

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa, ACJ
Mr. Justice Dost Muhammad Khan

Criminal Petition No. 32 of 2017 and Criminal Miscellaneous Application No. 54 of 2017

(Against the order dated 30.11.2016 passed by the Lahore High Court, Lahore in Criminal Appeal No. 1501 of 2015)

State through the Deputy Director (Law), Regional Directorate, Anti-Narcotics Force

...Petitioner

versus

Mujahid Naseem Lodhi

...Respondent

For the petitioner:	Raja Inaam Ameen Minhas, Special Prosecutor, Anti-Narcotics Force Syed Rifaqat Hussain Shah, AOR Mr. M. Tariq, Deputy Director (Law)
---------------------	---

For the respondent:	In person.
---------------------	------------

On Court's Notice:	Syed Nayyab Hussain Gardezi, Assistant Attorney-General for Pakistan
--------------------	--

Date of hearing:	05.07.2017
------------------	------------

ORDER

Asif Saeed Khan Khosa, ACJ.: The respondent namely Mujahid Naseem Lodhi had been booked in case FIR No. 36 registered at Police Station Anti-Narcotics Force, Lahore on 24.07.2012 in respect of an offence under section 9(c) read with section 15 of the Control of Narcotic Substances Act, 1997 with an

allegation that he was apprehended while in possession of heroin weighing 3100 grams (3.100 kilograms). In the same case an allegation had also been leveled against the respondent's co-accused namely Muhammad Suneel that he was apprehended while in possession of heroin weighing 900 grams. 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 and now the same relief has been sought by the State through the present petition before this Court.

2. On 20.03.2017 this Court had raised some queries regarding competence of the State to file an appeal seeking enhancement of a convict's sentence and also regarding competence of a Special Prosecutor, Anti-Narcotics Force to file an appeal before this Court and in respect of such queries notice was issued to the respondent as well as to the learned Attorney-General for Pakistan.

3. We have heard the learned Special Prosecutor, Anti-Narcotics Force, the learned Assistant Attorney-General for Pakistan and the respondent appearing in person on the above mentioned issues as well as on the merits of the case.

4. The questions of law noticed above do not require any pronouncement by this Court through the present petition because the same have already been attended to and authoritatively

answered in the judgment passed by this Court in the case of The State through Director-General, Anti-Narcotics Force v. Abdul Jabbar alias Jabbara (Criminal Appeal No. 254 of 2014 decided on 18.05.2010).

5. As regards the prayer made through the present petition regarding enhancement of the respondent's sentence the learned Special Prosecutor, Anti-Narcotics Force has mainly relied upon the judgment handed down by a Full Bench of the Lahore High Court, Lahore in the case of Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362) wherein some guidelines had been laid down *vis-à-vis* sentencing in cases of narcotic substances and has maintained that the sentence passed by the trial court against the respondent was not in accord with the said guidelines. The said judgment of the Lahore High Court, Lahore had approvingly been referred to by this Court in the case of Ameer Zeb v. The State (PLD 2012 SC 380). We note that in paragraph No. 10 of the judgment handed down by the Lahore High Court, Lahore in the above mentioned case it had been observed that "in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure." In the case in hand the trial court had recorded reasons for passing a sentence against the respondent which made a departure from the above mentioned sentencing guidelines. The trial court had observed that the respondent had made a confession before the trial court besides expressing remorse and repentance with an assurance not to deal with narcotics in future. It was also noticed by the trial court that the respondent's co-accused namely Muhammad Suneel had also made a confession before the trial court and on the basis of such confession he was also awarded a sentence which departed from the above mentioned sentencing guidelines but the State had not sought enhancement of his sentence. The High Court had refused to enhance the respondent's sentence and had dismissed an appeal filed by the State in that regard by holding that the

above mentioned considerations weighing with the trial court for passing a reduced sentence against the respondent were appropriate in the circumstances of the present case. 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, particularly when the reasons recorded for passing a reduced sentence against the respondent and for making a departure from the above mentioned sentencing guidelines have been found by us to be proper in the peculiar circumstances of this case. This petition is, therefore, dismissed and leave to appeal is refused.

Criminal Miscellaneous Application No. 54 of 2017

6. As the main petition has been dismissed by this Court today, therefore, the interim relief already allowed through the present miscellaneous application is withdrawn and recalled. This miscellaneous application is dismissed.

Acting Chief Justice

Judge

Islamabad

05.07.2017

Approved for reporting.

Arif