IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Jail Appeal No. D-16 of 2024

Present:
Mr. Justice Shamsuddin Abbasi
Mr. Justice Jan Ali Junejo

Appellant:	Nadeem son of Shamsuddin Mirjat, through Mr. Muhammad Afzal Jagirani, Advocate
Respondent/State:	through Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh
Date of hearing:	08-04-2025
Date of Judgment:	08-04-2025

JUDGMENT

Jan Ali Junejo, J.—This criminal appeal challenges the judgment dated 30.03.2024 (hereinafter referred to as the *"Impugned Judgment"*) passed by the learned First Additional Sessions Judge/MCTC/Special Judge for CNS, Shikarpur, (hereinafter referred to as the "Trial Court") in Sessions Case No.24/2022, whereby the appellant, Nadeem son of Shamsuddin Mirjat, was convicted for an offence under Section 9(c), of the Control of Narcotic Substances Act (CNSA), 1997, for possession of 7,800 grams of charas. He was sentenced to imprisonment for the period already undergone and a fine of Rs. 10,00,000/-, with a default sentence of 10 years' simple imprisonment. The appellant challenges both the conviction and sentence, primarily contending that the prosecution failed to establish its case beyond reasonable doubt and that the sentence is excessive.

2. The prosecution case, as per FIR No. 48/2021 (P.S. Dakhan), is that on 23.11.2021, ASI Khan Muhammad Abro, along with police personnel, arrested

the appellant near the Sui Gas Line at Dakhan-Madeji Link Road. During the search, 7,800 grams of charas and cash were allegedly recovered from the appellant. The contraband was sealed, and the FIR was lodged. The case proceeded to trial, where charges were framed under Section 9(c) CNSA, 1997. The appellant pleaded not guilty and claimed trial. The prosecution examined three witnesses:

- **PW-1 (ASI Khan Muhammad Abro):** Deposed about the arrest, recovery, and seizure of charas.
- **PW-2 (Inspector Ali Bilawal):** First Investigating Officer (IO) who endorsed the recovery process.
- **PW-3 (SI Kamaluddin):** Second IO who prepared the challan.

3. During trial, the appellant filed an application (Exh-9) admitting guilt, expressing remorse, and pleading for leniency. In his statement under Section 342 Cr.P.C. (Exh-11), he reiterated his admission. On the basis of such admission of the Appellant, he was convicted by the learned trial Court vide Impugned Judgment.

4. Learned counsel for the appellant urged that the imposed fine of Rs. 10,00,000/- is exorbitant and disproportionate to the appellant's indigent financial condition, as he belongs to an underprivileged agrarian family with no stable income or assets. Being the sole breadwinner, his prolonged incarceration for non-payment would irreparably devastate his dependents. Mitigating circumstances including his first-time offender status, unblemished prior record, genuine remorse, and voluntary admission of guilt warrant a compassionate reduction of the fine to a nominal amount. The counsel requested for reduction of the fine amount in view of his arguments.

5. Per contra, the learned APG argued that the appellant's unequivocal admission under Section 342 Cr.P.C. dispenses with the need for further proof. It is further argued that the trial court rightly exercised discretion under Section 382-B Cr.P.C. to sentence the appellant to the period already undergone. However, the learned APG has given consent to the reduction of fine imposed upon the Appellant.

6. Upon meticulous examination of the record and with the able assistance of learned counsel for the appellant as well as the learned Additional Prosecutor General representing the State, we have thoroughly analyzed the entirety of the material available before us. A careful scrutiny of the evidence on record reveals that all the prosecution witnesses, while deposing before the learned Trial Court, have unequivocally supported the prosecution's case and have implicated the appellant in the commission of the offence. There is no indication of any false implication arising from malice, enmity, or ill-will. During the trial, the appellant did not contest the prosecution's case and instead moved an application seeking a lenient view. Therefore, we find ourselves in concurrence with the learned Additional Prosecutor General's submission that the prosecution has successfully established its case beyond any reasonable doubt. Consequently, the present appeal does not warrant interference on merits.

7. Learned counsel for the appellant has contended that the appellant is neither a habitual offender nor a hardened criminal, nor does he has any prior criminal convictions to his discredit. It has further been submitted that the appellant's family is enduring extreme hardship due to his incarceration, as he is the sole breadwinner. It is an undisputed fact that in such circumstances, the deprivation of the family's primary financial support exacerbates their distress. The peculiar facts and circumstances pleaded by the appellant's counsel have not

been rebutted by the prosecution and, therefore, warrant due consideration as a ground for judicial leniency. The appellant has also undertaken to demonstrate good conduct in the future and to refrain from any unlawful activities. Given that he is a first-time offender with no antecedents of criminality and has already undergone substantial incarceration, it would be just and appropriate to afford him an opportunity for rehabilitation and reintegration into society.

8. It is evident that the learned Trial Court exercised judicial leniency by imposing a sentence equivalent to the period already undergone by the appellant prior to the execution of the judgment and further imposed a fine of Rs.1,000,000/-. The quantum of the fine appears to be substantial, and the learned counsel for the appellant has emphasized that the appellant, being an indigent person, lacks the financial capacity to remit such a hefty amount. It has been contended that the non-payment of the fine would result in the appellant's continued incarceration, as failure to satisfy the fine would entail an additional term of imprisonment extending to ten years in default of payment.

9. It is imperative to underscore that the imposition of punishment is fundamentally aimed at maintaining societal equilibrium, as all divine and legal systems contemplate the principles of justice in both temporal and spiritual contexts. Punishment is awarded based on the jurisprudential doctrines of retribution, deterrence, and reformation, ensuring that peace is upheld either by incarcerating the offender or by rehabilitating and reintegrating them into society. The statutory scheme distinguishes between offences where sentencing mandates a minimum punishment by using the phrase “not less than” and those where discretion is vested in the Court with the phrase “may extend up to”. This distinction underscores the necessity for judicial appreciation of mitigating factors while determining the quantum of sentence in cases where the law permits flexibility. In such cases, Courts have the discretion to extend an

opportunity for reformation, ensuring that even a reduced sentence, however minimal, remains legally tenable. The principle of reformation is of paramount importance, as criminal convictions not only penalize the offender but also inflict collateral consequences upon their family.

10. In light of the foregoing observations and the peculiar facts and circumstances of the case, we are of the considered opinion that the prosecution has successfully discharged its burden of proving the appellant's guilt beyond any reasonable doubt. However, considering the mitigating factors, namely, the appellant's financial indigence, the fact that he is the sole breadwinner of his family, and his lack of prior criminal record, we find this to be a fit case warranting departure from the standard sentencing practice. A fair and equitable balance between the principles of deterrence and reformation would be appropriately maintained if the quantum of the fine is proportionately reduced. Precedent also supports such an approach; in analogous circumstances, in the case of ***Faiz Ahmed v. The State (2006 MLD 459),*** a Division Bench of the Lahore High Court not only reduced the sentence of imprisonment but also deemed it just and appropriate to reduce the fine imposed on the appellant.

11. For the reasons outlined here-in-above, the sentence imposed on the appellant through the impugned judgment dated 30.03.2024 is hereby modified. Exercising judicial leniency, the fine amount of Rs.1,000,000/- is reduced to Rs.50,000/-. The appellant shall be released forthwith upon payment of Rs.50,000/-, provided that he is not required in any other criminal case.

12. In view of the above modification, the instant Criminal Jail Appeal stands disposed of accordingly.

JUDGE

JUDGE