

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

Criminal Jail Appeal No: D- 141 of 2022

Present:

JUSTICE ZAFAR AHMED RAJPUT

JUSTICE AMJAD ALI BOHIO

Date of Hearing: 04.09.2024
Date of Decision: 04.09.2024
Appellant: Muhammad Asif @ Billa through M/s. Ishrat Ali Lohar & Adnan Shakeel Shaikh, Advocate.
Respondent: The State through Shahid Ahmed Shaikh, Additional Prosecutor General Sindh.

J U D G M E N T

ZAFAR AHMED RAJPUT, J- This Criminal Jail Appeal is directed against the judgment dated 09.12.2022, passed in Special Case No.120 of 2022, arising out of Crime No.38 of 2022 registered under section 9 (c) of the Control of Narcotics Substances Act, 1997 ("**the Act of 1997**") at P.S Tando Yousuf, Hyderabad, whereby the Special Judge Control of Narcotics Substances / Model Criminal Trial Court-II/IVth Additional Sessions Judge, Hyderabad convicted the appellant for the said offence and sentenced him to suffer R.I for nine (09) years being lesser punishment provided at serial No. 3(c) in the TABLE of section 9 (1) of the Act of 1997, as amended by the Control of Narcotics Substances (Amendment) Act, 2022 ("**the Act of 2022**"), promulgated on 05th September, 2022, and to pay fine of Rs. 30,000/- in default thereof, he shall undergo S.I for one month more.

2. At the very outset, learned counsel for the appellant contends that he does not press this appeal on merit; however, as the alleged offence of possessing 1030 gram charas was committed before promulgation of the Act of 2022, the appellant cannot be convicted and sentenced under the amended section of 9 (1) of the Act of 1997 retrospectively. He urges that the conviction and sentence should be recorded under section 9 (c) of the Act of 1997 as per the ratio of *Ghulam Murtaza* case reported as PLD 2009 Lahore 362.

3. Learned Addl. P.G while conceding to fact that since the alleged offence was committed by the appellant earlier to the amendment made in the Act of 1997, he cannot be awarded punishment other than one that was prescribed by the Act of 1997 for that offence at the time the offence was committed.

4. Heard and record perused.

5. As per prosecution case, on 15.05.2022, the appellant was arrested by the complainant ASI Khair Muhammad Channa of PS Tando Yousuf, Hyderabad, on being found in possession of 1030 gram charas at backside street of Primary School, Badin. After full-fledged trial, he was convicted and sentenced as mentioned above vide impugned judgment.

6. Before amendment vide Act of 2022, Section 9 (c) of the Act of 1997, prescribed punishment of death or imprisonment of life or imprisonment of term which may extend to 14 years with fine up to one (01) million if the quantity of narcotic drug psychotropic substance exceeds the limits of one (01) kilogram. In the sentencing policy approved

in *Ghulam Murtaza* case (*supra*), which was upheld by the Hon'ble Supreme Court in the case of *Ameer Zaib vs. The State* (PLD 2012 SC 380), the sentence for recovery of charas in connection with the Act of 1997 exceeding 1 kilogram and upto 2 kilograms is prescribed as R.I for 4 years and 6 months and fine of Rs.20,000/- and in default S.I for 5 months.

7. Article 12 of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution") provides protection against retrospective punishment, which reads as under:

12. *Protection against retrospective punishment (1) No law shall authorize the punishment of a person –*

- (a) *for an act or omission that was not punishable by law at the time of the act or omission; or*
- (b) *for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.*

(2) -----

8. It appears that Article 12 of the Constitution lays down that no law shall authorize the punishment of a person for an act or omission which was not punishable by law at the time when act or omission cropped up, or for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offense was committed. In other words, under Article 12 of the Constitution *ex post facto* legislation can neither create new offences nor provide for more punishment for an offence than the one which was available for it when committed. As observed in the case of *Nabi Ahmed and another vs. Home*

Secretary, Government of West Pakistan, Lahore and 4 others (PLD 1969 SC 599), there is no fundamental difference between retrospective and *ex post facto* law. The former expression is used in respect of civil matters and the latter in respect of criminal matters which by their nature are more serious. Ex post legislation means:

- (i) *Every law that makes an action done before the passing of the law, and which was innocent when done, criminal and punishes such action.*
- (ii) *Every law that aggravates a crime or makes it greater than it was when committed.*
- (iii) *Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime when committed.*

9. In the instant case, as per prosecution, the appellant committed the alleged offence on 15.05.2022. The provisions of section 9 of the Act of 1997, *inter alia*, were amended by the Act of 2022 after the date of commission of alleged offence on 05.09.2022. The Trial Court convicted the appellant and sentenced him under the amended section 9 (1) of the Act of 1997, which is being in violation of Article 12(b) of the Constitution required modification.

10. Consequently, the conviction of the appellant is converted from amended section 9 (1) to the section 9 (c) of the Act of 1997, which was enacted at the time the offence was committed, and his sentence is modified, accordingly, by reducing it from R.I for 9 years and fine of Rs.30,000/- to R.I for 4 years and 6 months and fine of Rs.20,000/- and in default S.I for 5 months, as per the ratio/sentencing policy of Ghulam

Murtaza case (*supra*). The appellant shall be entitled to benefit of Section 382-B, Cr. P.C and the remission earned by him as an under trial prisoner.

11. The Criminal Jail Appeal stands disposed of in the above terms.

JUDGE

JUDGE

Hafiz Fahad