

HCJDA 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Appeal No.85571/2023

Sufiyan Riaz versus The State

J U D G M E N T

Date of hearing:	<u>03.12.2025</u>
Appellant by:	Mr. Umar Khan Mehsood, Advocate.
State by:	M/s Nuzhat Bashir and Haroon Rasheed, Deputy Prosecutors General.

Farooq Haider, J.:- This appeal has been filed by **Sufiyan Riaz** (appellant/convict) against the judgment dated: 24.11.2023 passed by learned Addl. Sessions Judge, Gujrat/trial court whereby in case arising out of F.I.R No.178/2022 dated: 03.06.2022 (Ex.PA) **registered under Section: 9 (c) of the Control of Narcotic Substances Act, 1997** at Police Station: Shaheen Chowk, District: Gujrat, the trial court has convicted and sentenced the appellant; in this regard, relevant portion of the impugned judgment is hereby reproduced as under: -

*“18. In the light of what has been discussed above, I am of the considered view that prosecution has proved the charge against the accused present in the court beyond the shadow of any doubt and thus, **I hold the accused Sufiyan Riaz guilty of offence u/s 9(1) 3C, CNSA** and the convict is sentenced to undergo 09-years R.I. alongwith fine of Rs.80,000/- and in case of default of payment of fine, he shall further undergo S.I. for 03-months. The convict is given benefit of Sec. 382-B Cr.P.C. The convict Sufiyan Riaz is present in the court on bail, he be arrested and sent to District Jail, Gujrat with warrant of commitment.....”*

(emphasis added)

2. Briefly, as per case of prosecution narrated in the First Information Report (F.I.R./Ex.PA) got recorded by Muhammad Qasim, A.S.I. (complainant/PW-3), appellant was apprehended on 03.06.2022 as suspect by the complainant and other police officials and on his personal search, from white coloured shopper, blackish brown coloured slab type charas weighing 1320-grams was recovered from his possession; out of the recovered charas, 66-grams as sample was separated for getting chemical analysis from PFSA whereas sample and remaining charas were secured into sealed parcels with the stamps of "MQ" and taken into possession through recovery memo (Ex.PB); for ready reference, relevant portion of the Crime Report (F.I.R./Ex.PA) is hereby scanned below: -

(ابتدائی اطلاع نیچے درج کریں)

استثنائے ذیل دفعہ 9C/CNSA اس وقت میں معصمت رسول C/3133 ق/تقریر آجہ C/2811 ق/ضمیمہ آجہ C/لاٹران قنائد سلسلہ معصمت و تلاش بدرویہ کان
 بسواری پرائیویٹ موٹر سائیکل ہائے سٹاف گلہ محلہ سردار پورہ گجرات موجود ہوں کہ ایک کس پیدل چاہ ریلوے لائن سے آیا جو پولیس پارٹی کو دیکھ کر دائیں مڑنے لگا
 جسکو مشکوک جان کر ہاندا اور ہوائی ملازمان روک کر قابو کیا جسکی چاند تلاش اذیت خود عمل میں لائی تو مذکورہ کے دائیں ہاتھ میں پکڑے ہوئے شاپر برگ سفید میں
 سے چرس برگ بلیکس براؤن سلیب نما جس پر پیلے رنگ کی ٹیپ لپٹی ہوئی برآمد ہوئی جو وزن کرنے 1320 گرام ہوئی۔ برآمدہ چرس میں سے 66 گرام چرس کے
 حساب سے برائے نمونہ تجزیہ کیمیائی PFSA الگ نکال کر نمونہ دہیہ چرس کے پائل ہائے سربراہی MQ سے تیار کر کے بطور وجہ ثبوت بذریعہ فرد قبضہ پولیس میں
 لکھ چھیل فرد بر موقع ہوئی۔ دریافت پر مذکورہ کا نام و پتہ بعد دریافت سفیان ریاض ولد محمد ریاض قوم ٹائی سکند شاہ فیصل پورہ گجرات معلوم ہوا۔ مذکورہ سفیان ریاض
 نے چرس برائے نوش و فراغت اپنے قبضہ میں رکھ کر اس کا کباب جرم 9C/CNSA کا کیا ہے جس کی خلاف استثنائے مذکورہ مرتب کر کے بغرض اندراج مقدمہ
 بدست معصمت رسول C/3133 قنائد ہے۔ بعد اندراج مقدمہ کسی دیگر حوالہ تفتیشی افسر کو تفتیش پر۔ کہ روایتہ موقع کا کیا جائے میں معصمت رسول قنائد
 موجود ہوں محمد قائم ASI قنائد شاہین چوک گجرات 03.06.22 از سٹاف گلہ محلہ سردار پورہ گجرات بوقت 3:20 بجیں کاروائی پولیس از قنائد حسب آدہ استثنائے
 رپورٹ ابتدائی اطلاعی ہذا مجرم مذکور مرتب ہوئی آئندہ اصل استثنائے مع نقل ایف آئی آر برادر تفتیش بدست آئندہ کنسٹیبل عتب صفدر حسین SI صاحب بجوائی
 چاہی ہے عذر چھیل دیکھاؤ کرے۔

