

HCJDA-38  
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**MULTAN BENCH MULTAN**  
**JUDICIAL DEPARTMENT**

(Criminal Appeal No. 654 of 2020)

*Haider Ali*  
**Versus**  
*The State and another*

**Date of Hearing:** 13.04.2022  
**Appellant by:** Rana Asif Saeed and Tahir Hussain Khan Malazai  
Advocates  
**State by:** Mr. Ashfaq Ahmad Malik Deputy Prosecutor  
General  
Mr. Khalid Iban-e-Aziz Advocate Special  
Prosecutor ANF (on Courts call)  
Syed Badar Raza Gillani Advocate/Amicus  
Curiae.

**J U D G M E N T**

**Sohail Nasir J:** This Criminal Appeal under Section 48 of the Control of Narcotic Substances Act, 1997 (*Act*) filed by Haider Ali (*appellant*) is directed against judgment dated 10.12.2020 passed by the learned Additional Sessions Judge/Judge Special Court (*CNS*) Khanewal on the basis whereof he was convicted and sentenced as under: -

- (i) **Under Section 9(c) of the Act** for possessing the Heroin 5324 grams to undergo 10 years R.I<sup>1</sup> and fine of Rs.1,10,000/- (one lac and ten thousands). In default of payment of fine he was ordered to further undergo 10 months S.I.<sup>2</sup>
- (ii) **Under Section 9(c) of the Act** for keeping 2680 grams of Charas to undergo 5 years and 6 months R.I and

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<sup>1</sup> Rigorous imprisonment

<sup>2</sup> Simple imprisonment

*fine of Rs.25000/- (twenty five thousands). In default of payment of fine he was ordered to further undergo 5 months and 15 days S.I.*

2. It was directed that sentences of appellant shall run concurrently and benefit of Section 382-B<sup>3</sup>, Cr.P.C<sup>4</sup> shall be available to him. The conviction is ultimate result of the prosecution that appellant has faced in case FIR<sup>5</sup> No. 82 (PC) recorded on 05.04.2020 under Section 9(c) of the *Act* at Police Station Makhdoom Pur district Khanewal.

3. In brief prosecution's case was that on 05.04.2020 at about 03:40 pm, from the area of 'Mouza Kot Abdullah' appellant was arrested and from his possession Heroin weighing 5324 grams and 'Charas' weighing 2680 grams were recovered.

4. As evident from opening paragraph of this judgment, appellant has been convicted on two counts, one for recovery of Heroin and other for possessing the 'Charas'. On 17.03.2022 when criminal Miscellaneous (01 of 2022) for suspension of sentences file by appellant came up for hearing, the following order was passed by this Court: -

*"We have observed that in this case from the possession of applicant Heroin weighing 5324 grams and Charas weighing 2680 grams was recovered in one and the same transaction on 05.04.2020. The learned trial court has convicted the appellant for both the recoveries independently as under: -*

- (i) **Under Section 9-C of CNSA 1997**  
*to undergo 10 years R.I and fine of Rs.1,10,000/- (Heroin).*
- (ii) **Under Section 9-C of CNSA 1997**  
*to undergone 5 years R.I and fine of Rs.25,000/- (Charas).*

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<sup>3</sup> Where a Court decides to pass a sentence of imprisonment on an accused for an offence it shall take into consideration the period, if any, during which such accused was detained in custody for such offence.

<sup>4</sup> Code of Criminal Procedure (Act V of 1898)

<sup>5</sup> First Information Report registered under Section 154 Cr.P.C

*2. The legal question before us is that if more than one kind of contraband is recovered from an accused whether it shall be deemed to be a single recovery of contraband as Section 9-C of CNSA 1997 provides the punishment without describing the nature and kind of contraband.*

*3. We therefore, direct both the sides to assist the Court on this legal proposition. For better assistance and to arrive at an authoritative decision we appoint Syed Muhammad Badar Gillani Advocate as Amicus Curiae who is present in Court and has been informed accordingly.”*

5. Syed Badar Raza Gillani learned Amicus Curiae<sup>6</sup>, Mr. Khalid Iban-i-Aziz Advocate for ANF<sup>7</sup>, Mr. Ashfaq Ahmad Malik Deputy Prosecutor General, Rana Muhammad Asif Saeed and Mr. Tahir Hussain Khan Malazai Advocates for appellant jointly contended that as under Section 9(c) of the *Act* no distinction has been drawn with regard to variant of material recovered from an offender and that the slab for sentences are only with reference to quantity therefore, if an accused is found in possession of more than one kinds of contraband, that shall be deemed to be single recovery and accused cannot be convicted for each kind separately.

