

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.
Mr. Shahbaz Khan, Judge.

**Cr. Misc. No. 04/2015 in
Cr. PLA. No. 09/2015.**

Zubair Ahmed son of Khushal Resident of Shoti Napura basin District Gilgit.

Petitioner.

Versus

The State

Respondent.

OFFENCE UNDER SECTION 9 (C) CNSA 1997 VIDE FIR NO. 02/2013 DATED 30/01/2013 ANF POLICE STATION ANF GILGIT.

CRIMINAL PETITION FOR LEAVE TO APPEAL AGAINST THE IMPUGNED JUDGMENT/CONVICTION DATED 5/3/2015 IN CRIMINAL APPEAL NO 08/2015 PASSED BY GILGIT -BALTISTAN CHIEF COURT.

PRESENT:-

1. Mr. Amjad Hussain Advocate alongwith Mr. Johar Ali Advocate-on- Record for the petitioner.
2. Mr. Manzoor Hussain Advocate/ Special Prosecutor ANF.

DATE OF HEARING: - 08.04.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition is directed against the impugned judgment dated 05.03.2015 in Criminal Appeal No. 08/2014, passed by the learned Gilgit-Baltistan Chief Court. Whereby, the appeal was dismissed and upheld the judgment dated 30.04.2014 in Session Case No. 12/2013 passed by the learned Special Judge CNSA Gilgit. The learned Trial Court convicted the petitioner and sentenced him to suffer eight (08) years R.I under Section 9 (C) CNSA 1997 in addition to pay Rs. 100,000/- (rupees one lac only), in default in

payment of fine he has to undergo for further one (01) year S.I. The benefit of Section 382 –B Cr.PC was given to the petitioner.

Briefly the facts spelt out in FIR. No. 02/2013 registered on 30.01.2013 at Police Station ANF, Gilgit under Section 09 (C) CNSA 1997 are that on receipt of spy information about a notorious drug peddler Zubair Ahmed, who will arrive at Kashrote Paltani Mohallah link road with a huge amount of Charas in his personal vehicle to supply the same to his specific buyers. Whereupon a raiding team, in the surveillance of Assistant Director ANF alongwith the complainant and other staff moved towards the above venue and made nakabandi on the Ehsan Ali road. In the meantime a dark blue Toyota Corolla Car bearing No RE-788 came towards the link road from Paltani Muhallah which was made to stop. On inquiry, a person found in the vehicle, who subsequently was known to be Zubair Ahmed s/o, Khushal Khan r/o Shoti Napoor Basin Gilgit. The said drug peddler disclosed that the charas is lying in the Digi of the vehicle. On the opening Digi of the Car a blue plastic bag was found which was opened in presence of witnesses and twenty (25) number of packets of hashish were recovered. On weighing all the packets it were found hundred grams each and the total packets were found twenty five (25) Kgs. Ten grams of hashish as sample were drawn from each packet containing i.e. total twenty five (25) which were separately sealed in presence of the witnesses and remaining hashish weighing 24750 was also sealed in a plastic bag. The recovery memos were also prepared. The vehicle was

compounded and recovery memo of the same alongwith site plan were prepared on the spot whereafter the recovered articles alongwith the accused were brought to the police station.

The charge was framed by the learned Trial Court on 11.03.2013 under Section 09 (C) CNSA 1997 for possession of twenty five (25) Kgs Charas. The petitioner did not plead guilty and claimed for trial. Six (06) prosecution witnesses were examined. In the meantime, the prosecution filed Complete Charge sheet, whereafter, the prosecution examined only two (02) witnesses namely PW HC Asif Shah and PW SI Muhammad Sharif SHO ANF and closed prosecution evidences on 05.09.2013. The petitioner/accused was also examined under Section 342 Cr.PC. The petitioner denied all the charges leveled against him and took specific defence of false implication and planting of false recoveries from him by the SHO /SI Muhammad Sharif and PW Asif Shah in collusion with so called ANF informer namely Setti. The petitioner/accused although opted not to record his statement on oath under Section 340 Cr.PC but examined two Defence Witnesses in support of his version, namely Ayub S/o Subhan Joo r/o Khawaja Muhallah Kashorote Gilgit and Obaidullah s/o Abdul Bari r/o Sakwar Gilgit. The said DWs have admitted the presence of petitioner and interception of the alleged Car drove by him on the specific day and time of the raid. Further the petitioner admitted his arrest at the said raid on the specific time and day of the occurrence.

Upon hearing the learned counsel for the petitioner as well as the Special Prosecutor ANF, the learned trial Court after found him guilty convicted and sentenced him to suffer eight years RI and to pay Rs. 100,000/- (Rupees one lac). In case of default, the petitioner will undergo for further one (01) year SI. The benefit of Section 382-B Cr. PC was extended to him. A sum of Rs. 100,000/- (rupees one lac) recovered in possession of the petitioner having not been proved as "Watak Money" was ordered to return to him. The accounts of the petitioner/accused frozen by the ANF, having not been proved raised by the petitioner on allegedly drug peddling money were also defreezed. The vehicle allegedly involved in the offence is also released as fine was imposed on the petitioner. The case property i.e. 25 Kgs charas was also declared State property and the prosecution was directed to destroy the same according to the law in presence of the Judicial Magistrate.

