

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Appeal No. 538 of 2024

Before:

Justice Zafar Ahmed Rajput.

Justice Tasneem Sultana.

Appellant : Babar s/o Bashir, through
Mr. Habib-ur-Rehman Jiskani, Advocate

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

M/s. Hakim Ali Shaikh & Saghir Ahmed
Abbasi, Addl. Advocates General, Sindh

M/s. Habib Ahmed, Special Prosecutor ANF
& Raj Ali Wahid, Advocate as *Amici Curiae*.

Date of hearing : 29.05.2025
Date of order : 29.05.2025

ORDER

ZAFAR AHMED RAJPUT, J: - This Crl. Appeal is directed against the Judgment, dated 23.07.2024, passed in Sessions Case No. 2600 of 2023, arisen out of FIR No. 410 of 2023, registered at P.S. Ibrahim Hyderi, Karachi under sections 6/9 (1) 3 (c) of the Control of Narcotic Substances (Amendment) Act, 2022 ("**Federal Amendment Act, 2022**"), whereby the IVth Addl. Sessions Judge/Special Judge (CNS) Malir, Karachi ("**Trial Court**") convicted the appellant for the said offence and sentenced him to suffer R.I for fourteen (14) years and to pay a fine of Rs. 4,00,000/- or, in default thereof, he should undergo S.I. for three (03) months more. The benefit of section 382-B, Cr. P.C. has, however, been extended to him.

2. It is alleged that, on 27.09.2023 at 1630 hrs., a police party headed by SIP Imam Bux of P.S. Ibrahim Hyderi, Karachi arrested the appellant from a street, near Masco Company, Water Pump, Ibrahim Hyderi, Karachi, for possessing 1030 grams charas (*cannabis*); for that, he was booked in the

aforesaid FIR. 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. On 24.03.2025, this Court directed to learned Acting Advocate General, Sindh to assist the Court on the point as to whether after enforcement of the Control of Narcotics Substance (Sindh Amendment) Act, 2021 ("**Sindh Amendment Act, 2021**"), narcotics cases should be registered by the local police and tried by the courts concerned under the said Act or Federal Amendment Act, 2022; thereafter, on 17.04.2025, this Court appointed M/s. Habib Ahmed, Special Prosecutor ANF and Raj Ali Wahid, Advocate as *Amici Curiae* to assist the Court on the said point.

4. Mr. Habib-ur-Rehman Jiskani, learned counsel for the appellant, has contended 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 Sindh Police and on the day of alleged offence, i.e. 27.09.2023, Sindh Amendment Act, 2021 was in the field, hence, the appellant should have been charged and tried under section 9 (c) of the said Act. He has also contended 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 the appellant is not previously convicted of any offence and the gross weight of the charas (*cannabis*) allegedly recovered from the appellant was 1030 grams while according to the chemical examiner's report, its net weight

was 1018 grams; hence, the case of appellant is on borderline as 18/30 grams quantity marginally exceeds the maximum limit of one kilo gram, which is required to be considered a case under section 9 (b) of the Sindh Amendment Act, 2021, which carries lesser punishment of three years.

5. Mr. Abrar Ali Khichi, learned Addl. PG, has conceded 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.

6. Mr. Hakim Ali Shaikh, learned Addl. AG, Sindh and Mr. Habib Ahmed, Special Prosecutor ANF while referring Article 142 (b) of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**") have maintained that after promulgation of Sindh Amendment Act, 2021, the Sindh Police should have taken cognizance of the alleged offence against the appellant under the Sindh Amendment Act, 2021, so also, he should have been tried by the Trial Court under the said Act. While Mr. Raj Ali Wahid, Advocate by relying on Article 143 of the Constitution has argued that where there is inconsistency between a Provincial and Federal law, the latter shall prevail; hence, the Sindh Police rightly registered the Crime and the Trial Court tried the appellant competently under the Federal Amendment Act, 2022.

7. We have heard the learned counsel for the appellant, learned Addl. PG, Sindh, learned Addl. AG, Sindh, learned *Amici Curiae* and perused the material available on record with their assistance.

8. 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 section 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;

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**)

9. Subsequently, on 5th September, 2022 Majlis-e-Shoora (Parliament) promulgated Federal Amendment Act, 2022 thereby, *inter alia*, it 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.

10. It may be observed that under Article 142(b) of the 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.

11. We are of the view that in the case in hand, 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.

12. We are therefore of the view that in the instant case, the FIR was 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 27.09.2023, 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, Pakistan 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.

13. 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. It is well established that punishment for an offence serves not only as a means of retribution but also as a tool for deterrence and a mechanism to strengthen the fabric of society through the rehabilitation of the offender. The law itself classifies offences distinctly. In some instances, punishment is mandated with the expression "*not less than,*" denoting a fixed minimum, while in others, the law provides flexibility through terms like "*may extend to*" or "*may extend up to.*" This legislative contrast signifies that, in the latter category, the courts are expected to exercise judicial discretion by taking into account the specific facts and circumstances of the case. These are the kinds of offences where a

lesser punishment may serve the ends of justice by allowing room for the offender's moral and social reformation.

14. 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 fourteen (14) years to R.I. for four (04) years; however, the fine amount i.e. Rs.400,000/-and sentence in default thereof i.e. S.I. for three (03) months shall remain intact. He shall be entitled to the benefit of section 382-B, Cr.P.C.

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

JUDGE

JUDGE

Athar Zai