

## IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Zulfiqar Ali Sangi*

CRIMINAL JAIL APPEAL NO.682 OF 2021.

Appellant	Muhammad Ayoub S/o Muhammad Yousuf through Jehanzaib Khan, Advocate.
Respondent	The State through Mr. Haib Ahmed, Spl. Prosecutor ANF.
Date of Judgment	31.10.2022

### JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Muhammad Ayoub s/o Muhammad Yousuf Khan was tried by learned Judge, Special Court-II (CNS), Karachi in Spl. Case No.1264 of 2018 in respect of FIR No.14 of 2018 u/s. 6/9(c) r/w section 14,15 of CNS Act, 1997 registered at PS ANF Clifton, Karachi and vide judgment dated 30.11.2021 was convicted u/s 6,9 CNS Act, 1997 and sentenced to undergo R.I. for 12 years with fine of Rs.100,000/- and in case of default in payment of fine, he was to suffer imprisonment for one year more. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. Brief facts of the prosecution case are that on 16.07.2018 at about 0945 hours, at Mawach Curve Hub River Road, near PSO Petrol Pump, Saeedabad, Karachi, complainant SI Zaid Ali Joya of P.S. ANF Clifton Karachi alongwith ANF officials arrested appellant Muhammad Ayoub and recovered a white nylon sack from his possession containing 07 packets of charas in shape of roll and 03 packets of charas wrapped in yellow solution tape, total weighing 10 Kgs charas and during preliminary investigation he disclosed that recovered charas was given him by absconding accused Muhammad Osman s/o Zer Bahadur Khan for delivering to accused Muhammad Riaz s/o Abdul Sattar at Mawachh Goth. After completing requisite formalities, arrested accused and recovered charas were brought at P.S. and FIR was lodged.

3. After usual investigation, case was challaned. Charge against the appellant was framed to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 03 witnesses and exhibited various documents and other items. The appellant in his 342 Cr.P.C statement denied the allegations leveled against him. The appellant did not give evidence on oath. However, examined one D.W in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out above in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 30.11.2021 passed by the trial court therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions of the appellant does not press the appeal on merits provided that he was given some reasonable reduction in the sentence based on the following mitigating circumstances:-

- a) That the appellant is a young man having a large family to support;
- b) That appellant is first offender and capable of reformation.
- c) By not contesting the case on merits the appellant has admitted his guilt and shown genuine remorse.
- d) That the appellant has served out a substantial part of his sentence.

8. Based on these mitigating circumstances, learned Additional Prosecutor General has no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and note that the appellant was arrested on the spot and caught red handed in possession of

10 Kilo grams charas. The arresting officer made recovery, has no enmity with the appellant and had no reason to falsely implicate him in this case. We find the evidence of the P.Ws to be trustworthy and confidence inspiring and believe the same. The recovered narcotics was sent to the Chemical Examiner who has examined the same and issued positive chemical report as such we find that prosecution has proved its case against the appellant beyond any shadow of doubt and maintain his conviction.

10. With regard to sentence awarded to the appellant, taking into account the mitigating circumstances mentioned above particularly the fact that the appellant has served out substantial portion of his sentence and the no objection given by the learned Additional Prosecutor General, we hereby reduce the sentence of the appellant Muhammad Ayoub to one already undergone in custody and waive his fine. The appellant shall be released forthwith unless he is wanted in any other custody case.

11. This appeal stands disposed of in the above terms.