

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.349 of 2018

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of case.

06th June 2024

Mr. Muhammad Safeer advocate for appellant
Ms. Seema Zaidi, Additional Prosecutor General

Through the captioned criminal appeal, appellant has impugned the judgment dated 21.04.2018 passed by learned Additional Sessions Judge-V Malir Karachi, for offence under Section 23(1)(a) of Sindh Arms Act, 2013, whereby the learned Judge convicted and sentenced the appellant to suffer R.I for 07 years, besides to pay fine of Rs.5000/- and in case of default, he was ordered to suffer 02 months S.I. Appellant was also extended benefit of Section 382(b) Cr.P.C.

2. At the very outset, the learned Counsel for the appellant contends that he would be satisfied and shall not press this appeal on merits, if the sentence awarded to the appellant i.e. R.I for 07 years is reduced to one already undergone by him including the conviction in lieu of fine. He further submits that appellant is poor person and is only surviving bread earner of his family and while taking lenient view, his sentence may be reduced to one already undergone.

3. Learned A.P.G has conceded to the proposition of counsel for the appellant that sentence awarded to the appellant may be reduced to already undergone.

4. *Quantum of punishment* is not only discretion of the Court, which has to be exercised while considering the circumstances of the case, but also is an independent aspect of Criminal Administration of Justice which, too, requires to be done keeping the concept of *punishment* in view.

5. Since, appellant is not pressing appeal on merits but seeking reduction of sentence, therefore, I would examine the legality of such plea. Conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the guilty. There are certain offences, the punishment whereof is with phrase “**not less than**” while there are other which are with phrase “**may extend upto**”. Thus, it is quite obvious and clear that the law itself has categorized the offences in *two* categories regarding quantum of punishment. For one category the Courts are empowered to award *any* sentence while in *other* category the discretion has been limited by use of the phrase ‘**not less than**’. Such difference itself is indicative that the Courts have to appreciate certain circumstances before setting quantum of punishment in *first* category which appear to be dealing with those offences, the guilty whereof may be given an opportunity of “**reformation**” by awarding less punishment which how low-so-ever, may be, will be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family/dependents too. A reformed person will not only be a better brick for society but may also be helpful for future by properly raising his dependents.

6. Since the appellant in main case bearing Crime No.157 of 2015 registered at P.S Ibrahim Hyderi for offences under Sections 147, 148, 149, 302, 324, 34 PPC has been acquitted by way of compromise entered into between the parties, therefore, keeping in view, the phrase “**may extend upto**” and the circumstances explained herein above and also by taking lenient view against appellant as he is only bread earner of his family, hold that the appellant has made out a case where he deserves leniency being proposed by the learned Counsel. Hence, I find it appropriate to reduce the sentence of the appellant from five (07) years to the one already undergone.

7. In view of above, appeal is dismissed and conviction and sentence awarded to the appellant by the learned trial Court vide judgment dated

21.04.2018 is maintained, however, reduce the sentence awarded to appellant to one already undergone by him. With regard to the conviction period in lieu of non-payment of fine of Rs.5000/-, the same shall also include into the sentence already undergone by him. Accordingly, appellant Ghulam Qadir Baloch shall be released forthwith if not required in any other custody case. The appeal is disposed of accordingly.

JUDGE

Sajid PS

