Form No.HCJD/C-121

IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH, BAHAWALPUR. (JUDICIAL DEPARTMENT)

Criminal Appeal No.482/2022

The State Versus Muhammad Altaf

S/No. of order/Proceedings	Date of order/Proceedings	Order with signature of Judge, and that of parties or counsel, where necessary.

14.11.2023. Ch. Asghar Ali Gill, Deputy Prosecutor General.

Through instant appeal under Section 48 of the Control of Narcotic Substances Act 1997, the State has assailed the vires of judgment dated 16.06.2022, passed by learned Additional Sessions Judge/MCTC, Ahmadpur East, whereby the respondent/accused was convicted under section 9 (c) of the Act ibid, in case FIR No. 96/21 dated 14.03.2021, Police station Saddar Ahmadpur East, District Bahawalpur and sentenced to rigorous imprisonment for fifteen months with fine of Rs.10,000/-, in case of default to further undergo simple imprisonment for ten days; benefit of section 382-B Cr.P.C. was extended.

2. We have observed that accused though initially did not plead guilty to the charge, yet admitted his guilt when the charge was amended; upon which learned trial Court has convicted him as forecited. Learned Deputy Prosecutor General contends that two illegalities in the impugned judgment have necessitated the filing of this appeal which according to him are; (i) recording the plea of guilt at the stage when case was fixed for prosecution evidence, whereas law does not permit such course because once the accused denies the charge under section 265-E Cr.P.C. (the Code), he cannot be allowed to confess his guilt until his statement under section 342 of the Code is recorded; (ii) the range of sentence for recovery of 2300 grams charas which in no case commensurate to sentencing policy enunciated through case reported as *"GHULAM MURTAZA and another Versus THE STATE"* **(PLD 2009 Lahore 362)**

3. Heard; record perused.

4. The alleged irregularities/illegalities in the judgment are necessary to be addressed for decision of this appeal, therefore, first we see the permissibility of recording the plea of guilt at intermediatory stage during the trial. Two views with their respective force are breathing in the jurisprudence or literature based on legal precedents. According to first view it is mandatory for the Court to follow all the processes in the trial once accused denies the charge because there is no intermediatory stage to record confession or second plea of accused which could only be done when the statement of accused is recorded under section 342 of the Code; of course, second view is otherwise.

5. **First View**

Once the accused denies the charge, there is no intermediatory stage to admit his guilt during the trial. Following are judgments in support of the view;

> "Lalji Ram vs. Corporation of Calcutta" **(AIR 1928 Cal 243); AIR 1957** Travancore-Cochin **89**" **(V 44 C 27 April)**;"SARFRAZ KHAN versus THE STATE" **(1985 P Cr. L J 167);** "FAIZ MUHAMMAD Versus THE STATE" (**1986 P Cr. L. J 2250)**; "MUHAMMAD JEHANGIR Versus THE STATE and another" **(1999 MLD 2450);** "Khizar Hayyat alias Khizru vs. The State" **(2001 MLD 1145)** "FARRUKH SHEHZAD vs. THE STATE" **(2012 P Cr. L J 352**); "MUHAMMAD AMIN Versus The STATE" (**2014 YLR 2207)**; "MUHAMMAD FAIZAN SALEH Versus The STATE and others" **(2022 P Cr. L J 1) "**Muhammad Sohail Asim vs The State & another" **(PLJ 2023 Cr. C 735).**

However, the basic judgment was passed in Lalji Ram case supra which is usually referred that once the charge is denied by the accused, no further plea of guilt can be recorded mid-way during the trial. Lalji Ram/accused claimed that he did not plead guilty but it was recorded by the Magistrate at his own, and MUKERJI, J with deficient record though was not sure about the stage of trial, if the accused has

confessed his guilt; however, requisitioned the report from concerned Magistrate who responded as under: -

> "I have no personal recollection of what took place at the hearing, but it is impossible that I should have recorded the admission of the defendant who appeared without his having done so. On the charge being explained Lalji Ram admitted and pleaded guilty and thereupon I found him guilty and fined him Rs. 60, in default two months imprisonment."

