

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Present:-

Mr. Justice Shamsuddin Abbasi
Mr. Justice Ali Haider 'Ada',

Cr. Jail Appeal No. D-22 of 2023

Appellant	Ali Nawaz s/o Shah Nawaz Lolai Through Mr. Ali Raza Pathan, advocate
State	Mr. Aitbar Ali Bullo, D.P.G for the State
Date of hearing	01-10-2025
Date of judgment	01-10-2025

J U D G M E N T

Shamsuddin Abbasi, J. Through instant criminal appeal, appellant Ali Nawaz s/o Shahnawaz Lolai, has assailed the Judgment dated 04.08.2023, passed by the learned I-Additional Sessions Judge/Special Judge for CNSA (MCTC), Shikarpur, in Special Case No. 294/2022, (re: The State V/S Ali Nawaz), emanating from Crime No. 30/2022 of P.S. Lakhi Gate Shikarpur, for the offence 9(c) of C.N.S Act, 1997, whereby the learned trial court found the appellant/accused Ali Nawaz S/O Shah Nawaz by caste Lolai as guilty for recovery of 10 kilo and 100 grams of chars from his possession on 11.03.2022 at 1600 hours. Hence, in view of recent enactment in shape of “**Control of Narcotic Substances (Amendment Act) 2022**”, by which, a new Schedule of punishments has been given in respect of the “quantum of sentence” in Narcotic Cases, the appellant/accused was convicted u/s 265-H(ii) Cr.P.C for the offence under section 9 (E) of the above new Act and sentenced to suffer Rigorous imprisonment for life and to pay fine of Rs. 8,00,000/- (Eighty hundred thousand rupees) or in default thereof, he shall suffer six months S.I more by extending him a benefit of Section 382-B Cr.P.C and that the period under gone by him as under trial prisoner shall be adjustable towards the substantive sentence now imposed upon him.

2. Brief facts of the prosecution case as per FIR lodged by the complainant ASI Qaimuddin Solangi on 11.03.2022 at 1800 hours are that on the same day, he along with HC Abdul Hameed, PC Muhammad Shafique and PC Saeed Ahmed, duly armed with arms and ammunition and investigation kit, left the P.S, vide roznamcha entry No. 21 at 1500 hours on two Motorcycles, for patrolling purpose. After patrolling at different places, when, at about 1600 hours, they reached near hand pump situated at link road leading from Ibrahim Markaz to village Mari, where, they saw that one person was coming from village Mari towards city side, who was having one plastic sack (bachko) in his hand. After seeing them in a police uniform, said person had tried to skip away towards eastern side. They immediately stopped their

Motorcycles and after chasing him up to 30/35 paces, they arrested him along with said plastic sack (bachko). Since no private persons were available, hence, complainant had appointed HC Abdul Hameed and PC Muhammad Shafique as mashirs and enquired from him about his name, who disclosed his name as Ali Nawaz S/O Shah Nawaz Lolai R/O Village Bado, Taluka Garhi Yasin. On opening the plastic sack (bachko), they had found one plastic shopper of blue colour, which contained five big pattis of chars and 38 small pieces of the chars. On weighing the total weight of chars had become 10 kilo and 100 grams. On enquiry about Chars, accused had disclosed that he was taking away chars for selling purpose. On his bodily search, he had recovered two currency notes of Rs. 100/- from his right flank pocket total Rs. 200/-. Per complainant, he then sealed the property separately and prepared such mashirnama in front of the same mashirs and obtained their signatures thereon. Thereafter, they returned back to the P.S along with arrested accused and recovered case property, where, he was booked in the instant case u/s 9 (c) Control of Narcotic Substances Act.

3. After that F.I.R was lodged and whole quantity of Chars was sent for chemical analysis. According to the report in this regard, the presence of the respective Narcotic Substance was proved. After codal formalities, charge sheet was presented against the present accused to face his trial. Usual investigation was conducted. After observing legal formalities, the formal charge was submitted against appellant/accused to face the trial.

4. After completion of codal formalities, charge was framed against the present appellant at Ex.3, to which he denied, pleaded not guilty and claimed trial vide his plea at Ex.4.

5. The prosecution in support of its case, examined PW-1/complainant ASI Qaimuddin Solangi at Exh.5, who produced attested P.S copy of entry No. 21 at Exh. 5/A, Mashirnama of arrest of accused and recovery of Chars at Exh. 5/B and FIR at Exh. 5/C. PW-2 Mashir/P.C, Muhammad Shafique at Exh.06, he produced mashirnama of place of incident at Exh. 6/A. PW-3/WHC Roshan Ali Soomro at Ex. 07, he produced Malkhana entry No. 15 at Ex. 7/A. PW-4/PC Inayatullah at Ex. 8, he produced R.C No. 26 at Exh. 8/A and lastly PW-5 SIP/SIO Ali Hussain Shah was examined at Ex. 09, he produced P.S attested P.S copy of entry No. 30 at Ex. 09/A and Chemical report at Ex. 09/B. Thereafter, side of the prosecution was closed by the learned DDPP for the State, vide his statement at Exh. 10.

