

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 596 of 2017

PRESENT:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Amjad Ali Sahito

Appellant/State : Anti-Narcotics Force
through Mr. Habib Ahmed, Special
Prosecutor ANF along with Inspector
Mustafa,

Respondent : Muhammad Saeed
through Mr. Khan Zaman, Advocate

Date of hearing : 04.03.2019

Date of order : 04.03.2019

ORDER

AMJAD ALI SAHITO, J : - Through this instant Criminal Appeal, the appellant/ANF has aggrieved and dissatisfied with the impugned order dated 27.09.2017 passed in Special Case No.577 of 2015 arising out of the FIR No.70/2015 under section 6, 9(b) of the Control of Narcotic Substances Act, 1997 registered at ANF PS-II, Karachi, whereby the learned trial Court awarded lesser sentence to the accused/respondent No.1. It has been further prayed by the appellant/ANF that by setting aside the impugned order sentence of the respondent No.1 may be enhanced.

2. Briefly, the facts of the prosecution case are on 22.10.2015, Inspector Naeem Khan along with other ANF officials apprehended respondent/accused Muhammad Saeed from Jinnah International Airport when he has carried Methamphetamine inside the bag weighing 720 grams and traveling from JIAP Karachi to Jeddah, Saudi Arabia. The respondent was arrested and the instant FIR was lodged against him under Section 6,7,8 and 9(b) of Control of

Narcotic Substances Act, 1997 by the complainant on behalf of the State.

3. After completing all the formalities, report under Section 173 Cr.P.C. was submitted before the competent Court of law. During the trial, the respondent/accused admitted his guilt and confessed before the trial Court and on such admission of guilt, he was convicted by the trial Court for an offence under Section 9(b) of the Control of Narcotic Substances Act, 1997 and sentenced to undergo R.I. for ten months and to pay fine of Rs.8,000/- (eight thousand) and in default of the payment of fine, he further undergo Simple Imprisonment for 10 days more. The benefit of Section 382(b) Cr.P.C. was extended to him. Being aggrieved, the State through ANF filed the instant Criminal Appeal for enhancement of sentence of the respondent/accused.

4. The instant Criminal Appeal was presented on 07.12.2017 and on 27.02.2018 learned counsel for the respondent filed Vakalatnama. Since then the respondent is in attendance.

5. It is inter alia contended by the learned Special Prosecutor for ANF that Methamphetamine weighing 720 gms were recovered from the respondent/accused but the learned trial Court has convicted and sentenced him only ten months, which is against the sentencing policy (Ghulam Murtaza case PLD 2009 Lahore 362); that the trial Court has not followed the guideline provided in the case of Ghulam Murtaza and others Vs. the State. Lastly, he prayed for enhancement of sentence.

6. On the other hand, learned counsel for the respondent mainly contended that the appellant was booked in this case on 22.10.2015. Since then he is attending the trial Court as well as this Court and

sufficient punishment has been given to the respondent/accused; that he is previously not convicted in any narcotic case nor he is dangerous or desperate since his acquittal, he is not involved in any narcotic/criminal activities, hence he prayed for dismissal of the instant appeal.

7. We have heard the learned Special Prosecutor for ANF and have gone through the material available on record. In this case, the State/ANF made prayer through the instant appeal regarding enhancement of the sentence of respondent and the learned Special Prosecutor ANF mainly relied upon the case of Ghulam Murtaza and others Vs. the State (PLD 2009 Lahore 362) wherein the guideline/sentencing policy was provided, but in para 10 of the judgment, the learned Lahore High Court observed that **“In a particular case carrying some special feature relevant to the matter of sentence a Court may depart from the norms and standard prescribed above but in all such cases the Court concerned shall be obliged to record its reason for such departure.”**

8. In the instant case, Methamphetamine weighing 720 grams were recovered from the possession of the accused/respondent. It is appropriate to reproduce herewith the definition of Methamphetamine provided in Wikipedia, which reads as under:-

“Methamphetamine (contracted from N-methylamphetamine) is a potent central nervous system (CNS) stimulant that is mainly used as a recreational drug and less commonly as a second-line-treatment for attention deficit hyperactivity disorder and obesity. Methamphetamine was discovered in 1893 and exists as two enantiomers: levo-methamphetamine and dextro-methamphetamine.

Methamphetamine properly refers to a specific chemical, the racemic free base, which is an equal mixture of levomethamphetamine and dextromethamphetamine in their pure amine dextromethamphetamine in their pure amine forms. It is rarely prescribed over concerns involving human

neurotoxicity and potential for recreational use as an aphrodisiac and euphoriant, among other concerns, as well as the availability of safer substitute drugs with comparable treatment efficacy.

Dextromethamphetamine is a much stronger CNS stimulant than levomethamphetamine.”

9. Further, the Methamphetamine is used medically in the form of its crystalline hydrochloride especially to treat attention deficit disorder and obesity and that is often abused illicitly as a stimulant. Hence, nothing has been brought on record that the recovered narcotic is equal to the heroin or other narcotic nor any punishment has been provided in the case of Ghulam Murtaza (cited as supra). In the instant case, the trial Court has recorded reasons for passing a sentence against the respondent that the accused/respondent is a first offender and there is no any previous record available to the prosecution to show that he was previously convicted in any such type of case. The accused/respondent has spoken the truth before the Court and looking at his old age, the learned trial Court has taken a lenient view.

10. The learned trial Court has recorded the reason while passing the impugned order particularly that the accused is old age and a first offender, as such, the learned trial Court reduced the sentence against the respondent/accused and for making the departure from the sentencing policy. In this context, the reliance is placed upon the case of *State through the Deputy Director (Law) Regional Director Anti-Narcotics Force Vs. Mujahid Naseem Lodhi (PLD 2017 SC 671)* wherein the Hon'ble Supreme Court of Pakistan has held that

“the exercise of jurisdiction and discretion in the matter of the respondent's sentence by the trial court and the High Court have not been found by us to be open to any legitimate exception, particularly when the reasons recorded for passing a reduced sentence against the respondent and for making a departure from the above-mentioned sentencing guidelines have been found by

us to be proper in the peculiar circumstances of this case. This petition is, therefore, dismissed and leave to appeal is refused.”

11. In our humble view, the learned trial Court while passing the impugned order has given cogent reasons, which do not require any interference. Resultantly, the instant Criminal Appeal stands dismissed.

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