

Appellant : Mehrab Bhangwar present in person(on bail).

Respondent : The State, through Mr. Aitbar Ali Bullo, Deputy
Prosecutor General.

Date of hearing: 25.03.2024.

Date of Judgment: 25.03.2024.

JUDGMENT

Muhammad Saleem Jessar, J.- Appellant Mehrab Bhangwar was tried by the learned Additional Sessions Judge-II, Kandhkot, vide Sessions Case No.134/2023 re-The State v. Mehrab Bhangwar, based on Crime No.212/2023 registered with P.S A/Section, Kandhkot. On conclusion of trial, he was convicted vide judgment dated 27.11.2023 for offence u/s 23(i)(a) of Sindh Arms Act, 2013 and sentenced to suffer R.I. for one year, with fine of Rs.5,000/-, in default whereof to undergo S.I. for two months more; however, benefit of section 382-B, Cr.P.C was extended to him.

2. According to the prosecution's case, on 26.08.2023, at 0700 hours near Bijar Wah on link road of Khair Shah, a police posse headed by ASI Muhammad Ali Sabzoi of PS A/Section, Kandhkot apprehended the appellant on a tip-off and recovered an unlicensed T.T. Pistol loaded with 04 live bullets in its magazine; hence, he was booked in this case.

3. Appellant Mehrab Ali, who from his general appearance is a paralytic, submits that he has nothing to do with the alleged offence. According to him, the weapon in question was not recovered from him, but the police due to his failure to meet their illegal demand and grease their palms was implicated in this case falsely by foisting the alleged recovery against him, only to show their efficiency before their high-ups. He submits that by occupation he is a labourer and has

never been involved in any other criminal case prior to this. The appellant submits that if the sentence served by him in jail is treated as undergone, then he would not press instant criminal appeal on merits. The appellant further submits that he being labourer has suffered a lot for no fault. 73

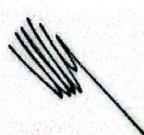
4. The learned DPG representing the State, candidly concedes to the above request made by the appellant and raises no objection to reduction in sentence of the appellant to the period, which he has already served in jail.

5. I have heard the appellant in person as well as learned DPG and have gone through the available record.

6. So far merits of the case, the prosecution witnesses examined at trial have furnished straightforward and confidence inspiring evidence and there is nothing on record to show that they deposed against the appellant maliciously or out of any animus. No evidence of *enmity* between the accused and the police/complainant or any of the PWs of this case has been established. In absence of any enmity between the appellant and the complainant/police, evidence of prosecution witnesses regardless of their being officials was rightly believed by the Court below. Mere status of one as 'official' would not alone prejudice the competence of such a witness unless and until he is proved to be **interested** having motive to falsely implicate an accused or has previous enmity with the person involved.

7. From the perusal of record it appears that the appellant was apprehended by the police party and an unlicensed weapon (T.T. Pistol) was recovered from him. The accused was under obligation to *firstly* cause dent in prosecution case and *secondly* to establish *least* justify possibility of false implication or *foisting* of weapon upon him. The recovery witnesses remained consistent on each and every material aspect, such as manner of departure till arrest of accused and recovery of *weapon*. The witnesses were cross-examined on behalf of the appellant but no material contradiction appears to have been extracted from them. Furthermore, no enmity, ill-will or grudge has been proved against the prosecution witnesses, for falsely implicating the appellant in this case.

8. As regards the request made by the appellant for reduction of sentence on the ground that he is an extremely poor person, perusal of the record, particularly



his jail roll dated 01.03.2024 furnished by the Senior Superintendent, Central Prison, Sukkur, shows that out of total sentence of 01 year, the appellant had remained in jail for about 05 months; besides has earned the remissions for 03 months and 13 days. From his general appearance, he appears to be a poor person and crippled from one leg as well as young man of 24 years. Moreover, there is no material on record to show that the appellant is involved or convicted in any other criminal case. Besides, the appellant also claims to be the only earning member of his family, therefore, it is appropriate that he may be given an opportunity to prove himself as a law-abiding citizen so also being head of his family provide them basic necessities in a good manner.

9. Considering the above facts and circumstances of the case, I do not find any material illegality or serious infirmity committed by the trial Court while passing the impugned judgment, and thus instant criminal appeal is dismissed. However, in view of discussion made *hereinabove* on plea of reduction of sentence, I find it a fit case for departure from normal practice of determining *quantum* of sentence. Therefore, it would serve both the purposes of deterrence and reformation, if the sentence, awarded to appellant is reduced to one already undergone by him. In the given circumstances, I am inclined to take a lenient view in the matter. Accordingly, the sentence of the appellant is altered and reduced to the period of his detention in jail he has already undergone including the period, he was to undergo in lieu of fine. With the above modification in the sentence of appellant, this criminal appeal is dismissed. The appellant is present on bail, his bail bonds stand cancelled and surety, discharged.

~~JUDGE~~

The above order has been complied
On 02.04.2024

ZIK Accountant