6. **HEARD.**

7. To resolve the proposition involved, we have to examine the scheme of the law. The *Act* was promulgated on 07<sup>th</sup> July, 1997 with a preamble to consolidate and amend the laws relating to narcotic drugs and psychotropic substances and control the production, processing and trafficking of such drugs and substances. It was for that reason that by way of Section 78 of the *Act*, The Opium Act, 1857 (XIII of 1857),

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<sup>6</sup> It's a Latin word that means "Friend of the Court"

<sup>7</sup> Anti Narcotics Force

The Opium Act, 1878 (I of 1878), The Dangerous Drugs Act, 1930 (II of 1930) and the Control of Narcotic Substances Ordinance, 1997 (XLIII of 1997) were repealed and at the same time under Section 76 the provisions of the *Act* were stated to have effect notwithstanding anything contained in any other law for the time being in force. It means that every case with regard to narcotic drug, psychotropic substance or controlled substance shall be governed under the provisions of the *Act*.

8. For more effective discussions, Section 9 of the *Act* is reproduced as under: -

**“9. Punishment for contravention of Section 6, 7 and 8:** *Whoever contravenes the provisions of Sections 6, 7 or 8 shall be punishable with---*

*(a) imprisonment which may extend to two years, or with fine, or with both, if the quantity of the **narcotic drug, psychotropic substance or controlled substance** is one hundred grams or less;*

*(b) imprisonment which may extend to seven years and shall also be liable to fine, if the quantity of the **narcotic drug, psychotropic substance or controlled substance** exceeds one hundred grams but does not exceed one kilogram;*

*(c) death or imprisonment for life, or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be up to one million rupees, if the quantity of **narcotic drug, psychotropic substance or controlled substance** exceeds the limits specified in clause (b):*

*Provided that if the quantity exceeds ten kilograms the punishment shall not be less than imprisonment for life”*

9. Plain reading of the above referred Section of law provides the consequences in case of contravention of the

provisions of Sections 6, 7 and 8 which for better understanding are also reproduced as under: -

**“6. Prohibition of possession of narcotic drugs, etc.:** No one shall produce, manufacture, extract, prepare, possess, offer for sale, sell, purchase, distribute, deliver on any terms whatsoever, transport, dispatch, any **narcotic drug, psychotropic substance or controlled substance**, except for medical, scientific or industrial purposes in the manner and subject to such conditions as may be specified by or under this Act or any other law for the time being in force.

**7. Prohibition of import or export of narcotic drugs, etc.:** (1) No one shall---

(a) import into Pakistan

(b) export from Pakistan

(c) transport within Pakistan

(d) tranship any **narcotic drug, psychotropic substance or controlled substance** save in accordance with rules made under subsection (2) and in accordance with the conditions of any licence, permit or authorization for that purpose which may be required to be obtained under those rules.

(2) The Federal Government may make rules permitting and regulating the import into and export from Pakistan, transport within Pakistan and transshipment of **narcotic drugs, Psychotropic substance or controlled substances**, and such rules may prescribe the ports or places at which any kind of **narcotic drug, psychotropic substance or controlled substance** may be imported, exported, transported within Pakistan or transhipped, the form and conditions of licence, permit or authorities by which such licences, permits or authorization may be granted, the fees that may be charged therefore, any other matter required to have effective control of the Federal Government over such import, export, transportation and transshipment.

**8. Prohibition on trafficking or financing the trafficking of narcotic drugs, etc.:** No one Shall---

(a) organize, manage, traffic in, or finance the import, transport, manufacturing or trafficking of, narcotic drugs, psychotropic substances or controlled substances; or  
(b) use violence or arms for committing or attempt to commit an offence punishable under this Act.

