

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

Cr.Jail.Appeal.No.D- 212 of 2011

Present:
Mr. Justice Salahuddin Panhwar.
Mr. Justice Muhammad Iqbal Kalhoro.

09.07.2014.

Mr. Ashique Hussain D. Solangi, Advocate for appellant.
Mr. Shahid Shaikh, A.P.G. for the State.

J U D G M E N T

Through instant Criminal Jail Appeal, the appellant has assailed the impugned judgment dated 10.06.2011 passed in Special Case No.14/2010 by Special Judge / Sessions Judge, Jamshoro at Kotri.

2. Relevant facts are that complainant alongwith his subordinate staff was on patrolling, while patrolling he received a tip-off that one person is selling intoxicant articles near Dargah Khan Shah. Pursuant to that, they arrested appellant. On personal search of appellant 120 (one hundred twenty) grams charas was recovered wherefrom 10 grams were separated for chemical examination. After lodging FIR usual investigation was carried out and thus appellant was sent up for trial.

3. After full dressed trial and opportunity being provided u/s 342 Cr.P.C, the appellant was convicted for 03 years with fine of Rs.20,000/-. In case of default in payment of fine, further sentence of 03 months. However, benefit of Section 382-B Cr.P.C. was provided.

4. At the very outset, learned counsel for the appellant contends that the impugned judgment is against the sentencing policy provided in the case of Ghulam Murtaza reported in PLD 2009 Lahore 362, subsequently, endorsed by Honourable Apex Court in the case of Ameer Zaib, reported in PLD 2012 Supreme Court 380 and in the case of Fareedullah, reported in 2013 SCMR 302 as maximum sentence for recovery from 100 to 300 grams (charas) is 01 year 03 months but here the learned Special Judge has awarded conviction for 03 years which is completely in negation of policy hence he does not press the appeal on merits but this appeal may be disposed of and sentence may be reduced in view of referred cases.

5. Conversely, learned A.P.G. does not controvert on this legal position and concedes for reduction of sentence.

6. After careful consideration of contention raised by learned counsel for the appellant and perusal of the dicta referred above, it is manifest that in view of Ghulam Murtaza case, sentence with regard to contraband narcotics (Charas) from 100 to 300 grams is provided as 01 year and 03 months with fine of Rs.9000/-. In case of default in payment of fine further sentence is SI for 03 months and 15 days. At this stage, it would be worth to add here that such policy is endorsed by Honourable Apex Court in the cases of Ameer Zaib and Fareedullah (supra). Keeping in view the principle laid down by

Honourable Apex Court, it is pertinent to mention that the impugned judgment is not in accordance with sentencing policy as held in the above cases. Candidly recovery effected from the appellant is one hundred twenty grams (120) charas hence judicial propriety demands that the appellant deserves benefit of sentencing policy as extended in the above judgments. Consequently, while maintaining the impugned judgment dated 10.06.2011, we reduce the sentence of appellant from 03 years to 01 year and 03 months and fine from Rs.20,000/- to Rs.9000/-. In case of default in payment, he shall further undergo SI for 03 months and 15 days.

7. In view of above, the instant appeal is disposed of.

JUDGE

JUDGE

Tufail