

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

Criminal Revision Application No.D-14 of 2021.

**Present**

**Mr. Justice Muhammad Iqbal Kalhoro**

**Mr. Justice Amjad Ali Sahito.**

Date of hearing & decision: 28.09.2022.

Mr. Shawak Rathore Deputy Prosecutor General.

Mr. Muhammad Sachal R. Awan advocate for respondents.

**ORDER**

MUHAMMAD IQBAL KALHORO, J:- Respondents were charged in Crime No.169/2020, P.S. Jamshoro, u/s 9-C of CNS Act 1997 after they were arrested by police of same police station from near Toll Plaza Jamshoro travelling in a Hino Mazda on 31.07.2020 at 1300 hours, from which, on searching, 47 KG of Charas was recovered. They were tried by the Court of 1<sup>st</sup> Additional Sessions Judge/Model Criminal Trial Court Jamshoro against the said charge and vide impugned judgment dated 26.03.2021 have been convicted. However, learned Judge did not sentence them but, instead, by exercising powers u/s 5 of the Probation of Offenders Ordinance 1960, released them on probation for a period of three years under the supervision of Probation Officer against execution of a bond for committing no offence and observing good behavior for such period. The said judgment has been challenged by the State through Prosecutor General Sindh.

We have heard learned Deputy Prosecutor General, learned counsel for respondents and perused the material available on record.

Section 5 of the Ordinance 1960 under which learned trial Court has exercised powers for suspending the sentence of the respondents and releasing them on probation is reproduced herein-below:-

*“5. Power of court to make a probation order in certain cases.— (1) Where a Court by which—*

- (a) *any male person is convicted of an offence not being an offence under Chapter VI or Chapter VII of the Pakistan Penal Code, or under sections 216A, 328, 382, 386, 387, 388, 389, 392, 393, 397, 398, 399, 401, 402, 455, or 458 of that Code, or an offence punishable with death or imprisonment for life, or* (emphasis supplied)
- (b) *any female person is convicted of any offence other than an offence punishable with death,*

*is of opinion that, having regard to the circumstances including the nature of the offence and the character of the offender, it is expedient to do so, the Court may, for reasons to be recorded in writing, instead of sentencing the person at once, make a probation order, that is to say, an order requiring him or her to be under the supervision of a probation officer for such period, not being less than one year or more than three years, as may be specified in the order;*

*Provided that .....*

*(2) .....*

*(3) .....”*

A perusal of above provision clearly shows that trial Court has no authority to release offenders on probation in an offence which carries death penalty or is punishable for imprisonment for life. The offence with which the appellants were charged falls u/s 9-C of CNS Act 1997, is punishable either for death or imprisonment for life, or imprisonment for a term which may extent to 14 years besides fine. The said provision of law is further qualified by a proviso which states that if quantity (of narcotics) exceeds 10 KG, the punishment shall not be less than imprisonment for life. In this case allegedly from possession of respondents 47 KG of charas was recovered, which is more than 10 KG and in such case the Court has no discretion to award any other punishment, except, at least imprisonment for life let alone releasing them on probation.

In this case, after appreciating the evidence, learned trial Court found the respondents guilty of charged offence, yet without appreciating either scheme of Section 9 of CNS Act or Section 5 of the Ordinance 1960, under which it has exercised its authority, suspended sentence of respondents and released them on probation, which in our view, is not sustainable in law. This legal position, learned counsel for respondents, could not controvert and therefore, has agreed to setting-aside of impugned judgment and remanding the case back to learned trial Court for announcement

of judgment afresh after hearing the parties. During pendency of this revision application, this Court had asked learned presiding officer to submit his comments and justify exercise of his authority u/s 5 of the Ordinance 1960, in above circumstances. In response, he has simply stated that on humanitarian basis, he had exercised his authority, which itself reflects that even learned presiding officer was not convinced about his power in law to release the respondents on probation.

Be that as it may, for foregoing discussion, this revision application is allowed, impugned judgment dated 26.03.2021 is set-aside and the case is remanded back to learned District & Sessions Judge Jamshoro with direction to respondents to appear before it on 17.10.2022, who after affording an opportunity of hearing to both the parties shall pronounce judgment afresh and dispose of the case in accordance with law.

JUDGE

JUDGE

Irfan Ali