

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

Criminal Appeal No.D-158 of 2019.

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Khadim Hussain Tunio.

Date of hearing: 07.04.2020.

Date of decision: 07.04.2020

Appellant: Through Mr. Badal Gahoti, advocate.

The State: Through Mr. Muhammad Ayoob Qassar, Special
Prosecutor, Anti-Narcotics Force.

JUDGMENT

= =

MUHAMMAD IQBALKALHORO, J:-Appellant Huzoor Bux was arrested on 31.07.2017 at 1330 hours by Sub-Inspector Sami Hayat of P.S. ANF Hyderabad along with his staff on a tipoff and from his possession 05 kilograms of Charas was recovered. Such memo was prepared on spot and consequently the appellant was booked in the present case.

2. During the trial, prosecution examined Mashir ASI Rahim Bux, DPC Zulqarnain and SI Sami Hayat Tarar who is complainant and Investigation Officer of the case who produced all the relevant documents including report of the chemical examiner. The trial Court after recording the statement of appellant under section 342 Cr.P.C. has decided the case vide impugned judgment dated 03.09.2019 convicting the appellant to undergo R.I. for seven (07) years and to pay fine of Rs.25,000/- and in case of default thereof to further undergo S.I. for one (01) month. The appellant has been, however, extended benefit contemplated under section 382-B Cr.P.C. Hence, this appeal.

3. Learned counsel for the appellant after arguing the appeal on merits at some length submits that appellant is first offender and is more than 50 years of

age, therefore, if the period of sentence already undergone by him is treated as sentence, he will not press the appeal on merits.

4. Learned Special Prosecutor ANF has recorded objection but has not denied that the appellant is the first offender and has been sufficiently punished.

5. We have considered submissions of parties and perused the material available on record. The prosecution witnesses have supported the case against the appellant on all salient features viz-a-viz his arrest at the spot, recovery of alleged Charas from him, etc. The chemical report is also in positive and it shows that property was received by the Chemical Examiner in a sealed condition which establishes its safe transmission. However, it is an admitted fact that the appellant is the first offender and no case of like nature or otherwise has ever been registered against him. The jail roll received today shows that the appellant has remained in jail for 02 years 04 months and 05 days and has earned remission of 10 months and 03 days which will become three (03) years two (02) months and eight (08) days. We are of the view that the punishment appellant has already undergone is sufficient for a first offender like appellant particularly when learned defence counsel has disclosed that the appellant is remorseful of his past and wants to improve himself. While considering these facts, we see no impediment legal or otherwise to accede to the request of learned defence counsel for reduction of sentence.

6. Accordingly, this criminal appeal is dismissed on merits, however, sentence of the appellant is reduced to the period already undergone by him. The fine amount is also reduced from Rs.25,000/- to Rs.5,000/- and in default thereof he shall suffer R.I. for one week i.e. 07 days more.

7. The appeal is disposed of in the terms as stated above.

JUDGE

JUDGE