

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.D-44 of 2014

Present: **Mr. Justice Abdul Maalik Gaddi**
Mr. Justice Arshad Hussain Khan

Appellant: Asghar alias Munawar.
None present for appellant.

Respondent : The State through Mr. Shahzado Saleem
Nahyoon alongwith SIP Rasheed Ahmed
S.H.O P.S A-Section Nawabshah and ASI
Darban Ali of P.S A-Section, Nawabshah.

Date of Hearing : **30.01.2018**

Date of Judgment : **30.01.2018**

J U D G M E N T

ABDUL MAALIK GADDI, J – Through this appeal the appellant has assailed the legality and propriety of the judgment dated 07.04.2014, passed by the learned Special Judge (Narcotics), Shaheed Benazirabad in Special Narcotic Case No.197 of 2012 (re-The State Versus Asghar alias Munawar) registered under sections 9(c) CNS Act, 1997, in Crime No.99 of 2012 of P.S A-Section, Nawabshah, whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in point No.3 of the impugned judgment. For the sake of convenience, it would be proper to reproduce point No.3 of the impugned judgment, which reads as under:-

“Point No.3

In view of my findings on points No.1 & 2 it is held that the prosecution has successfully established its case against the accused Asghar alias Munawar, therefore, I, find him guilty of offence punishable U/s 9(c) C.N.S.A, 1997. He is remained in jail from 06.5.2017 to 07.4.2014, he is in jail, these are taken as mitigating circumstances for awarding him lesser sentence accordingly the accused is convicted and sentenced to suffer rigorous imprisonment for six years and pay fine of Rs.30,000/- (thirty thousand), in default of payment of fine, he should undergo simple imprisonment for six months more. However, he is extended benefit of section 382-GB Cr.P.C. Inasmuch as his period as UTP from 06.5.2012 upto 07.4.2014, he remained in jail, is ordered to be counted towards the period of his conviction. Accused is produced in custody. He is remanded back to Central Prison Hyderabad to serve out sentence.”

2. Precisely, the facts of the prosecution case are that on 06.5.2012 at 1700 hours, at Taj colony disposal, Nawabshah, present accused Asghar alias Munawar was found possessing eighteen big and little pieces of charas weighing 3050 grams of charas, out of which 250 grams from small pieces was separated for chemical examination, by a police party headed by SIP/SHO Ghulam Awais Mangrio in presence of Mashirs ASI Irshad Ali Vistro and PC Ali Akbar. The substance was sealed at the spot under a mashirnama whereafter the accused and property were brought at police station, where SIP.SHO Ghulam Awais Mangrio lodged present F.I.R. The complainant/I.O investigated the case, examined witnesses U/s 161 Cr.P.C dispatched substance to chemical examiner Sukkur at Rohri, collected report in positive and submitted charge sheet in court of law for offence punishable u/s 9 (c) Control of Narcotic Substances, Act 1997. Hence this appeal.

3. Formal charge at Ex.5 was framed against the accused to which he pleaded not guilty and claimed to be tried vide plea at Ex.6.

4. In support of the case the prosecution has examined PW No.1, complainant SIP/SHO Ghulam Awais Mangrio at Ex.7, who produced mashirnama of arrest and recovery at Ex.7/A, FIR No.99 of 2012 at Ex.7-B, simple attested copy of departure and arrival entries at Ex.7-C, Chemical report at Ex.7.D, PW No.2 ASI Irshad Ali Vistro, mashir at Ex.8, whereafter, side of the prosecution was closed by the learned Incharge DPP for the state at Ex.9.

5. Statement of accused U/s 342 Cr.P.C was recorded at Ex.10, the accused claimed false implicated and denied the prosecution allegation. He stated that on 29.4.2012, he was arrested from Gajrawah Morri alongwith cousin Ramzan by SHO Ghulam Awais Mangrio and was illegally confined at police station A-Section Nawabshah. On 02.5.2012d, his uncle Imam

Bux filed application U/s 491 Cr.P.C whereupon Judicial Magistrate-III conducted raid at police station, but police shifted his custody to somewhere else on that account complainant arranged the charas and foisted upon him. He has not examined himself on oath nor examined any witness in disproof of prosecution allegations.

6. Trial Court after hearing the learned counsel for the parties, by impugned judgment, convicted and sentenced the appellant under section 9(c) of Control of Narcotics Substances Act, 1997, as stated above.

7. Appellant filed instant appeal against the impugned judgment, it was admitted to regular hearing vide orders dated 30.04.2014. During pendency of appeal, application for suspension of sentence was preferred on behalf of the appellant and sentence of the appellant was suspended vide order dated 06.01.2015, subject to furnishing a solvent surety in the sum of Rs.1,00,000/- and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court. It appears that surety was furnished on 09.02.2015 and thereafter appellant was released. After release the appellant remained absent and NBWs were repeatedly issued against him and notice issued to surety. SIP Rasheed Ahmed, S.H.O P.S A-Section Nawabshah has returned the NBWs unexecuted and submits that after receipt of NBWs, time and again he went to given address of the appellant to arrest him but he has become absconder and shifted to unknown place and he is concealing himself to appear before this Court. He further submits that he also made attempts to serve the notice upon his surety namely Imam Bux son of Darya Khan but he also could not be traced out at his given address and his whereabouts are also not known.

8. Learned Deputy Prosecutor Generals Sindh submit that after suspension of sentence, the appellant has absconded away and is deliberately concealing himself at some unknown place.

9. We have heard the learned D.P.Gs and scanned the record. It is proved that the appellant is concealing himself deliberately after suspension of sentence and he has become fugitive from the law. The law is settled by now that a fugitive from law and Courts loses some of normal rights granted by procedural as well as substantive law. The Honourable Supreme Court in the case of IKRAMULLAH AND OTHERS V/S. THE STATE (2015 SCMR 1002) has observed as under:-

“9. A report dated 11.12.2014 has been received from the Superintendent, Central Prison, Bannu informing that Adil Nawab appellant had escaped from the said jail during the night between 14/15.04.2012 and he has become a fugitive from law ever since. The law is settled by now that a fugitive from law loses his right of audience before a Court. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court for seeking resurrection of this appeal.”

10. In view of the report of ASI Rano Khan Mashori, P.S Sakrand, it is clear that the appellant has become a fugitive from the law, as since appellant loses some of normal rights granted by procedural as well as substantive law. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal. Since notice under section 514, Cr.P.C issued against the surety has returned unserved, let the same be repeated. Separate proceedings against surety shall be continued. Adjourned to a date in office for proceedings against surety.

JUDGE

JUDGE