The honourable Judge gathered and narrated the facts as under;

> "It was a summons case and the procedure to be adopted for the trial of this case is what is laid down in the Code of Criminal Procedure with regard to the trial of summons cases. It appears that summons in this case was issued on 30th May 1924, and the date fixed for the case was 20th June, 1924. On that day the petitioner was not present and the case adjourned to 18th July 1924. On 18th July, **presumably** in the presence of the petitioner who had by that date appeared, the Food Inspector, Mr. K.D. Banerjee, was examined as a witness on behalf of the prosecution and this case was thereafter adjourned to 25th July for further evidence. on 25th July the following note was made by learned Magistrate;
>
> > "Lalji admits and plead guilty and I fine him Rs.60; in default two months imprisonment."
>
> It is difficult to see what was the procedure that was being adopted by the learned Magistrate in connection with the trial of this case."

When honourable judge was not sure about what procedure was being adopted by the Magistrate, and even has not referred any provision of Calcutta Municipal Act, 1923 that offence under section 412 of that Act was a summons case or a warrant case, his observation is lurking in the light of legal provisions, because there was difference in trial of summons case and a warrant case. We have read and perused the old volumes of Code of Criminal Procedure, 1898 in this respect. In erstwhile provision for summons cases, the section 242 states as under;

> "When the accused appears or is brought before the Magistrate, the particulars of offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted***, but it shall not be necessary to frame a formal charge",***

and if he does not admit the offence then under section 244, Magistrate shall proceed to record the prosecution evidence. Whereas in warrant case as per erstwhile section 252 of the Code;

> "When an accused appears or brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution"

Further as per section 253 if, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him; but as per section 254 as given below;

> "If, when such evidence or examination have been taken or made, or at any previous stage of the case, the Magistrate is of the opinion that there is ground for **presuming** that accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion could be adequately punished by him, **he shall frame in writing a charge against the accused**

Thereafter under section 255, the charge shall be read and explained to the accused, and he shall be asked whether he is guilty or any defence to make, and under section 255 (2) if the accused pleads guilty, the Magistrate shall record the plea and may in his discretion convict him thereon.

6. This was the procedure which the Magistrate had followed in above case, that was the reason that he first examined the complainant and then asked the accused for his explanation about pleading guilty, which Lalji Ram did and Magistrate had convicted him. Even for summary trials under Chapter XXII, of the Code, it was mentioned in erstwhile section 262 that procedure prescribed for summons-cases shall be followed in summons-cases and the procedure prescribed for warrant-cases shall be followed in warrants cases.

7. Whereas MUKERJEE. J in cited case discussed that section 242, 243 & 244 being part of Chapter XX of the Code are applicable in trial of summons cases and **presumed** that as on 18th July the learned Magistrate examined the complainant in the case and it would, therefore, appear that he was proceeding under Section 244, Criminal P.C., and not under Section 243, which would apply if there was admission by the accused that he had committed the offence for which he was being tried. The learned judge, finally held that accused did

not plead guilty, therefore he acquitted the accused. His observation was in following words: -

> "The result has been that in this case there has been really no evidence upon which there could be a conviction of the petitioner, and I am not prepared to hold that there was a plea of guilty with regard to the offence upon the basis of which the petitioner could have been convicted by the learned Magistrate."

Had there been any irregularity with respect to procedure in trial for stage of recording plea of guilty, the learned Judge must have remanded the case, and such decision then could have a binding effect as a *'ratio decidendi'* for an interpretation of section 243 of the Code but he preferred to acquit the accused while holding that accused did not plead guilty in any manner during the trial. Thus, in a situation when a judge comment upon a point of law but does form it a part of decision it is called obiter dicta which is Latin word for ***"things said by the way"*** and it doesn't have any precedential value. Interesting to note that where obiter dictum comes from the court, it is expressed as '*per curium*' and when it comes from a particular judge, the word 'per' appears before the judge's name. It is trite that the question which is necessary for the determination of a case would be the 'ratio decidendi', the statements made in passing are in the nature of 'obiter dicta'. It is trite that only 'ratio decidendi' known as "law of case" maintains the status of binding effect. Dr. Muhammad Munir in Chapter 4.3. of his book 'Precedent in Pakistani Law' published by Oxford university press. also commented upon 'obiter dicta' like as mentioned above. Some of the precedents which dealt and well explained the concept and binding effect of ratio decidendi and obiter dicta, are referred as under;

> *"ALL PAKISTAN NEWSPAPERS SOCIETY and others Versus FEDERASTION OF PAKISTAN and others"* **(PLD 2004 Supreme Court 600)**; *"JUSTICE KHURSHED ANWAR BHINDER and others Versus FEDERASTION OF PAKISTAN and another"* **(PLD 2010 Supreme Court 483)**; "*Messrs HABIB BANK LIMITED Versus BANKING COURT NO.II and 2 others"* **(2012 CLD 218-Sindh)**; "*CONSTITUTION PETITIONS under Article 184 (3) of the Constitution of the Islamic Republic of Pakistan, 1973"* **(PLD 2015 Supreme Court 401)**; "*MUHAMMAD ZAHID, PROPRIETER*