10. In all the earlier quoted provisions of the *Act*, three kinds of contraband have been shown as: -

- *Narcotic Drugs*
- *Psychotropic Substances and*
- *Controlled Substances*

11. All these kinds have been defined under Section 2 of the *Act* as follows: -

“2(k) “controlled substance” means any substance which may be used for the production or manufacture of narcotic drugs or psychotropic substance;

2(s) “Narcotic drug” means coca leaf, cannabis, heroin, opium, poppy straw and all manufactured drugs;

2(z-a) “psychotropic substance” means the substance, specified in the Schedule to this Act, and such substances as the Federal Government may, by notification in the official Gazette, declare to be a psychotropic substance”

12. The study of Section 9 of the *Act* does not make any distinction that in case of which variant (*Narcotic Drugs, Psychotropic Substances, Controlled Substances*) what will be the amount of punishment like we have noticed under Article 4 of *The Prohibition (Enforcement of Hadd) Order, 1979* where in case of specific quantity of intoxicant the punishment is similar but once exceeds the punishment varies keeping in view the kind of material. It is as under: -

**“4. Owning or possessing intoxicant.**

*Whoever owns, possesses or keeps in his custody any intoxicant shall be punished with imprisonment of either description for a term, which may extend to two years, or with whipping not exceeding thirty stripes, and shall also be liable to fine:*

*Provided that nothing contained in this Article shall apply to a non-Muslim foreigner or to a non-Muslim citizen of Pakistan who keeps in his custody at or about the time of a ceremony prescribed by his religion a reasonable quantity of intoxicating liquor for the purpose of using it as a part of such ceremony:*

**Provided further that if the intoxicant in respect of which the offence is committed is heroin, cocaine, opium or coca leaf, and the quantity exceeds ten grams in the case of heroin or cocaine or one kilogram in the case of opium or coca leaf, the offender shall be punishable with imprisonment for life or with imprisonment which is not less than two years and with whipping not exceeding thirty stripes, and shall also be liable to fine”**

**(Emphasis applied)**

13. “*Neminem opertet legibus esse sapientiore*” is a Latin phrase that means “no man ought to be wiser than the laws” so it cannot be said that while making the *Act* the legislatures were not cognizant of the situation. If they had to limit the sentence in the light of any specific material/kind they were supposed to specify it clearly as has been observed under the provisions of the Prohibition (Enforcement of Hadd) Order, 1979 (*ibid*). Therefore, in case of various type of contraband no distinction is there under Section 9 of the *Act* however the discretion has been left at the court for quantum of sentence if quantity does not exceed 10 kilograms, who keeping in view the kind of recovered material, its effect on human lives and society or other considerations as the case may be, has to ascertain the amount of punishment and it is needless to say that sentencing

is not an easy process but difficult stage for a judge and is an attempt to juggle the objects of various sizes while walking on a tight rope which is being shaken at both ends.

**14.** We, therefore, feel no difficulty to hold that in case of recovery of contraband of more than one kind, it will be considered single recovery against an offender with accumulative weight.

**15.** The next question is with regard to determination of period of imprisonment in view of sentencing policy<sup>8</sup>. The legality of the Judgment passed in Ghulam Murtaza case is under consideration before the Honourable Supreme Court of Pakistan<sup>9</sup> which appears to have been suspended as evident from copy of an order dated 31.08.2009 passed in Criminal Appeal No. 218-L of 2009. For the sake of arguments, if it is presumed that still the sentencing policy holds the field, even then question is not difficult to be answered for the reason that the said policy does not cover the proposition in hand, like in the case of ‘Amphetamine’ (ICE), so it will be within the discretion of the court to determine that what the quantum of sentence has to be keeping in view the features of each case.

**16.** Coming to the merits of the case although various contentions have been raised by learned counsel for appellant like that chain of safe custody has been not been proved and summoning of record of ‘*Roznamcha*’ of the Police Station with reference to report dated 08.04.2020 but as the learned trial court has committed serious illegality while convicting the appellant on two counts therefore, all concerned to the matter are in agreement that it is a case of remand. Therefore, this Criminal Appeal is allowed. Impugned judgment is set aside.

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<sup>8</sup> Ghulam Murtaza & another vs. The State PLD 2009 Lahore 362

<sup>9</sup> Criminal Petition No. 308 of 2009; Criminal Appeal No. 218-L of 2009 and Criminal Appeal No. 287-L of 2009’ Criminal Appeal No. 905-L-2009



The case is **remanded** back to the learned trial court with direction to rewrite the judgment after giving a proper right of hearing to both the sides by attending and responding all the contentions to be raised by them and without being influenced from its earlier judgment.

**(Shakil Ahmad)**  
**Judge**

**(Sohail Nasir)**  
**Judge**

**Approved For Reporting**

**(Judge)**

Afzaal