

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 251 of 2024

Present Before:

Justice Zafar Ahmed Rajput
Justice Tasneem Sultana

Appellant : Murtaza s/o Masood Tunio
through Mr. Zeeshan Ahmed Qazi,
Advocate.
Respondent : The State, through Ms. Rahat Ehsan,
Deputy Prosecutor General, Sindh
Date of hearing : 24.02.2025
Date of order : 24.02.2025

J U D G M E N T

TASNEEM SULTANA, J.

This Criminal Appeal is directed against the judgment, dated 29.02.2024, passed by the learned IVth Additional Sessions Judge/ Special Judge (CNS), Malir Karachi, in Sessions Case No. 95 of 2024, whereby the appellant was convicted under Sections 6, 9(1), 6(b) of the Control of Narcotic Substance Act, 1997 (the "Act") and sentenced to suffer Rigorous Imprisonment for 10 (ten) years and to pay fine of Rs. 1,25,000/-, along with co-accused Rashid Ali. The benefit of Section 382-B of Criminal Procedure Code, 1898 (Cr. P.C.) was, however, extended to him.

2. Brief facts leading to file the instant appeal are that, on 28.06.2023 at 0100 hours, a police party headed by SIP Qamar Abbas arrested the appellant and co-accused Rashid Ali at Shadi Khan Chowk, Bhittai Abad, Malir Cantt, Karachi on being found each of them in possession of heroin 200/200 grams. Consequent to above, aforementioned FIR was lodged.

3. After completion of investigation, police submitted the charge sheet before the Trial Court. The necessary documents were provided to appellant and co-accused under Section 265-C, Cr. P.C; thereafter, on 02.02.2024, the

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Trial Court framed the charge against them, to which they pleaded not guilty and claimed to be tried. On 19.02.2024, the case was fixed for evidence of prosecution witnesses, when the appellant and co-accused filed separate applications for pleading their guilt. The Trial court issued them show cause notices under section 243/265-E, Cr. P.C; In reply thereof, they stated that they were poor persons and did not have any source of income to support their families and facing hardship; they prayed for a lenient view. Thereafter, the Trial Court recorded their statements under Section 342, Cr. P.C, wherein they admitted their guilt and prayed for leniency. Trial Court then convicted and sentenced them in aforesaid terms vide impugned judgment; however, only the appellant preferred the instant appeal.

4. The learned counsel for the appellant at the very outset has contended that the Trial Court has violated the mandatory provisions of Cr. P.C; that once the charge was denied and the accused claimed trial, there is no occasion for the trial Court to accept the application for admitting the guilt; hence, the impugned judgment is not sustainable in law. In support of his contentions, he has relied on the cases of *Muhammad Sharif v. The State* (2020 MLD 1390); *Farrukh Shahzad v. The State* (2012 P Cr. L J 352); *Muhammad Imran v. The State* (2009 P Cr. L J 256); *The State/ANF v. Hazar Khan & 2 others* (2020 P Cr. L J 1035) and *Dilawar Khan v. The State* (PLD 2024 Baluchistan 70).

5. Conversely, learned D.P.G., has raised objection on maintainability of the instant appeal and stated that an appeal against conviction based on pleading of guilt is not maintainable under section 412, Cr. P.C.

6. Heard, record perused.

7. As regards the objection of the learned D.P.G. regarding maintainability of the instant appeal, it may be observed that there is no cavil to the

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proposition that under Section 412, Cr. P.C. conviction based on plea of guilt of an accused is not appealable except as to the extent or legality of the sentence. However, the instant appeal is not against the order passed under section 265-E (2), Cr. P.C. but against the judgment passed under section 265-H(ii), Cr. P.C. Hence, the instant appeal is maintainable in law.

8. Reverting to the case in hand, it reflects from perusal of the record that, on 02.02.2024, at the time of framing of the charge, the appellant pleaded not guilty and the Trial Court adopted the procedure as provided under section 265-F, Cr. P.C. by fixing the case on 19.02.2024 for recording evidence of prosecution witnesses, on which date, the appellant made offer for admission of his guilt by filing an application. The Trial Court accepted the application; closed the prosecution side for evidence without examining a single P.W. and recorded the statement of appellant under section 342, Cr. P.C. The alleged procedure adopted by the Trial Court is totally alien to law of criminal procedure governing the trial. It may be observed that once an accused pleads not guilty at the time of framing of charge, and claims trial, there is no discretion left with trial Court to entertain second plea of accused and then convict him on the basis of such admission without recording prosecution evidence. After framing a formal charge and denial of accused under section 265-E, Cr. P.C, the provision of section 265-F (ibid) shall ipso-facto become operative. Hence, in the case in hand, the Trial Court had to proceed under section 265-F (ibid) by recording the evidence of P.Ws and then statement of accused under section 342, Cr. P.C. In case of *Furrukh Shehzad v. The State* (2012 P. Cr. L.J. 352), It has been held that: -

“Bare perusal of provisions of sections 242, 243 and 244 Cr. P.C. clearly depict that once a formal charge is framed and put to accused, which is denied by him under section 242, Cr. P.C.




Provisions of section 243, Cr. P.C shall ipso facto become inoperative and Court has to proceed under section 244, Cr. P.C by recording prosecution evidence as well as that of the accused, if lead in defence. Therefore, confessional statement made after 2/3 dates of hearing when at the time of framing of charge the appellant in explicit terms had denied the same, is of no legal effect in presence of sections 244, 265-D, 265-E and 265-F, Cr. P.C.

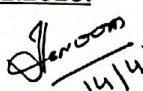
The same question of law has been adjudicated in case of *Khizar Hayyat @ Khizru v. The State* (2001 MLD 1145).

"The consequences of the aforesaid authority is that once charge framed the accused pleads not guilty, thereafter, the trial commenced in its normal manner and admission of guilt recorded subsequent to plea of not guilty at the time of framing of the charge leaves no discretion with court but to record evidence."

9. In view of what has been discussed above, the instant appeal is allowed by setting aside the conviction and sentence recorded vide impugned judgment dated 29.02.2024 to the extent of appellant being not sustainable in the eyes of the law and the case is remanded to the Trial Court to decide the same after recording the evidence in accordance with law.

10. These are the reasons of our short order dated 24.02.2025.


JUDGE


JUDGE 14/4/2025

Faheem/PA