PLUS ENTERPRIZERS Versus FEDERAL BOARD OF REVENUE through Chairperson, Islamabad and 5 others" **(2021 PTD 80)**; "*Dr. IQRAR AHMAD KHAN Versus Dr. MUHAMMAD ASHRAF and others"* **(2021 PLC (C.S.) 1259)**; *"ABDUL QUDOOS Versus COMMANDANT FRONTIER CONSTABULARY, KHYBER PAKHTUNKHWA, PESHAWAR and another"* **(2023 SCMR 334)**.

8. However, without further commenting upon the ratio of Lalji Ram case, suffice it to cite that Supreme Court of Pakistan in case reported as *"STATE through the Deputy Director (Law), Regional Directorate, Anti-Narcotics Force Versus MUJAHID NASEEM LODHI"* **(PLD 2017 Supreme Court 671),** did not declare illegal the admission of accused made at a later stage during the trial, when he admitted that he was apprehended while in possession of heroin weighing 3100 grams (3.100 kilograms). In the same case co-accused namely Muhammad Suneel was also apprehended while in possession of heroin weighing 900 grams. What happened during the trial is narrated in following words;

> "During the trial the said Muhammad Suneel co-accused admitted his guilt and confessed before the trial court and on such admission of guilt by him he was convicted by the trial court for an offence under section 9(b) of the Control of Narcotic Substances Act, 1997 and was sentenced to rigorous imprisonment for four months and fine. **Later on, during the same trial the present respondent namely Mujahid Naseem Lodhi also admitted his guilt**, confessed and showed remorse and repentance on the basis of which he was convicted by the trial court for an offence under section 9(c) of the Control of Narcotic Substances Act, 1997 and was sentenced to rigorous imprisonment for three years and fine. The State through the Anti-Narcotics Force sought enhancement of the respondent's sentence through an appeal which was dismissed by the High Court."
>
> **(Emphasis supplied)**

The Supreme Court of Pakistan responded on the appeal filed by ANF as follows:-

> "The exercise of jurisdiction and discretion in the matter of the respondent's sentence by the trial court and the High Court have not been found by us to be open to any legitimate exception."

Thus, Supreme Court of Pakistan in turn approved that despite pleading not guilty to the charge, the accused can admit his guilt mid-way during the trial and he can well be convicted upon his admission.

9. **Second View**

In the light of above decision of Supreme Court of Pakistan, the second view was also thrashed which enunciates that right to fair trial is for the benefit of accused and it is not based on any public policy rather a private right which the accused can waive at any time and ask the Court to cut short any process before or during the trial. Some of the instances could be like, foregoing the right to receive copies of statement under section 241-A or 265-C of the Code, or urge not to record prosecution evidence after his confession, or not opt to cross examine any witness. However, Court being guardian of rights must have insight and a satisfaction level to give a go to waiver of rights by the accused or in its discretion refuse it. That is the reason it is now settled that any offence which entails capital punishment or imprisonment for life, accused should not be convicted on his plea of guilt. Cases reported as *"LOUNG Versus THE STATE"* **(1976 P Cr. L J 204)**; *"TARIQ MEHMOOD versus THE STATE"* **(2000 P Cr. L J 837)**; *"KHAN BAIG Versus THE STATE"* **(PLD 1984 Lahore 434)** *"AFTAB ABAIDULLAH Versus THE STATE"* **(2010 MLD 599)** are referred. The case reported as "*YOUNAS KHAN versus THE STATE and another"* **(2003 P Cr. L J 1684)** is also referred in this respect which acknowledges the right of accused to forfeit or surrender the right of trial. The observation of Court was as follows;

> "10. The right of an accused to claim trial is an indefeasible and it is for the accused alone to forfeit or surrender such right at a latter stage of the trial and if he communicates to the Court to that effect and intends to admit his guilt then in that case the proper legal procedure is to record a full statement/confession of the accused as nearly as possible in the same manner as laid down in section 364, Cr.P.C. and the Court shall also probe into the mind of the accused as to what were the reasons which prompted or induced him in making a confession at a latter stage when he has earlier denied the charge against him. This exercise must be carried out because of the requirements of principles of justice as the Court must be satisfied that the subsequent confession made by the accused at a latter stage of the trial is free from any promptness or other inducing cause both from inside and outside quarters and then the Court would be within its jurisdiction and competent to record conviction…."

