

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.7-P/2014

(On appeal from the Judgment dated 28.05.2013 passed by the Peshawar High Court, Peshawar in Criminal Appeal No.558 of 2010).

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

VERSUS

Fakhar Zaman ...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.- Fakhar Zaman, respondent herein, was intercepted by Anti Narcotics Force, Peshawar on 5.4.2009 with 82.600 kilograms of *charas garda* as well as 07 kilograms of *charas pukhta*; he was convicted under Section 9(c) of the Control of Narcotics Substances Act, 1997 *vide* judgment dated 17.5.2010 and sentenced to imprisonment for life along with fine of rupees fifty thousands or to undergo six months S.I. in lieu thereof. The learned Peshawar High Court, in appeal, *vide* impugned judgment dated 28.5.2013 upheld the conviction, however reduced the sentence to ten years R.I. with benefit of Section 382-B of the Code of Criminal Procedure, 1898 *vires* whereof are being challenged through leave of the Court, *inter alia*, on the ground that there was no occasion for the learned High Court to reduce the sentence from imprisonment for life to ten years as according to the proviso to Section 9(c) of the Act *ibid*, lowest mandated sentence for possessing contraband in excess of ten kilograms is imprisonment for life and as the learned High Court maintained respondent's conviction, it had no option but to maintain the quantum of sentence as well.

2. The respondent was sent for through repeated process and he has found it convenient to stay away from the law; his absence is seemingly calculated to avoid the judicial process. It is by now well settled that an appellant or a respondent, though endowed with right of opportunity of hearing, nonetheless, cannot hold the process of law in abeyance to a point of time of his own choice and his case can be decided even in his absence if the default is deliberate; a case in hand.

3. The impugned view would not commend well with the law, unambiguously providing a sentence, not less than imprisonment for life as well as fine in case an offender is held guilty of possessing contraband in excess of ten kilograms as is the case with the respondent and therefore impugned view taken by the High Court is open to exception, warranting interference by this Court; consequently this appeal is allowed, impugned judgment dated 28.5.2013 is set aside and the sentence awarded by the learned trial Court is restored, however with benefit of Section 382-B of the Code *ibid*. Perpetual warrants of arrest shall issue to arrest the respondent so as to serve out the sentence, handed down by the learned High Court.

JUDGE

JUDGE

JUDGE

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