence, i.e. 29.06.2022, Sindh Amendment Act, 2021 was enforced, hence, the appellant should have been convicted under the said Act. He also contends that under instructions, he does not press this Appeal on merit; however, he seeks alteration of appellant's conviction and reduction of his sentence on the grounds the appellant is not previously convicted of any offence, and he has served out the sentence excluding the remissions for a period of more than two years and with remission five years and seven months, whereby he has sufficiently been punished. Moreover the gross weight of the charas (*cannabis*) allegedly recovered from the appellant was 1065 grams while according to the chemical examiner's report, its net weight was 1053 grams; hence, the case of appellant is on borderline as 53/65 grams quantity marginally exceeds the maximum limit of one kilo gram, which is required to be considered a case under section 9 (b) of the Sindh Amendment Act, 2021, which carries lesser punishment of three years.

4. Learned APG concedes to the contentions of learned counsel for the appellant that the provisions of Sindh Amendment Act, 2021 attract to the alleged offence and that there is no criminal record of the appellant.

5. We have heard the learned counsel for the appellant as well as APG and have perused the material available on record with their assistance.

6. As per jail roll dated 08.10.2025, furnished by the Senior Superintendent, Central Prison & Correctional Facility, Karachi, the

appellant has served out the sentence of five years and seven months with remission and his unexpired portion of sentence is about four years, seven months and twenty-eight days.

7. It may be observed that the Provincial Assembly of Sindh, on 4th February, 2021 promulgated Sindh Amendment Act, 2021 whereby, *inter alia*, clause (s) of section 2 and section 9 of the Control of Narcotic Substances Act, 1997 (**“Act of 1997”**) were amended, as under: -

2. In the Control of Narcotics Substances Act, 1997, herein after referred to as the said Act, in its application to the Province of Sindh, in section 2 –

(i).....

(ii).....

(iii).....

(iv) for clause (s), the following shall be substituted: -

“(s) “narcotic drug” means-

(i) **Category (i)** coca leaf, cannabis and poppy straw;

(ii) **Category (ii)** cocaine, heroin, methamphetamine, midomafetamine and all manufactured drugs or any other substance, which Government of Sindh may, by notification in the official gazette, declare to be narcotic drug for the purpose of this Act;

9. **Punishment for contravention of section 6, 6-A, 7 and 8.** Whoever contravenes the provisions of sections 6, 6-A, 7 and 8 shall be punished with--

(a) imprisonment which may extend to three years but shall not be less than six months, or with fine upto rupees one lac but shall not be less than rupees fifty thousand, or with both if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** is one hundred grams or less;

(b) imprisonment which may extend to seven years but shall not be less than three years and shall also be liable to fine upto rupees five lac but shall not be less than rupees one lac if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** exceeds one hundred grams but does not exceed one kilogram, or if the quantity of narcotic drug **category (ii)** is **fifty gram** or less;

(c) death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees, if the quantity of

*narcotic drug **category (i) and (ii)**, psychotropic substance or controlled substance exceeds the limit specified in clause (b):*

Provided that if the quantity of narcotic drug category (i), psychotropic substance or controlled substance exceeds ten kilograms or narcotic drug category (ii), exceeds two kilograms, the punishment shall not be less than imprisonment for life.”
(Emphasis supplied)

8. It may be observed that under Article 142(b) of the Constitution of Islamic Republic of Pakistan, 1973, Majlis-e-Shoora (Parliament) and Provincial Assembly both have power to make laws with respect to criminal law, criminal procedure and evidence. While under provision of Article 143 of the Constitution, laws enacted by Parliament have been given over-riding and superimposing effect over laws enacted by a Provincial Assembly of any of the provinces, and in case of any clash or repugnancy between the two, the laws enacted by the Parliament prevails.

9. Sindh Amendment Act, 2021 was made applicable in Province of Sindh meaning thereby Provincial Police of Sindh was empowered to take cognizance of any offence under the Act of 1997. We are, therefore, of the view that in the instant case, FIR should have been lodged under Sindh Amendment Act, 2021 and the appellant tried and convicted under section 6/9 (c) of the said Act, which provides sentence for contravention of section 6 of the Act (ibid) *death or imprisonment for life for or a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees, if the quantity of narcotic drug category (i) exceeds the limit specified in clause (b) i.e. one kilogram.* Hence, we modify the conviction of the appellant recorded by the Trial Court under sections 6/9 (c) of the Act of 1997 and convert it in section 6/9 (c) of the Sindh Amendment Act, 2021.

10. We are conscious of the fact that the punishment for any offence committed by a person is awarded for retribution, deterrence and in order to

strengthen the society by reforming the guilty. The law itself has categorized the offences. It is well established that punishment for an offence serves not only as a means of retribution but also as a tool for deterrence and a mechanism to strengthen the fabric of society through the rehabilitation of the offender. The law itself classifies offences distinctly. In some instances, punishment is mandated with the expression “*not less than,*” denoting a fixed minimum, while in others, the law provides flexibility through terms like “*may extend to*” or “*may extend up to.*” This legislative contrast signifies that, in the latter category, the courts are expected to exercise judicial discretion by taking into account the specific facts and circumstances of the case. These are the kinds of offences where a lesser punishment may serve the ends of justice by allowing room for the offender’s moral and social reformation.

11. In the case of Niaz-ud-Din v. The State (2007 SCMR 206) the Apex Court in a case of recovery of 5-kilogram heroin reduced sentence of imprisonment from 10 to 6 years considering that the accused was not previously convicted and there was no instance of his involvement in drug trafficking, hence, he was given a chance in his life to rehabilitate himself. In the instant case, since the appellant is neither previously convicted of any offence nor is there any instance of his involvement in narcotics cases, we are inclined to give him an opportunity for reformation. We, therefore, deem it appropriate to reduce his sentence awarded by the Trial Court to already under gone; however, the fine amount i.e. Rs.100,000/-and sentence in default thereof i.e. S.I. for three (03) months shall remain intact.

12. The instant Crl. Appeal stands dismissed with above alteration in conviction and modification in sentence.

JUDGE

Athar Zai