The case reported as *"THE STATE Versus INTIZAR ALI"* **(1986 P Cr. L J 1674)** discusses the situation when accused requested the Court that he wants to confess his guilt, therefore, waives his right to receive copies under section 241-A of the Code, and the Court held that the provision contained in section 241-A of the Code deals with a private right intended for the personal benefit of an accused person only and does not infringe in any way any matter of public policy; the Court observed as under;

> "I am aware that section 241-A requiring the Court to furnish the accused with the said skies is mandatory in nature but the mere fact that the said provision is so does not restrain the accused person from foregoing his said right."

In the same judgment, following cases were also referred for waiving right by any authority for whose protection law provides a provision. "*Vellayan Chettiar v. The Government of Province of Madras"* **(PLD 1947 PC 160)** and "*Bodi "Venkata-swami v. Adada Mahalakshmi"* **(AIR 1949 Mad. 747);** in the case reported as "*Masood Hussain v. Muhammad Saeed Khan*" **(PLD 1965 Lah. 11)** Sardar Muhammad Iqbal, J. who later rose to be Chief Justice of Lahore High Court, Lahore, held that there appeared to him no inconsistency between the proposition that the provisions of a section are mandatory and must be enforced by the Court and that they may be waived by the authority for whose benefit they are provided; the Hon'ble Judge spoke like as under;

> "In this connection reference was made in that decision to Maxwell on Interpretation of Statutes, 11th Edition, at page 376 where it is said that everyone has a right to waive the advantage of law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy and where in an Act there is no express prohibition against contracting out of it, it is necessary to consider whether the Act is one which is intended to deal with private rights only or whether it is an Act which is intended as a matter of public policy to have a more extensive operation."

The case reported as *"NAZIR AHMAD versus THE STATE"* **(PLD 1975 Lahore 304)** throws light on the spirit of section 243 of the Code which deals with recording of accused's admission to the charge:-

> "The language of the section is not trammeled by any condition of fixation of time or stage when the confession is to be recorded. The words of the section do not indicate that it shall cease to have operation at any subsequent stage of the trial. It is correct that the provisions of section 243 shall come into operation immediately after the particulars of the offence have been put to an accused person and he makes an admission of his guilt, but this does not mean that the section is operative only up to this particular stage and after this it becomes dormant, with the result that the Magistrate shall have to go through the exercise of recording the evidence in spite of the fact that the accused at some intermediary stage comes forward to make a clean breast of the whole matter."

The Court in the same judgment while focusing on the object of section 243 of the Code, observed as under;

> "The object of the section is to permit a Court to convict a man on the basis of his confession without taking the trouble of recording evidence and it has been left to the trial Court to decide whether or not to record some evidence in support of the prosecution story to assure itself of the culpability of the accused or to determine the quantum of sentence. The, intention of the Legislature will not be fully achieved if we restrict the; operation of the section to the particular stage when the particulars of the offence are put to an accused person under section 242. Wherever Legislature intends to fix a point of time, it does give an indication to that effect. **In my humble view the observations made in the case of Lalji Ram referred to above, to the effect that once the Magistrate has started recording evidence after the denial of the charge by the accused, he has to go through the whole process, do not reflect the correct legal position."**

(Emphasis supplied)

In a case reported as *"Mst. NAWAB BIBI alias BABO Versus THE STATE"* **(1991 P Cr. L J 935)** Federal Shariat Court while commenting upon sections 265-E & 265-F of the Code has observed as under;

> ". If an accused person brought before the trial Court does not plead guilty at the time of answering the charge, but on second thought changes his mind and speaks out the truth at any stage during the trial would it still be necessary for the trial Court to continue with the trial and record the entire evidence according to the calendar of witnesses and then in spite of the willingness of the accused to make confession prolong the agony of the accused and all concerned till the entire list of witnesses was exhausted. In my opinion since the accused had shown her willingness to make a confession the Presiding Officer was fully competent rather obliged to record the confession and close the evidence."

In a case reported as *"MUHAMMAD ASLAM Versus THE STATE and 3 others"* **(2011 YLR 368)**, the Court held as under:-

> "The law does not suggest any stage of the trial for making a confessional statement by the accused. It is settled law that any accused of a criminal case can confess his guilt at any stage of the trial and there is no bar upon the learned trial Court to refuse to record the confessional statement when the accused wishes to do so."

