

## Judgment Sheet

### PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

#### *JUDICIAL DEPARTMENT*

#### Cr.A No.91-A of 2018

#### JUDGMENT

*Date of hearing.....14.12.2018.....*

*Appellant...(Muhammad Khursheed) by Mr. Shahzad Ahmad Khan,  
Advocate....*

*Respondent...(The State etc) by Sardar Muhammad Asif, Assistant AG  
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**SYED MUHAMAMD ATTIQUE SHAH, J:-** This appeal is directed under section 410 Cr.P.C against the judgment dated 28/04/2018 passed by learned Additional Sessions Judge-I Mansehra, whereby, the appeal filed by the appellant against his conviction and sentence awarded to him by the learned Judicial Magistrate vide judgment dated 23.04.2018 in case FIR No. 176 dated 22/04/2018 under Articles 3/4 of Prohibition (Enforcement of Hadd) Order, 1979, Police Station Saddar, District Mansehra.

2. Facts leading to the instant appeal are that on 22/04/2018 at about 18:55 hours, complainant Muhammad Naseem Khan, SHO Police Station Saddar, Manshra, was on 'gusht' alongwith police officials on Balakot Road, when he received spy


information about selling of narcotics by a person in 'Sanday Sar Ziarat'; that he reached the spot and found a person sitting there in suspicious condition, who was overpowered by the police officials; that as a result of search, he was found in possession of 720 grams '*charas*' kept in a shopping bag lying in his lap, who subsequently, disclosed his name as Muhammad Khursheed son of Muhammad Aslam. The complainant separated sample of five grams from the recovered contraband for chemical analysis and arrested the accused in the case.

3. After completion of investigation, challan was submitted in the court of learned Judicial Magistrate for trial. However, the appellant submitted an application, wherein, he has waived off his rights under Section 241-A Cr.P.C. Accordingly, charge was framed to which the appellant pleaded guilty and did not claim trial, followed by Show Cause Notice as provided under section 243 Cr.P.C, however, the appellant placed himself at the mercy of the Court. Consequently, the appellant was convicted and sentenced to one month under Article 4 P.O, while, two months imprisonment and to pay a fine of

Rs.2,000/- or in default thereof, he was sentenced to undergo simple imprisonment for 10 days, under Article 3 P.O., vide impugned judgment dated 23/04/2018. The said conviction was challenged by the appellant before learned Additional Sessions Judge-I, Mansehra, which was dismissed vide judgment dated 28.04.2018, hence, the instant appeal.


4. Arguments of the learned counsel for the parties heard and perused the record with their valuable assistance.

5. In this case, the appellant had admitted his guilt qua selling and possessing '*charas*' and declined to produce any evidence. It is a common practice that once a person who is involved in a criminal case wants to plead guilty to the charge leveled against him and placed himself at the mercy of the Court and in that eventuality he become a friend of the Court and the Court always takes lenient view in respect of his sentence. Since the appellant, in the instant case, had straight away placed himself at the mercy of the trial Court and pleaded guilty, therefore, the trial Court has rightly taken a lenient view in respect of his sentence. Furthermore, once the appellant pleads guilty under



section 265-E, Cr.P.C, then he is barred under section 412, Cr.P.C. to challenge his conviction and sentence by filing appeal. He could only challenge the extent or legality of the sentence. There is no reason how, after submission of complete challan and appearance in the trial Court, the appellant could remain unaware that if he made statement in the Court in the proceedings it could result in his conviction and sentence on his own plea of guilty.

6. Now the matter which is to be considered by this Court is only the extent and legality of the sentence awarded to the appellant by the learned trial Court. While going through the memo of appeal filed by the appellant before the learned Appellate Court, this Court notes that the appellant has challenged the extent and legality of the sentence but in an implied manner. Thus, this Court considers that in peculiar facts and circumstances of the present case, especially, when the appellant is first offender, not previously convicted and the only bread earner of his family, moderate reduction in the quantum of sentence would certainly meets the interest of justice.



7. It may be mentioned that though under section 412 Cr.P.C, appeal does not lie in case of plead guilty, except as to the extent or legality of the sentence. However, the appellant has filed appeal before the learned Additional Sessions Judge-I, Mansehra, which was dismissed but again the appellant has filed second appeal before this Court, which is not maintainable. However, in the interest of justice, this appeal is converted into revision petition under section 439 Cr.P.C.

8. Accordingly, for the reasons stated hereinabove, this Court while exercising powers under section 439 read with section 423 Cr.P.C, partially allows the present revision petition in the manner that the conviction of the appellant is maintained, however, the sentence awarded to him in the present case is modified to the extent that the same is reduced to the period he has already undergone.

**Announced.**  
**Dt.14.12.2018.**

  
**J U D G E**

/\*M.Saleem\*/

(SB) Mr. Justice Syed Muhammad Attique Shah