

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**Spl. Cr. Jail Appeal No. D – 193 of 2016**

*(Atta Muhammad Domki versus The State)*

Present:

**Mr. Muhammad Iqbal Kalhoro, J.**

**Mr. Arbab Ali Hakro, J.**

Date of hearing : **20.12.2023**

Date of decision : **20.12.2023**

Mr. Muhammad Asif Kolachi, Associate of Mr. Imdad Ali Malik,  
Advocate for appellant.

Mr. Mohsin Ali Khan, Special Prosecutor ANF.

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

**Muhammad Iqbal Kalhoro, J.** – This appeal is filed by appellant Atta Muhammad S/o Muhammad Ramzan Domki challenging judgment dated 30.09.2016, passed by learned 3<sup>rd</sup> Additional Sessions Judge/Special Judge (CNS), Sukkur in Special Case No.83 of 2012 (*Re: The State versus Atta Muhammad Domki*), emanating from Crime No.17 of 2012, registered at Police Station ANF Sukkur, whereby he was convicted and sentenced to suffer life imprisonment and to pay fine of Rs.1,00,000/- (*Rupees one lac*), or in default, to undergo simple imprisonment for six (06) months more for offence punishable U/S 9(c) of CNS Act, 1997, however, with a benefit of Section 382-B CrPC.

2. Brief facts of the case are that on 12.11.2012, complainant Inspector Ghulam Abbas of ANF Sukkur received spy information that interprovincial smuggler Rehmatullah, resident of Quetta, would smuggle a huge quantity of *charas* through his representative Atta Muhammad in a Datsun Pickup No. CL-9611 from Balochistan via Shikarpur-Sukkur and Hyderabad. Consequently, the complainant along with his staff left Police Station ANF vide entry No.07 at 1715 hours and reached near Naz Bypass Flayover, Sukkur at about 1800 hours, where they found the aforesaid Datsun coming from Shikarpur side. They stopped it and found a person on driving seat. Complainant in presence of *mashirs* from raiding party enquired about identity of the driver, who disclosed the same as Atta Muhammad S/o Muhammad Ramzan Domki, resident of Chandia Mohallah, Usta Muhammad, District Naseerabad, Balochistan. On further

enquiry, he admitted about presence of narcotics, and produced two plastic sacks of green colour from foot-pad of front seat with *charas* in them in shape of slabs. The quantity of packets was 31 in one sack and 40 in other sack. The packets, when weighed separately, were found 1 kilogram each, total 71 kilograms of *charas*, which were sealed for chemical analysis. A CNIC and cash of Rs.930/- were also secured from the captive. His arrest and recovery of *charas* from him was duly incorporated in a memo by the police, and subsequently, FIR was registered against him.

3. The Challan was then submitted and against a formal charge, appellant pled not guilty, hence, the trial started. The prosecution examined only two witnesses: complainant Inspector Ghulam Abbas as PW-1 and *mashir* ASI Syed Salman as PW-2, who have filed in their evidence all the necessary documents including memo of arrest and recovery, departure entry, FIR, letter for sending samples to chemical examiner and the report of chemical lab. In the statement U/S 342 CrPC, the appellant has denied the allegations against him and examined himself on oath U/S 342(2) CrPC. However, no witness in defence was examined by him. The trial has resulted in conviction and sentence of the appellant, as above, for keeping in possession 71 kilograms of *charas*, which was sent for chemical analysis and the report was received in positive. Hence, this appeal.

4. Today, we have received jail role of the appellant, which reflects that he has remained in jail substantially for 10 years, 11 months & 20 days, has earned remissions of 13 years, 08 months & 26 days, his unexpired portion is only 09 months & 14 days including a sentence for failure to pay fine.

5. Learned Counsel for appellant has submitted that since only a short period of time in the sentence of the appellant has remained, he would not press the appeal on merits, if the amount of fine and the period, in default of which the appellant is to suffer, is reduced, enabling the appellant to pay the fine and get released after serving the entire sentence of life imprisonment. Learned Special Prosecutor ANF has, however, opposed this proposal, but has conceded that this question is essentially the discretion of the Court.

6. The general rule embodied U/S 33 CrPC, prescribing period of imprisonment in default of fine, states that the period of imprisonment

awarded in default of payment of fine shall not exceed one fourth of the period of imprisonment, which the Court is competent to inflict as punishment for the offence, and further that such imprisonment may be in addition to substantive sentence of the imprisonment for the maximum term awarded by the Court. It is clear that only the upper limit of the maximum period of sentence in default of fine has been enforced by the scheme U/S 33 CrPC, and it has been made clear that the Court is not competent to impose a sentence beyond one fourth of maximum punishment of the offence in default of payment of fine, whereas, the minimum limit in the period to be imposed for default in payment of fine has been left to the discretion of the Court. The request made in defense is not to upset findings of the trial Court over merits of the case and maximum period of sentence awarded by the trial Court, but to the extent of fine amount and the period which the appellant has to suffer in default thereof.

7. In view of above, it is within the domain of the Court to impose a particular period upon the convict to suffer in default of fine, which, however, in no case, shall be more than one fourth of the actual imprisonment provided under the offence. Section 9(c) of CNS Act confers jurisdiction over the Court to impose fine, in addition to penalty of death or imprisonment for life or imprisonment for a term which may extend to fourteen years, which may be up to one million rupees. Section 18 of CNS Act prescribes that where no amount of minimum fine has been fixed, the Court shall impose the fine keeping in view the quality and quantity of the narcotic drug etc. involved in the commission of such offence. The CNS Act is clear that it is the Court which has to determine imposition of fine as per facts of the case. Therefore, we see no legal or otherwise any impediment in accepting the request of Counsel for appellant, as noted above. Consequently, the appeal is **dismissed**, and the imprisonment for life awarded by the trial Court to the appellant U/S 9(c) of CNS Act, 1997 is maintained. However, the amount of fine imposed is reduced from Rs.1,00,000/- (*Rupees one lac*) to Rs.40,000/- (*Rupees forty thousand*), and in case of its default, two months simple imprisonment shall be suffered by the appellant in addition to life imprisonment.

The appeal is **disposed of** in the above terms.

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