ASD احمد
03-06-2022

Shahid Sadiq
Additional Sessions Judge
Gujrat

After investigation, challan report was sent to the Court against the appellant; charge was framed against him under Section: 9(c) of the Control of Narcotic Substances Act, 1997, to which, he pleaded not guilty and claimed trial; prosecution produced its evidence and thereafter trial Court recorded statement of the appellant under Section: 342 Cr.P.C., wherein he refuted allegations leveled against him; he neither recorded his statement under Section 340(2) Cr.P.C. nor produced any evidence in his

defence. Trial court after hearing learned counsel for the parties, passed the impugned judgment wherein appellant was convicted and sentenced as mentioned above.

3. Learned counsel for the appellant, at the very outset, submits that as per case of prosecution, charas weighing 1320-grams was recovered from the appellant on 03.06.2022, case was registered against him *vide* F.I.R. No.178/2022 dated: 03.06.2022 (Ex.PA) under Section: 9 (c) of the Control of Narcotic Substances Act, 1997 at Police Station: Shaheen Chowk, District: Gujrat and charge was framed against him on 16.09.2022 under said offence i.e. Section: 9(c) of the Act (*ibid*) however as per paragraph No.18 of the impugned judgment, inadvertently, appellant has been convicted and sentenced under Section: 9(1) 3(c) of the CNSA, 1997; further submits that though case of the prosecution regarding recovery of charas weighing 1320-grams from the appellant has been proved against the appellant through prosecution evidence and he does not challenge the same yet appellant was liable to be convicted and sentenced under erstwhile Section: 9(c) of the Act (*ibid*) and requests for converting conviction of the appellant from Section: 9 (1) 3(c) of the Act (*ibid*) introduced through Control of Narcotic Substances (Amendment) Act, 2022 to erstwhile Section: 9(c) of the Control of Narcotic Substances Act, 1997 as well as awarding lesser sentence of imprisonment and fine upon the appellant.

4. Learned Deputy Prosecutors General while confirming aforementioned factors submit that since in this case charas weighing 1320-grams was recovered from the appellant on 03.06.2022 and case was registered against him *vide* F.I.R. No.178/2022 dated: 03.06.2022 (Ex.PA,

mentioned above) under erstwhile Section: 9(c) of the Control of Narcotic Substances Act, 1997, charge was framed against the appellant by the trial court under said offence, therefore, the appellant cannot be convicted and sentenced under Section: 9(1) 3(c) of the Act (*ibid*) which offence was brought on the statute through the Control of Narcotic Substances (Amendment) Act, 2022 (Act No.XX of 2022) promulgated in the month of September, 2022 i.e. after registration of instant case and said conviction is also hit by Article 12 of the Constitution of Islamic Republic of Pakistan, 1973; hence, it would be necessary to convert conviction recorded by the trial court against the appellant from Section: 9(1) 3(c) of the Act (*ibid*) introduced through the Control of Narcotic Substances (Amendment) Act, 2022 to erstwhile Section: 9(c) of the Control of Narcotic Substances Act, 1997 and award sentence to the appellant under erstwhile Section: 9(c) of the Act (*ibid*); they while producing copy of report bearing No.22650 dated: 01.12.2025 prepared and sent by the Superintendent, District Jail, Gujrat (which has been placed on the record) submit that since appellant has already served out imprisonment of 02-years, 05-months and 06-days till 01.12.2025 and there is no statutory threshold/limit for lesser sentence under erstwhile Section: 9(c) of the Control of Narcotic Substances Act, 1997, therefore, it would be appropriate to award sentence of the imprisonment already undergone by the appellant and impose fine of Rs.20,000/- upon him and in default of payment of the same to undergo 05-month's Simple Imprisonment.