In a case reported as *"SHAKIRULLAH versus THE STATE"* **(PLD 1997 Peshawar 161),** section 243 of the Code was explained as under;

> "The provisions of section 243 are salutary in nature and as such are to be strictly followed. This section appears under Chapter XX of the Criminal Procedure Code relating to trial of cases by Magistrate. After the charge is framed against an accused person he is asked if he admits the commission of the offence and on refusal the prosecution is called upon to adduce its evidence. If, in mid-way of the trial an accused wants to admit the guilt. section 243 of the Code empowers the Magistrate trying, to convict the accused accordingly. A show-cause notice in the shape of warning is condition precedent for such conviction."

In a case reported as *"DADAN alias Dadoo versus THE STATE"* **(PLD 1996 Karachi 391),** the Court remanded the case to trial court for recording plea of the accused while complying with the requirement of section 243 of the Code in letter and spirit and declared that such plea can be recorded mid-way during the trial. The Court held as under;

> "The purpose and object was to avoid involuntary admission, the accused persons oftenly make admission of the guilt with the promise or inducement that they will either be sentenced with leniency or will be acquitted on the plea of mercy. Here in this case also it is apparent that applicant confessed his guilt and admitted the commission of offence because for sufficient time none of the witnesses appeared and it was because of protracted trial that he was constrained to admit the charge with the prayer to take mercy upon him as he felt that there is no other alternate left for him excepting this."

10. Corresponding to Section 243 & 244 or 265-E & 265-F of the Code, the Indian Code of Criminal Procedure, 1973, keeps Sections 229 & 230 which are reproduced for further reference;

> **229. Conviction on plea of guilty.** If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.
>
> **230. Date for prosecution evidence.** If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

On the strength of such sections, in a case reported as "*Ram Kishun vs State of U.P.*" **(1996 Cri LJ 440)**, Allahabad High Court has held as under;

> "It is stated at the outset that plea of guilt of an accused is a voluntary act. It does not partake character of confession. The stage of investigation is over much before the stage of pleading guilt reaches. The Judge's task is to find out truth involved in the case before him and if at any stage the accused pleads guilty and the Judge is satisfied that the said plea is voluntary plea and without any coercion, physical or mental, there is nothing in Cr.P.C. to prevent such a guilt being recorded and thereafter on its basis, conviction can safely be recorded."

Whereas another case decided by Allahabad High Court titled "*Alok Prajapati vs State of UP*" with Neutral Citation as **(2019 AHT 21360)** is also a classic example of above ruling of the Court**.**

11. Similarly, in another case reported as "*Santhosh vs State of Kerala*" **(2003 (1) KLT 795)**, the Kerala High Court has also held in the same manner as under;

> "No doubt, there is no specific provision in the Cr.P.C. enabling the court to permit an accused to withdraw his claim to be tried and convict him on a plea of guilty subsequently. But as contended by the learned counsel for the petitioner, there is also no prohibition in the Cr.P.C. to record the plea of guilty in the course of trial and convict the accused on his subsequent admission of guilt. The object of trial is to investigate the offence and to find out the truth. When the guilt is admitted by the accused and the admission is found to be voluntary, there is no reason why the court should not allow him to withdraw his claim to be tried and plead guilty."

Court Further held that;

> "There is no reason to restrict the applicability of Section 229 of the Cr.P.C. to a particular date or occasion but the purport of section is obvious that plea of guilt can be advanced by an accused at any stage of the trial after framing charge. If an accused is allowed to withdraw his claim to be tried and plead guilty, an earlier termination of the trial can be secured and wastage of the precious time of the court can be avoided."

In a case reported as *"Shyama Charan Bharthuar And Ors. vs Emperor"* **(AIR 1934 Patna 330),** the Court while citing section 271 (2) of the Code (now replaced with section 265-E) has given a clear verdict in support of view which is as follows;

> "A plea of guilty under Section 271 (2), Criminal Procedure Code, is not a confession such as is dealt with in the Indian Evidence Act in respect of relevance or irrelevance. It is a statement which, if accepted by the Court, amounts to a waiver on the part of the accused of trial in which alone a confession might be utilized in evidence."

And for accused' rights it was held as under;

> "It was a case of recognizing the inevitable and cutting short an irksome trial which they perceived could only end in conviction with at least as heavy a sentence, and that too starting from and ending at a later date. If pressure or diplomacy could secure them a light sentence, it would be their gain, if the prosecution could not be cajoled or intimidated, the plea of guilty would be tendered all the same as it would be at least some gain to secure an earlier termination of the trial."

