

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

Criminal Appeal No.D-425 of 2010

*Present:-*

*Mr. Justice Muhammad Iqbal Kalhoro.*

*Mr. Justice Khadim Hussain M. Shaikh.*

Date of hearing: 02.11.2017

Date of decision: 02.11.2017

Appellant: Zulfqar Ali through Mr. Shakir Ali Talpur,  
Advocate.

The State Through Syed Meeral Shah Addl.P.G.

**J U D G M E N T**

**MUHAMMAD IQBAL KALHORO,J:-** The appellant was arrested on 10.03.2009 at 2030 hours from Pardehi Peer in Deh Unerpur by police of P.S Budhapur headed by SIP Muhammad Aslam Aqlani and from his possession 40 patties of charas in different shapes weighing 1500 grams were recovered, out of which 100 grams of charas was separated for examination and report by Chemical Analyzer. Such memo of arrest and recovery was prepared at the spot and the appellant was brought at Police Station where F.I.R. of the present case was registered against him. After usual investigation the challan was submitted against the appellant and a formal charge was framed as Ex.2 to which he pleaded not guilty and claimed trial.

2. In the trial, the prosecution in support of its case has examined complainant SIP Aslam Khan (Ex.4) and mashir of the case namely SIP Tariq Muhammad Ameen (Ex.6). These witnesses have produced necessary documents including the F.I.R., mashirnama of arrest and recovery, and report of the chemical analyzer etc. Whereafter, the statement of the appellant under section 342 Cr.P.C (Ex.8) was recorded in which he has denied the allegations and has professed to be innocent. After concluding the evidence and hearing the parties the trial court has convicted the appellant vide impugned judgment under section 245(ii)

Cr.P.C for offence punishable under section 9(c) Control of Narcotics Substances Act, 1997 and sentenced him to suffer seven years' imprisonment with fine of Rs.50,000/-, in default of which to suffer R.I for six months more.

3. We have heard the Counsel for the appellant and learned A.P.G as well as perused the material available on record.

4. We have noted that in the F.I.R and memo of arrest and recovery it is stated that 40 patties of charas in different shapes weighing 1500 grams of charas were recovered from the appellant and out of those patties only 100 grams charas was taken, sealed and subsequently sent to the Chemical Analyzer for examination and report. There is nothing on record to show that how many patties of charas were mixed together to make a sample of 100 grams or from remaining property i.e. patties / cakes any sample was taken by the Investigating Officer for examination and report. In view of this factual position, the case of the accused at the most would be of possessing only 100 grams of charas instead of 1500 grams of charas because the chemical report is in respect of only 100 grams of charas, which does not represent the whole property i.e. 40 patties. About remaining property there is no expert opinion establishing the same as narcotic / charas. This factual position has not been denied by the learned Additional P.G and he has conceded that the case of the appellant would fall under section 9(a) Control of Narcotics Substances Act, 1997 for the recovery of 100 grams of charas. This legal position has not been controverted by learned defense Counsel.

5. The appellant's jail roll dated 27.09.2011 shows that he has remained in jail for one year, one month and 20 days and has earned remissions for three months and 25 days. We, in view of the facts and circumstances, alter the conviction and sentence of the appellant from section 9(c) Control of Narcotics Substances Act, 1997 to one under section 9(a) C.N.S Act, 1997 and reduce his sentence to the period already undergone by him which shall include the period he was to suffer in lieu of fine imposed on him. The appellant is on bail, his bail bond is cancelled and surety discharged.

Appeal in above terms disposed of.

JUDGE

JUDGE

Ali Haider