6. The statement of accused was recorded under section 342 Cr.P.C at Exh.11, wherein, he denied the prosecution allegation and stated that he has been falsely implicated in this case by foisting the Chars upon him and prayed for justice. Accused Ali Nawaz intended to examine D.W Muhammad Aslam Soomro, reporter Daily Kawish Hyderabad, by taking plea that he was innocent and has been falsely implicated in this false case as a policy matter by the then SSP Tanveer Tunio. Per

him, he along with Saeed Ahmed Chandio and Muhabat Chandio were booked in crime No. 8/2022 at P.S Usman Eissani @ Bado and were handed over to different police stations by police. Per him, they all were booked in different Narcotic cases on the same day viz. 11.03.2022. He produced copy of daily "Kawish", Judgment of Crime No. 8/2022 P.S Usman Eissani @ Bado, FIR of crime No. 21/2022 of P.S Madeji, in which, Saeed Ahmed was booked in 9/C case and FIR of Crime No. 3/2022 of P.S Jahan Wah lodged against Muhabat. Finally, he prayed for justice.

7. On conclusion of trial, the learned trial Court found the appellant guilty of the offence charged with and, thus, convicted and sentenced him as stated in para-1 (supra), which necessitated the filing of the listed appeal.

8. The learned counsel for the appellant submits that he would not press this appeal on merits, if the conviction and sentences awarded to the appellant are reduced to the period which he has already undergone contending that he has no previous criminal record in his credit, he is not a dangerous, desperate and hardened criminal as well as not a previous convict and served sufficient punishment and due to his confinement in jail his family members are passing a miserable life and that he undertakes that he will prove himself as a law abiding citizen and will not indulge in any unlawful act in future. He has further pointed out that alleged offence occurred before Amendment 2022, therefore, conviction cannot be awarded in retrospective effect.

9. On the other hand, the learned D.P.G while supporting the impugned judgment has argued that prosecution has successfully proved its case against the appellant beyond reasonable shadow of doubt, therefore, the appeal merits no consideration and is liable to be dismissed. He, however, has not disputed the submission of the learned counsel for the appellant with regard to the conversion of sentence into the period already undergone and extended his no objection to that extent. He has also admitted that Amendment 2022 has no retrospective effect, therefore, conviction under new law is not sustainable.

10. We have heard the learned counsel for the appellant and the learned D.P.G for the State and have gone through the entire material available before us with their able assistance.

11. A keen look of the record reveals that all the prosecution witnesses while appearing before the learned trial Court have supported the case of the prosecution and involved the appellant in the commission of offence leaving no occasion for his false implication due to any ill-will or animosity. We are, thus, in agreement with the submission of learned D.P.G that the prosecution has successfully proved its case against the appellant beyond any reasonable shadow of doubt and the appeal merits no consideration.

12. Insofar as the submission of the appellant with regard to reduction of sentence into the period already undergone on the ground that he is not a dangerous, desperate and hardened criminal as well as not a previous convict is concerned, suffice to observe that the appellant has served out the sentence of 03 years, 06 months and 20 days and also earned remission of 10 years, 06 months and 09 days as on 19.09.2025. As per jail roll, total period he remained in jail including remission period is 14 years and 29 days.

13. Per learned counsel for the appellant, the family of appellant is passing a miserable life due to his confinement in jail. Needless to say that normally, it is very difficult for a family to survive without support of earning member of the family. The position, being so, would be nothing but causing misery to the family of the appellant on account of his act. The peculiar facts and circumstances, so pleaded by the appellant, having gone unchallenged by prosecution may well be taken into consideration for departing from the normal practice. The appellant undertakes that he will prove himself a law abiding citizen and will not indulge in any unlawful act in future. He is a first offender and has no previous criminal history in his credit and only earning member of his family as well as served a sufficient sentence, therefore, it would be appropriate that appellant may be given an opportunity to improve himself as a law abiding citizen.

14. It is, however, pertinent to note that awarding punishment is only meant to have a balance in the society because all the divine laws speak about hereafter. Thus, conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the guilty. The law itself has categorized the offences. There are certain offences, the punishment whereof is with phrase “not less than” while there are other sentences which are with phrase “may extend upto”. Such difference itself is indicative that the Courts have to appreciate certain circumstances before setting quantum of punishment in later case which appear to be dealing with those offences, the guilty whereof may be given an opportunity of “reformation” by awarding less punishment which how low-so-ever, may be, will be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family.

15. The appellant was arrested on 11.03.2022, and the FIR was registered on the same date. After the usual investigation, the challan was submitted by the Investigating Officer, upon which the learned trial court took cognizance of the alleged offence against the appellant. In this case, the charge was framed on 01.10.2022. Subsequently, the learned trial court convicted the appellant under the amended provisions of Section 9 of the Control of Narcotic Substances Act, 1997, as per the Sindh Amendment Act, 2022, dated 05.09.2022, and awarded sentence

accordingly. In our considered view, the amendment introduced on 05.09.2022 does not have retrospective effect. Since the alleged offence occurred prior to the amendment, the conviction and sentence awarded to the appellant under the amended law are not legally sustainable. Therefore, the conviction and sentences are modified in accordance with the original provisions of the Control of Narcotic Substances Act, 1997 (prior to amendment).

16. Keeping in view the above facts and circumstances of the case, we are of the considered view that prosecution has discharged its burden of proving the guilt of the appellant beyond reasonable shadow of doubt, thus the appeal, insofar as it impugns conviction, is dismissed on merits. However, while entertaining the plea that the appellant is sole bread earner of his family, who is passing a miserable life, and the appellant is not a previous convict, we find it a fit case for departure from the normal practice of determining quantum of sentence. Therefore, in our view it would serve both the purposes of deterrence and reformation, if the sentence is modified and reduced to one already undergone.

17. Accordingly, in view of above, the sentence awarded to the appellant through impugned judgment dated 04.08.2023 is modified and reduced to one already undergone, which also include the sentence awarded in lieu of fine. The appellant shall be released forthwith if not required to be detained in connection with any other criminal case.

18. The instant Criminal Jail Appeal is disposed of with above modification.

Judge

Judge