The petitioner, feeling aggrieved by and dissatisfied with the impugned Judgment dated 30.04.2014, passed by the learned Session/Special Judge CNSA Gilgit, challenged the conviction and sentences awarded to him before the learned Gilgit-Baltistan Chief Court at Gilgit which upon hearing the learned counsel for the petitioner and the learned Special prosecutor for the State was pleased to dismiss the appeal being meritless and upheld the judgment passed by the learned Trial Court. The petitioner being aggrieved by filed Petition for Leave to Appeal in this apex court for setting aside the impugned judgment dated 05.03.2015 passed by

the learned Chief Court in Criminal Appeal No. 08/2014 as well as the judgment dated 30.04.2014 in Session Case No. 12/2013 passed by the learned Trial Court Gilgit. Notice to the special Prosecutor ANF was issued on 04.05.2015 and consequently the case was heard today.

After hearing the learned counsels for the respective parties at length, Mr. Amjad Hussain learned counsel for the petitioner very humbly submits that he on instructions from his client will not press the petition and prays for reduction in sentences. He further submits that the petitioner committed the offence in a mitigating circumstances. He is a young man having large family responsibilities. Due to his detention in jail, he and his family have morally and mentally suffered a lot and financially crippled. He has learnt a lesson and has shown remorse and penitence and wants to unburden his conscious. During serving his sentence in jail he has improved himself a lot and realized his mistakes by committing such shameful offence which has given bad name to his whole religious family. The learned advocate for the petitioner further contends that the petitioner undertook not to repeat such an offence in future. He wants to reform and rehabilitate himself as a responsible citizen. He finally submits that the ends of justice have already been served. While submitting so he supports his contentions by relying upon case laws reported as Jameel Khan & others versus The State, (PLD 2008, Karachi, 376), Waris Khan versus The State, (PLD 2006 Karachi, 648),

Muhammad Hashim versus The State, (PLD 2004 SC 856), Unchenna Ibeneme versus The State, (1992 MLD 1823), Rodriguez Narciso versus The State (2000 MLD 218), John Chibuzo versus The State (2000 MLD 235), Jaffar versus The State, (2008 PCr.LJ 1540), Rubina versus The State & others, (2009 PCr.LJ), Ikhtiar versus The State, (2009 PCr.LJ 355) and Muhammad Ayub versus The State, (2009 PCr.LJ 403). He contends that in all the aforementioned cases the Hon'ble High Courts and the Hon'ble Supreme Court of Pakistan have leniently considered the offences committed in mitigating circumstances and the appellants /petitioners have shown remorse and penitence by giving undertakings to reform and rehabilitate as responsible citizen in the society and their substantive sentences and fines were reduced.

On the other hand, the learned Special Prosecutor appearing on behalf of the State submits that since the petitioner has not challenged the convictions/sentences awarded to him by both the courts below, therefore, the appeal of the petitioner may be dismissed and conviction be maintained. He opposed to the reduction in sentences as the learned Trial Court has awarded lesser punishment. The learned counsel also submits that under Section 9 (C) as the quantity of recovered charas was twenty five (25) kgs and under Section 9 (C) First Proviso of CNS Act 1997 the minimum sentence provided was life imprisonment. This Court inquired from the learned Prosecutor for ANF as to why the State

has not filed Criminal Revision for enhancement of sentence, on which the learned Prosecutor ANF could not offer any explanation.

We have heard both the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned judgments passed by the two courts below as well as the case laws referred by Mr. Amjad Hussain, the learned counsel for the petitioner which supports his contentions. Further the perusal of the record shows that the petitioner/accused is in custody since 30.01.2013. He is the first offender who has shown his remorse and penitence during serving the sentence in jail. He has already served upon more than three (03) years in jail and as per record his conduct found satisfactory. He also wants to reform and rehabilitate himself as a responsible citizen in the society in future. In our considered view the petitioner deserves for leniency as prayed for.

In view of the above facts, circumstances and in pursuance of case laws cited by Mr. Amjad Hussain the learned counsel for the petitioner, we convert this petition into an appeal and the same is dismissed as not pressed. The conviction is maintained, however, the substantive sentence is reduced from eight (08) years R.I to five (05) years R.I and the fine of Rs. 100,000/- (rupees one lac only) is also reduced to Rs. 50,000/- (rupees fifty thousand only). In default in payment of fine he has to further undergo for six (06) months R.I instead of S.I. The benefit of Section 382-B Cr.PC has already been extended to the petitioner

will remain intact. The remission, if any, admissible as per Prisons Rules may be given to him and included in his substantive sentence thereto.

The appeal is dismissed, conviction is maintained and sentence is reduced.

Chief Judge.

Judge.

Judge.

Whether the case is fit to be reported or not?