

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

Criminal Appeal No.D-58 of 2021

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Amjad Ali Sahito.

Date of hearing: 08.12.2021
Date of decision: 08.12.2021
Appellant: Rafique through Mr. Muhammad Aslam Solangi,
advocate.
The State: Through Mr. Shawak Rathore, D.P.G.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J,- Appellant Rafique was arrested from Badin-Matli Road Notkani Chowk Matli on 12.11.2020 at 0700 hours by SIP Javed Ali Sahito of P.S. Matli along with his staff and from his possession 1500 grams of Charas was recovered. Such memo was prepared on spot and consequently the appellant was booked in the present case.

2. During the trial, prosecution examined complainant SIP Javed Ali Sahito, Mashir PC Muhammad Uris, WPC Mashooque Ali incharge Malkhana, HC Muhammad Ashraf, carrier and depositor of case property and I.O / SIP Sarwar Hussain Khoso, who produced all the relevant documents including report of the chemical examiner. The trial Court after recording the statement of appellant under section 342 Cr.P.C. has decided the case vide impugned judgment dated 22.04.2021 convicting the appellant to undergo R.I. for 04 years and 06 months with fine of Rs.20,000/- and in case of default thereof to further undergo S.I. for five (05) months. The appellant has been, however, extended benefit contemplated under section 382-B Cr.P.C. Hence, this appeal.

3. Learned counsel for the appellant after arguing the appeal on merits at some length submits that appellant is first offender and of young age, therefore, if the period of sentence already undergone by him is treated as sentence, he will not press the appeal on merits.

4. Learned Deputy Prosecutor General has recorded his no objection to this proposal.

5. We have considered submissions of parties and perused the material available on record. The prosecution witnesses have supported the case against the appellant on all salient features vis-a-viz his arrest at the spot, recovery of alleged Charas from him, etc. The chemical report is also in positive and it shows that property was received by the Chemical Examiner in a sealed condition which establishes its safe transmission. However, it is an admitted fact that the appellant is the first offender and no case of like nature or otherwise has ever been registered against him. The appellant has remained in jail for 01 year and 17 days and has earned remission of 10 months and 22 days. We are of the view that the punishment appellant has already undergone is sufficient for a first offender like appellant particularly when learned defence counsel has disclosed that the appellant is remorseful of his past and wants to improve himself. Considering these facts as well as no objection extended by the learned Deputy Prosecutor General, we see no impediment legal or otherwise to accede to the request of learned defence counsel for reduction of sentence.

6. Accordingly, this criminal appeal is dismissed on merits, however, sentence of the appellant is reduced to the period already undergone by him which shall include the period which the appellant is required to undergo in case of default of fine. Therefore, the appellant shall be released forthwith if not required in any other custody case.

7. The appeal is disposed of in the terms as stated above.

JUDGE

JUDGE