

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Jail Appeal No. 641 of 2024

Present:

Justice Zafar Ahmed Rajput.

Justice Tasneem Sultana.

Appellant : Noman s/o Abdul Razzak, through
Mr. Muhammad Riaz Advocate.

Respondent : The State, through Mr. Abrar Ali Khichi
Addl. Prosecutor General (**Addl. PG**), Sindh

Date of hearing : 29.05.2025
Date of order : 29.05.2025

ORDER

ZAFAR AHMED RAJPUT, J: - This Crl. Jail Appeal is directed against the Judgment, dated 08.12.2023, passed by the Vth Addl. Sessions Judge/ Special Court (CNS), Karachi-Central ("**Trial Court**") in Special Case No. 1031 of 2023, arisen out of FIR. No. 533 of 2023, registered at P.S. Sir Syed, Karachi under section 6/9 (1) 3 (c) of the Control of Narcotic Substances (Amendment) Act, 2022 ("**Federal Amendment Act, 2022**"), whereby the appellant has been convicted for the said offence for possessing narcotic drug viz. 1150 grams charas and sentenced to suffer R.I for nine (09) years and to pay a fine of Rs. 80,000/- or, in default thereof, he should undergo S.I. for one (01) month more. The benefit of section 382-B, Cr.P.C has, however, been extended to him.

2. As per prosecution case, on 10.08.2023, a police party headed by SIP Ali Nawaz Patafi of PS Sir Syed, Karachi during course of patrolling along with subordinate staff, on a tip-off that a person was present with charas at Block Thala Service, near Iqra University, Sector 7/D-3, North Karachi, reached the pointed place at 0815 hrs. and apprehended the appellant on

being recovered from his possession 1150 grams charas; for that, he was booked in the aforesaid F.I.R. After usual investigation, police submitted the charge-sheet against the appellant. The Trial Court framed the charge against him, to which he pleaded not guilty, which followed a full-fledged trial, conviction and sentence of the appellant, as mentioned above, vide impugned judgment.

3. Learned counsel for the appellant contends that the appellant was booked, charged and convicted under section 6/9 (1) 3 (c) of the Federal Amendment Act, 2022, which was not applicable on him, as the appellant was not arrested by any Federal Agency to attract the said provision, but by the members of Provincial Police and on the day of alleged offence, i.e. 10.08.2023, Control of Narcotics Substance (Sindh Amendment) Act, 2021 (**"Sindh Amendment Act, 2021"**) was in the field, hence, the appellant should have been booked and tried under section 9 (c) of the Sindh Amendment Act, 2021. He also contends that, under instructions, he does not press this Appeal on merit; however, he seeks alteration of appellant's conviction and reduction of his sentence on the grounds that it is a border line case and the appellant is not previously convicted of any offence.

4. Learned Addl. PG, concedes to the contention of learned counsel for the appellant that the provisions of Sindh Amendment Act, 2021 attracted to the alleged offence and that there is no criminal record of the appellant.

5. We have heard the learned counsel for the appellant as well as learned Addl. PG and scanned the material available on record with their assistance.

6. It may be observed that the Provincial Assembly of Sindh, on 4th February, 2021 promulgated Sindh Amendment Act, 2021 whereby, *inter alia*, clause (s) of section 2 and 9 of the Control of Narcotic Substances Act, 1997 (“**Act of 1997**”) were 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. Subsequently, on 5th September, 2022 *Majlis-e-Shoora* (Parliament) promulgated Federal Amendment Act, 2022 thereby, *inter alia*, amended section 9 of the Act of 1997 and provided punishments for contravention of sections 6, 7, and 8 of the Act of 1997 regarding narcotic drugs, psychotropic substances and controlled substances as given in the column (3) of the TABLES with regard to offences committed as mentioned in column (2) thereof.

8. It may be observed that under Article 142(b) of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**") both *Majlis-e-Shoora* (Parliament) and Provincial Assembly have power to make laws with respect to criminal law, criminal procedure and evidence. While under provision of Article 143 of the Constitution, laws enacted by Parliament have been given over-riding and superimposing effect over laws enacted by a Provincial Assembly of any of the provinces, and in case of any clash or repugnancy between the two, the laws enacted by the Parliament prevails.

9. We are of the view that Sindh Amendment Act, 2021 and Federal Amendment Act, 2022 are not *quae inter dissident*. Sindh Amendment Act, 2021 was made applicable in Province of Sindh meaning thereby Provincial Police of Sindh was empowered to take cognizance of any offence under the Act of 1997 while, under Federal Amendment Act, 2022, the Federal Agencies i.e. Anti Narcotic Force (ANF), Customs, etc. are

empowered to take cognizance of the offence under the Act of 1997 throughout Pakistan including Province of Sindh. Moreover, Federal Amendment Act, 2022 has not repealed the Sindh Amendment Act, 2021.

10. We are, therefore, of the view that in the instant case, FIR lodged under Sections 6-9 (1) column 3 (c) of the Federal Amendment Act, 2022, which was not in accordance with law. As when the alleged offence was committed i.e. on 10.08.2023, the Sindh Amendment Act, 2021 was enforced in the Province of Sindh. The instant case has not been lodged by any Federal Agency, i.e. A.N.F, Customs, etc. Hence, the provisions of Act of 1997, as amended vide Federal Amendment Act, 2022, do not attract to the case in hand, but the provisions of section 9 (c) of the Sindh Amendment Act, 2021, which provides sentence for contravention of Section 6 of the Act (ibid) *death or imprisonment for life 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 exceeds the limit of one kilogram to ten kilograms*. Hence, we modify the conviction of the appellant recorded by the Trial Court under sections 6-9 (1) column 3 (c) of the Federal Amendment Act, 2022 and convert it in section 9 (c) of the Sindh Amendment Act, 2021.

11. 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.

12. In the case of Niaz-ud-Din v. The State (2007 SCMR 206) the Apex Court in a case of recovery of 5-kilogram heroin reduced sentence of imprisonment from 10 to 6 years considering that the accused was not previously convicted and there was no instance of his involvement in drug trafficking, hence, he was given a chance in his life to rehabilitate himself. In the instant case, since the appellant is neither previously convicted of any offence nor is there any instance of his involvement in narcotics cases, we are inclined to give him an opportunity for reformation. We, therefore, deem it appropriate to reduce his sentence awarded by the Trial Court i.e. R.I for nine (09) years to R.I. for four (04) years; however, the fine amount i.e. Rs.80,000/-and sentence in default thereof i.e. S.I. for one (01) month shall remain intact. He shall be entitled to the benefit of section 382-B, Cr.P.C.

13. The instant CrI. Jail Appeal stands dismissed with above alteration in conviction and modification in sentence.

JUDGE

JUDGE

Athar Zai