

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Cr. Appeal No.D-04 of 2016

PRESENT

Mr. Justice Naimatullah Phulpoto

Mr. Justice Muhammad Karim Khan Agha.

Date of Hearing: 08.05.2017

Date of Judgment: 08.05.2017

Appellant/accused: *Muhammad Ashraf*
Through Mr. M. Jameel Ahmed,
Advocate

The State: *Through Syed Meeral Shah*
Bukhari, D.P.G. Sindh.

JUDGMENT

NAIMATULLAH PHULPOTO, J:- Appellant Ahmed

Chandio was tried by learned Sessions Judge / Special Court for Control of Narcotic Substance Act 1997, Umerkot, in Special Case No.11 of 2012, for the offence under Section 9 (c) Control of Narcotic Substances Act, 1997. By judgment dated 06.08.2014, the appellant was convicted under Section 9 (c) Control of Narcotic Substances Act, 1997 and sentenced to 08 years R.I. and to pay a fine of Rs.20,000/-, in default thereof appellant was ordered to suffer S.I for 02 months more. Benefit of Section 382 Cr.P.C was extended to the appellant/accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 24.08.2012 S.H.O. of Police Station Kunri on spy information, arrested accused Ashraf Makrani in

presence of the Mashirs and from his possession 1050 grams of Charas were recovered. Out of which it is alleged that 20 grams were sealed separately for sending to the chemical examination, while the remaining Charas was separately sealed at the spot. Mashirnama of arrest and recovery was prepared. Thereafter, F.I.R. against the accused was lodged on behalf of the State vide crime No.148 of 2012 under section 9(c) Control of Narcotic Substance Act 1997.

3. During the investigation, sample was sent to the Chemical Examiner for analysis, statements of the witnesses under section 161 Cr.P.C. were recorded. Positive chemical report was received. After usual investigation challan was submitted against accused under section 9(c) Control of Narcotic Substance Act 1997.

4. Trial Court framed the charge against the accused Muhammad Ashraf under Section 9(c) of CNS Act, 1997 at Ex-4. Accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined P.W-1 P.C. Imtiaz Iqbal at Ex.5, who produced Mashirnama of arrest and recovery at Ex.5-A, P.W. 2 Complainant SIP Maqsood Ahmed at Ex.5 who produced F.I.R. of crime No.148 of 2012 at Ex.5-A, arrival and departure entries at Ex.5-B & 5-C. P.W-3 SIP Mir Muhammad Kaloi at Ex-7, who produced positive report of chemical examiner at Ex.7-B. Thereafter, the prosecution side was closed vide statement at Ex-08.

6. Statement of the accused under Section under Section 342 Cr.P.C. was recorded at Ex-09, in which the accused claimed his false implication in this case and denied the prosecution allegations. Accused did not lead any evidence in defence and declined to examine himself on oath in disproof of prosecution allegations.

7. Learned Trial Court after hearing the accused in person and DPP for State and examining the evidence available on record, convicted and sentenced the accused as stated above. Hence, this appeal.

8. The facts of this case as well as evidence produced before the Trial Court find the elaborate mention in the judgment passed by the Trial Court dated 06.08.2014, therefore, the same may not be reproduced here, so as to avoid duplication and un-necessary repetition.

9. Mr. Muhammad Jameel Ahmed, learned Advocate for the appellant did not press the appeal on merits but argued that he would be satisfied in case appeal is decided in the view of sentencing policy laid down in the case of **GHULAM MURTAZA v. THE STATE** [P.L.D. 2009 Lahore 362] endorsed by Honourable Supreme Court in the case of **AMEER ZEB v. THE STATE** [P.L.D. 2012 Supreme Court 380]. It is argued that accused is a poor person and supporter of a large family.

10. Syed Meeral Shah Bukhari, learned D.P.G. recorded no objection in case appeal is disposed of in the light

of the sentencing policy endorsed by Honourable Supreme Court in the case of **AMEER ZEB v. THE STATE** [P.L.D. 2012 Supreme Court 380].

11. We have carefully heard learned Counsel for the parties, perused the evidence and case-law.

12. From the perusal of the evidence, it transpired that appellant Muhammad Ashraf was arrested on 24.08.2012 at 1730 by SIP Maqsood Ahmed and from his personal search 2 slabs of the Charas weighing 1050 grams were recovered and report of the Chemical Examiner was positive. Mashir P.C. Imtiaz Ali has fully supported the prosecution case.

13. According to the sentencing policy laid down in the case of **GHULAM MURTAZA** (Supra) sentence for recovery of Charas exceeding 01 kilogram up to 02 kilogram has been prescribed as rigorous imprisonment for 04 years, 06 months and fine of Rs.20,000/- or in default S.I. for 05 months. Fresh Jail Roll dated 08.05.2017, submitted by Senior Superintendent Central prison Hyderabad, reflects that accused has served sentence including remissions up to 08.05.2017 04 years 11 months and 28 days and his unexpired portion of the sentence is 03 years 02 months and 02 days.

14. In the view of above, conviction recorded by trial court is maintained. Since the appellant has already served the sentence up till now 08.05.2017 04 years 11 months and 28 days, keeping in view the sentencing policy, we hold that

sentence which appellant has already been undergone would meet the end of the justice. As far as fine of Rs.20000/- is concerned, appellant has already served sentence of 04 years, 11 months and 28 days. Thus the appellant shall be released forthwith if not required in some other case.

The appeal is disposed of in the above terms.

JUDGE

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