

IN THE HIGH COURT OF SINDH, KARACHI
Crl. Appeal Nos. 164 & 166 of 2024

Present:

Justice Zafar Ahmed Rajput.

Justice Tasneem Sultana.

Appellant in Crl. Appeal: Muhammad Akber @ Giran s/o Haji Jamal,
No. 164/2024 through Mr. Mehmood Khan Kakar,
Advocate

Appellant in Crl. Appeal: Abdul Rehman @ Ismail s/o Abdullah,
No. 166/2024 through Mr. Naseebullah Achakzai,
Advocate

Respondent : The State, through Mr. Abrar Ali Khichi,
Additional Prosecutor General, Sindh

Date of hearing : 19.05.2025

Date of order : 19.05.2025

ORDER

ZAFAR AHMED RAJPUT, J: - Both the captioned Crl. Appeals are directed against the Judgment, dated 15.02.2024, passed in Special Case No. 574 of 2022, arising out of Crime/F.I.R. No. 110 of 2022, registered at P.S. Gulberg, District Central, Karachi under section 6/9 (c) of the Control of Narcotics Substances Act, 1997 ("**Act 1997**"), whereby the Court of Special Judge, Narcotics/Addl. Sessions Judge-VII/M.C.T.C-2, Karachi-Central ("**Trial Court**") convicted the appellants Muhammad Akber @ Giran s/o Haji Jamal and Abdul Rehman @ Ismail s/o Abdullah for aforesaid offence and sentenced them to suffer R.I. for 14 years and to pay Rs.300,000/-, each, and in default thereof, they should suffer S.I. for eight (8) month more.

2. As per prosecution case, on 20.03.2022 at 0030 hrs., a police party headed by SIP Saleem Siddiqui of P.S. Gulberg, Karachi-Central, on a tip

off, stopped a Hino truck bearing registration No. TKV-504 near APWA College Karimabad, F.B. Area, Karachi-Central and recovered from back side of the driver seat a polythene bag containing eight packets of charas, total weight 9630 grams; for that appellants Muhammad Akber (*driver*) and Abdul Rehan (*seated on front side*) were booked in the aforesaid Crime/F.I.R. After a full-fledged trial, they were convicted and sentenced by the Trial Court vide impugned Judgment.

3. At the very outset, learned counsel for the appellants contend that under instructions they do not press these Appeals on merit, however, they seek reduction of sentence awarded to appellants on the ground that they are not previously convicted of any offence and they are the only bread earners for their families.

4. Learned Addl. P.G. while conceding to the fact that there is no criminal record of the appellants, does not oppose the proposition of learned counsel for the appellants.

5. We have heard the learned counsel for the appellants as well as learned Addl. P. G. and perused the material available on the record with their assistance.

6. It may be observed that by virtue of Control of Narcotics Substance (Sindh Amendment) Act, 2021 ("**Act of 2021**") (*promulgated on 4th February 2021*), inter alia, clause (s) of section 2 and 9 of the Act of 1997 have been amended, as under: -

2. *In the Control of Narcotics Substances Act, 1997, herein after referred to as the said Act, in its application to the Province of Sindh, in section 2 –*
(i).....

(ii).....

(iii).....

(iv) for clause (s), the following shall be substituted: -

“(s) “narcotic drug” means-

(i) **Category (i)** coca leaf, cannabis and poppy straw;

(ii) **Category (ii)** cocaine, heroin, methamphetamine, midomafetamine and all manufactured drugs or any other substance, which Government of Sindh may, by notification in the official gazette, declare to be narcotic drug for the purpose of this Act;

3.

4. In the said Act, for section 9, the following shall be substituted: -

“9. **Punishment for contravention of section 6, 6-A, 7 and 8.** Whoever contravenes the provisions of sections 6, 6-A, 7 and 8 shall be punished with--

(a) imprisonment which may extend to three years but shall not be less than six months, or with fine upto rupees one lac but shall not be less than rupees fifty thousand, or with both if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** is one hundred gram or less;

(b) imprisonment which may extend to seven years but shall not be less than three years and shall also be liable to fine upto rupees five lac but shall not be less than rupees one lac if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** exceeds one hundred grams but does not exceed one kilogram, or if the quantity of narcotic drug **category (ii)** is fifty gram or less;

(c) death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees, if the quantity of narcotic drug **category (i) and (ii)**, psychotropic substance or controlled substance exceeds the limit specified in clause (b):

Provided that if the quantity of narcotic drug category (i), psychotropic substance or controlled substance exceeds ten kilograms or narcotic drug category (ii), exceeds two kilograms, the punishment shall not be less than imprisonment for life.”

(Emphasis supplied)

7. In the instant case, it is an admitted fact that the alleged offence was committed by the appellants on 20.03.2022, when the Ac of 2021 was enforced. The alleged recovered quantity of narcotic drug/charas is less

than two kilograms for that the lesser punishment provided in the Statute i.e. Act of 2021 is "*may extend to fourteen years*".

8. We are conscious of the fact that the punishment for any offence committed by a person is awarded for retribution, deterrence and in order to strengthen the society by reforming the guilty. The law itself has categorized the offences. There are certain offences, which carry punishment with phrase "*not less than*" while there are also offences, which carry punishment with phrase "*may extend up-to*" or "*may extend to*". Such difference itself is indicative that the Courts have to appreciate certain circumstances before awarding quantum of punishment in later case which appear to be dealing with those offences; the guilty thereof may be given an opportunity of reformation by awarding less punishment.

9. Since the appellants are not previously convicted of any offence, we are inclined to give them an opportunity for reformation. We, therefore, deem it appropriate to reduce their sentence awarded by the Trial Court i.e. R.I. for fourteen years to ten years and six months; however, the fine amount i.e. Rs.300,000/-and sentence in default thereof i.e. S.I. for eight (8) months shall remain intact. The appellants shall be entitled for the benefit of section 382-B, Cr.P.C.

10. Both the captioned Appeals stand dismissed with above modification in sentence.

JUDGE

JUDGE