12. On the strength of above judgments, it can safely be held that there is no specific prohibition for recording plea of guilt at any stage of trial and such arrangement in no case opposes to right to fair trial if accused opts to waive the same to cut short the process in order to avoid the agony or rigors of protracted trial. However, Court is always at guard to take a careful look why the accused is admitting his guilt and shall ensure that the trial of offence entailing capital punishment should not be terminated mere on the admission of guilt by the accused, for which recording of evidence is essential. In addition to judgments cited supra in opening part of paragraph-9, in a case reported as *"Nasaruddin Mohammad v. Emperor"* **(AIR 1928 Calcutta 775**), it was held that "*it is not in accordance with the usual practice to accept a plea of guilt in a case where the natural sequence would be a sentence of death*." The cases reported as *"SHAHBAZ MASIH versus THE STATE"* **(2007 SCMR 1631)**; ***"****MUHAMMAD ISMAIL versus The STATE"* **(2017 SCMR 713)** and *"MULTAN JAN versus The STATE"* **(2020 P Cr. L J 88)** are also referred in this context.

13. Without further embarking upon the view expressed above, we have been told and also conceded by Learned Deputy Prosecutor General that the Supreme Court of Pakistan has not given any exhaustive judgment on this question of law; therefore, on the strength of case reported as *"STATE through the Deputy Director (Law), Regional Directorate, Anti-Narcotics Force Versus MUJAHID NASEEM LODHI"* **(PLD 2017 Supreme Court 671)** cited supra, the admission of guilt in this case recorded by the trial Court cannot be declared illegal in the given circumstances. We hold such mode as perfect, in consonance with the dictum laid down by the Supreme Court of

Pakistan; therefore, impugned judgment does not suffer from any illegality and calls for no interference by this Court.

14. So, for as the question of lower range of sentence awarded to the accused/respondent is concerned, it is trite that an accused who seeks sentence on the basis of his plea of guilt, in turn helps in reducing the costs of trial. If after attending the processes of trial the accused is to meet a particular sentence range then the Court can record such plea even at any stage mid-way if accused is ready to assist and facilitate the system for cost-reduction of prosecution case and can reward the accused with minimum sentence range as a State bounty. As per section 9(8) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 (the CPS Act), on pleading guilty by the accused, prosecutors are required to suggest appropriate sentence range. As per 'Code of Conduct for Prosecutors' issued under section 17 of CPS Act, while applying 'Full Code Test' which includes evidential test and public interest test, that can be applied at any appropriate stage keeping in view the requirement of Paragraphs 5.5 & 5.6 of the said Code, prosecutors shall ensure that prosecution of an offence must be a "Proportionate Response" which means that quantum of sentence must commensurate to the costs of prosecution.

15. It is a well-settled principle of law that when an accused voluntarily admits his guilt before the Court; he must be dealt with more leniently in terms of quantum of sentence. This principle is based on a celebrated legal maxim "***Cum confitente sponte, mitius est agendum"*** which means "he who willingly confesses, should be dealt with more leniently". Cases reported as Syed Aftab Ejaz's case (**PLD 1978 Lah. 361**) *"MUHAMMAD ARIF and another Versus THE STATE"* (**1991 P Cr. L J 623**) are referred. In a case reported as *"King Emperor v. Kasim Walad Mohamed Saffer"* **(AIR 1925 SIND 188),** it was held by a Division Bench of Sind High Court that *"where the "Plea of guilty" is considered, from the habits of Indian criminals, as due to*

hope, reasonable or otherwise, of leniency of punishment; it is not proper to enhance the punishment as it might attach suspicion of perfidy to the judiciary."

16. For what has been discussed above, we find no illegality or irregularity in the impugned judgment and we are not inclined to enhance the sentence awarded to the respondent by learned trial Court. The instant appeal, therefore, is dismissed in *limine*.

17. At this stage, it may be recognized that some relevant material, referred to above, was collected with the help of Hasnain Ahmed Anwar and Umair Ali Khan, Civil Judges, working in research center at Bahawalpur Bench. Their effort for providing requisite assistance is highly appreciated.

(Asjad Javaid Ghural)
Judge.

(Muhammad Amjad Rafiq)
Judge.

APPROVED FOR REPORTING.

Judge.

Judge.

This order was pronounced on 14.11.2023 and after dictation and preparation it was signed on …….

Javed*