

# IN THE HIGH COURT OF SINDH, AT KARACHI

Special CrI. Jail Appeal No.D-131 of 2022

*Before:-*

*Mr. Justice Irshad Ali Shah.*

*Mr. Justice Zulfiqar Ali Sangi*

Appellant: Agha Muhammad son of Shah Muhammad Kakar through Mr. Abdul Baqi Jaan Kakar, advocate.

The State: Mr. Zulfiqar Ali Jatoy, Additional P.G.

Date of hearing: 01-02-2024

Date of judgment: 01-02-2024

## J U D G M E N T

**IRSHAD ALI SHAH, J-** It is alleged that the appellant with rest of the culprits was found in possession/transporting 200 kilograms of charas through Truck, for that instant case was registered. On conclusion of trial, he was convicted u/s 9(c) CNS Act and sentenced to undergo imprisonment for life and to pay fine of Rs.200,000/- and in default whereof to undergo simple imprisonment for six months with benefit of Section 382-B CrPC by learned 1<sup>st</sup>. Additional Sessions Judge/Special Judge (CNS) / MCTC, Khairpur vide judgment dated 16.11.2022 which he has impugned before this Court by preferring instant Jail Appeal.

2. At the very outset, it is stated by learned Addl. PG for the State that the evidence recorded prior to amendment of charge in case relating to Juvenile Offender has been copied and pasted in the present case which is against the spirit of law, which has not only prejudiced the *State* but the appellant in his defence seriously. By contending so, he sought for setting aside of the impugned judgment with direction to learned trial Court to record evidence of the in

present case independently, which is opposed by learned counsel for the appellant by contending that such exercise would serve no purpose.

3. Heard arguments and perused the record.

4. As per Section 353 Cr.P.C evidence is to be taken in presence of accused. The evidence recorded in some other case has been copied and then is pasted in the present case; such omission being incurable in terms of Section 537 Cr.P.C has occasioned in failure of justice and is against the spirit of fair trial which is prescribed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973; consequently, the impugned judgment is set aside with direction to learned trial Court to examine the witnesses in present case independently and then to dispose of the case afresh in accordance with law without being influenced by earlier findings, preferably within 03 months after receipt of copy of this judgment.

5. The instant Criminal Jail Appeal is disposed of accordingly.

Judge

Judge