

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.13-P/2014

(On appeal from the judgment dated 12.12.2013 of the Peshawar High Court, Peshawar passed in Cr. Appeal No.482-P/2013)

The State through Regional Director ANF Peshawar ...Appellant(s)

VERSUS

Sohail Khan ...Respondent(s)

For the Appellant(s) : Mr. Muhammad Tariq Shah,
Special Prosecutor, ANF

For the Respondent(s) : N.R.

Date of Hearing : 30.04.2019

ORDER

Qazi Muhammad Amin Ahmed, J.- Sohail Khan, respondent herein, had been sent for through repeated process; instead of vindicating his position, he has opted to stay away, thus leaving the Court with no option to decide this appeal on merits with assistance of the learned Law Officer. On having been found in possession of 11.400 kilograms of *Charas Garda*, he was indicted before a Special Court (CNS) at Peshawar; convicted under Section 9(c) of the Control of Narcotic Substances Act, 1997 the learned trial Judge handed down sentence of five years with fine of rupees fifty thousand or to undergo six months S.I. in lieu thereof *vide* impugned judgment dated 21.1.2010. A learned division bench of the Peshawar High Court declined to enhance respondent's sentence to imprisonment for life as mandated by law. The issue is being re-agitated through leave of the Court to examine whether a sentence lesser than imprisonment for life can be awarded to a convict with contraband exceeding ten kilograms in weight.

2. The learned Law Officer contends that the proviso to Section 9(c) of the Act *ibid* mandatorily provides punishment of imprisonment for life and this left the learned High Court with no option but to enhance respondent's sentence to imprisonment for life so as to rectify the error committed by the trial Court; it has also been pointed out that the respondent did not prefer appeal after the learned High Court maintained his conviction.

3. The respondent by his own choice has found it convenient to stay away; his absence is seemingly calculated to avoid the process of law and certainly cannot stand in impediment to the disposal of this appeal; he has been found guilty of possessing contraband, in excess of ten kilograms; evidence of recovery and forensic report is inexorably pointed upon his culpability and thus in circumstances he was liable to be sentenced to imprisonment for life; magnanimity shown by the Courts below being outside the remit of law merits recall. Appeal is allowed, impugned judgments to the extent of quantum of sentence are set aside. He is sentenced to Imprisonment for life however, the amount of fine is kept intact along side attending consequences. Non-bailable warrants of arrest shall issue to bring the respondent before the law so as to serve out sentence inflicted upon him.

JUDGE

JUDGE

JUDGE

Islamabad, the
30th of April, 2019
Ghulam Raza/*