

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Crl Appeal 72/2012.

• Titled Muhammad Afzal vs The State •

- (a) Judgment approved for reporting Yes/ No
- (b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made. Yes/ No

(In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

FORM NO.HCID/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO.: CRL. APPEAL NO.72 OF 2012

Muhammad Afzal

Vs.

The State

Date of hearing : 19.02.2013
Appellant by : Mr. Ajmal Khan Khattak, Advocate
Respondent by : Syed Jalil Hussain, learned Standing Counsel.

NOOR-UL-HAQ N. QURESHI J.- The appellant has preferred the instant appeal being highly aggrieved with the judgment passed by learned Judge, Special Court CNSA (West), Islamabad dated 06.11.2012, whereby the appellant was convicted to suffer 04-years R.I. with fine of Rs.50,000/- (Rupees Fifty Thousand only), in default whereof, shall further undergo S.I. for 20-days with benefit of Section 382 Cr.P.C. for the offence u/s 9-B of Control of Narcotics Substance Act, 1997.

2. Mainly, the prosecution case is based upon the allegation levelled in the FIR bearing No.225/2011 registered at P.S. Tarnol, Islamabad on 21.05.2011 narrating the incident occurred on the very day at 7:40 p.m. u/s 9 (c) of CNSA. The facts in brief are given as under:

- i) The complainant SI of P.S. Tarnol, Islamabad on the said date and time was busy in checking the vehicles, when the appellant reached at Motorway Bus Stop. Finding police, he tried to slip away, but was apprehended with the help of subordinate staff. On search, 04-packets in plastic envelopes of grey color wrapped in cloth bag were recovered. On checking, charas Garda was secured which on weighing, comes to 5000-grams out of which, 10-grams of charas from every packet was separated for chemical analysis, whereas the remaining charas was got wrapped in two separate parcels. On account of non-availability of public person, the police officials were made witnesses. The accused/appellant since committed offence u/s 9-C of CNSA therefore with the property brought at P.S. Tarnol, Islamabad, FIR was lodged on behalf of State.
- ii) After submission of the challan, the documents required u/s 265-C Cr.P.C. were delivered to the appellant. At the trial, charge u/s 265-D Cr.P.C. was framed to which accused/appellant pleaded to be not guilty vide his plea recorded u/s 265-E Cr.P.C.

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- iii) As required by Section 265-F Cr.P.C. since the accused/appellant did not plead his guilt, therefore, trial commenced.
- iv) During the trial, no PW attended, when the learned trial court on 05.11.2012, at the request of the appellant, ordered for framing of charge, whereby the accused/appellant pleaded his guilt. Consequently, sentence referred above was awarded. Therefore, the appellant has preferred the instant appeal.

3. Learned counsel for the appellant, contrary to the prayer of the appeal regarding remand of the case to the learned trial court, has prayed for discharge of the appellant by reducing his sentence upto the period of sentence already undergone. He has mainly contended that there is no application or oral request recorded by the learned trial court about such admission on the basis whereof, statement was recorded. Therefore, statement recorded at this verge, without trail, is bad in law.

4. Learned Standing Counsel has conceded for remand of the case according to the prayer sought in the instant appeal.

5. Argument heard, record perused as well as the relevant law referred.

6. At the very outset, we would like to clarify the legal position with regard to the applicability of Criminal Procedure Code and the maintainability of the instant appeal.

7. Section 47 provides that Criminal Procedure Code shall apply to trial and appeals except as otherwise provided in the trial of Narcotics Substance Act, 1997. In view of applicability of Criminal Procedure Code, while referring prohibition contained u/s 412 Cr.P.C., no appeal shall lie, when accused pleads guilty and convicted by a High Court, court of Sessions and Magistrate (1st Class) on such plea. However, a room left by the legislature with such prohibition to the extent of legality of the sentence.

8. Therefore, we have to examine such question with regard to the applicability of Section 412 Cr.P.C. and constrained to examine the relevant provisions of law. Chapter XXII-A provides the procedure for trial before a High Court and court of Sessions, applicability whereof with regard to CNS Act is undisputed as referred above.

9. Section 265-C Cr.P.C. indicates commencement of trial by supplying the statements and documents to the accused, details whereof are given therein, not later than 7-days before the commencement of trial.
10. The trial commences from framing of charge u/s 265-D Cr.P.C., which is required to be framed from the extract of general complexion of the prosecution case and the court on forming an opinion that there is ground for proceeding with the trial, the charge shall be framed against the accused.
11. Later on, very important stage comes. The charge essentially is required to be read over to the accused. While recording his plea, the accused is to be asked for accepting guilt or any defence, in any. In case, if the accused pleads guilty, the court shall record his plea and may, in its discretion, convict him thereon.
12. It has yet been left upon the discretion of the court that accused who is facing trial has to be given every opportunity, as fair trial is the fundamental right of every person. It is pertinent to point out here that plea u/s 265-E Cr.P.C. and charge u/s 265-D are very important stages, where the court has to decide, as to whether the accused should be prosecuted or being guilty, he should be convicted.
13. Later on, the procedural law is very clear. While going through Section 265-F Cr.P.C., the evidence of prosecution is to be recorded after the plea of accused and when court in its discretion does not convict him on such his plea, the court shall proceed to examine the witnesses.
14. Later on, as one of the ingredient provided by Section 265-F Cr.P.C., the accused also has an opportunity provided by law to put his written statement, which shall be filed with the record, if any even as defence evidence. From the general evaluation, it appears that such stage by submitting written statement comes at the time of recording statement u/s 342 Cr.P.C., when the entire trial is concluded.
15. In between these stages referred above, there is no other stage except Section 265-K Cr.P.C., which empowers the court to acquit the accused at any stage of the case, if after hearing the parties, it is considered by the Court that there is no probability of committing

any offence by the accused. But nowhere, such provision for convicting the accused in between such proceedings is provided by law.

16. Even if there had been disclosure by the accused about his admission of the guilt that appears to have been recorded by the learned trial court on 05.11.2012 and on the very same day his statement u/s 342 Cr.P.C. is recorded. But no such admission seeks to have been available on record.

17. Throughout the procedural law discussed above, there is no such stage in the intervening period. Even if the accused desires to admit his guilt, the procedure adopted by the learned trial court is not in accordance with law.

18. Admittedly, the accused has neither submitted any application thereby admitting his guilt nor procedure provided by Section 265-F Cr.P.C. has been adopted for reaching up to the stage of recording statement of the accused u/s 342 Cr.P.C.

19. Under the above circumstances, we are of the confirmed view that the learned trial court has not adopted the legal procedure, as such, conviction awarded thereupon is not sustainable under the law, hence judgment dated 06.11.2012 passed by the learned Judge, Special Court is hereby set aside. As a result whereof, the present case is remanded back to the learned trial court for its proceedings from the stage, where it was disposed off by convicting the appellant.

20. In view of above, instant Criminal Appeal is allowed.

(RIAZ AHMAD KHAN)
JUDGE

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Wd
Zawar

Approved for reporting

Bdare Slip added.

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