5. Arguments heard. Record perused.

6. Although learned counsel for the appellant has not challenged the conviction recorded by the trial court against the appellant yet for safe

administration of justice, we have gone through the record and it has been found that case of the prosecution to the extent of recovery of the narcotics i.e. charas weighing 1320-grams from possession of the appellant as well as its safe custody has been proved by the prosecution through trustworthy and confidence inspiring evidence; moreover, report of Punjab Forensic Science Agency, Lahore (Ex.PE) produced in the case has established that said narcotics was ‘charas’. Appellant did not appear under Section: 340(2) Cr.P.C. and also did not produce any evidence to create any dent in the case of prosecution to the extent of recovery of narcotics (mentioned above). So, prosecution has proved its case against the appellant to the extent of recovery of charas weighing 1320-grams.

Now coming to the conviction recorded by the trial court, it is admitted fact that as per case of prosecution, charas weighing 1320-grams was recovered from possession of the appellant on **03.06.2022** {i.e. much prior to the promulgation of “The Control of Narcotic Substances (Amendment) Act, 2022 (Act No.XX of 2022), which was promulgated in the month of September, 2022”}; case was registered as per Column No.3 of the Crime Report (Ex.PA) under erstwhile Section: 9(c) of the Control of Narcotic Substances Act, 1997, charge was framed under erstwhile offence i.e. Section: 9(c) of the Act (*ibid*); therefore, mentioning of conviction of the appellant by the trial court in paragraph No.18 of the impugned judgment under Section: 9(1) 3(c) of CNSA is against Article: 12 of the Constitution of Islamic Republic of Pakistan, 1973 as well as settled principles of law on the subject including fundamental principle of law known as “prohibition against ex post facto law” and we see eye to eye with the contention raised by learned counsel for the

appellant in this regard which has also been fairly conceded by learned Deputy Prosecutors General.

It is relevant to mention here that the appellant has faced the agony of trial since his arrest, basic and prime purpose behind criminal justice system is to enable an offender to reform himself and to rehabilitate for rejoining the mainstream of prosperous life and once again to become a useful member of the society and not to wreak vengeance; since quantity of recovered contraband is not exceeding 10-KG, hence, there was no statutory threshold/limit of minimum quantum of sentence under erstwhile Section: 9(c) of the Control of Narcotic Substances Act, 1997. By now it is well settled that on the basis of valid reason, plea for reduction of sentence can be entertained and considered if substantial period of sentence has already been served out by the convict/appellant; in this regard, guidance has been sought from the case of “**MST. SUGHRAN AND ANOTHER vs. The STATE**” (2021 SCMR 109). According to copy of report bearing No.22650 dated: 01.12.2025 prepared and sent by the Superintendent, District Jail, Gujrat (produced today by learned Deputy Prosecutors General and placed on the record), appellant has already served out 02-years, 05-months and 06-days till 01.12.2025; therefore, it would be in the interest of justice if he is awarded sentence of imprisonment comprising of the period which he has already undergone (mentioned above) and afforded opportunity to reform himself as well as become a useful member of the society and in this regard, case of “**ABDUL REHMAN vs. The STATE**” (2011 SCMR 965) can be advantageously referred, wherein it has been held as under: -

“After perusal of the record in light of the arguments advanced before us, it appears that there is no previous record of the conviction of the petitioner in any offence. The recovery effected in Charas as pointed out by the learned counsel is distinct from heroin, therefore, the case calls for a lenient view.”

Guidance on the subject has also been sought from the cases of **“NIAZ-UD-DIN vs. The STATE” (2007 SCMR 206)** and **“STATE through the Deputy Director (Law), Regional Directorate, Anti-Narcotics Force vs. MUJAHID NASEEM LODHI” (PLD 2017 SC 671).**

7. In view of above and with consent of learned counsel for the appellant as well as learned Deputy Prosecutors General, conviction recorded by the trial court against the appellant under Section: 9(1) 3(c) of CNSA *vide* impugned judgment is converted to **“conviction under erstwhile Section: 9(c) of the Control of Narcotic Substances Act, 1997”** and he is awarded sentence of **“02-years, 05-months and 06-days rigorous imprisonment including benefit of Section: 382-B Cr.P.C”, fine of Rs.20,000/- (Rupees twenty thousand only) is also imposed upon him and in default of payment of fine, he will undergo 05-month’s Simple Imprisonment.** Nutshell is that instant appeal is **dismissed** with aforementioned modifications in the conviction as well as sentence.

(MUHAMMAD TARIQ NADEEM)
JUDGE

(FAROOQ HAIDER)
JUDGE

Approved for reporting

(MUHAMMAD TARIQ NADEEM)
JUDGE

(FAROOQ HAIDER)
JUDGE