

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT,  
MULTAN BENCH, MULTAN.  
(JUDICIAL DEPARTMENT)**

**Criminal Appeal No.363/2020**

Qasim Ali Vs. The State

**JUDGMENT**

**DATE OF HEARING:** 15.02.2022.

**APPELLANT BY:** Mr. Muhammad Sadiq, Advocate.

**STATE BY:** Mr. Muhammad Ali Shahab, Deputy  
Prosecutor General.

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**MUHAMMAD AMJAD RAFIQ, J:-** On recovery of 680 grams of *charas* from him, Qasim Ali (accused/appellant) was booked in case FIR No.29/2020 under section 9 (b) of the Control of Narcotics Substance Act, 1997 registered at police station Ghalla Mandi, Sahiwal and after investigation when sent up to face trial, he proceeded to confess his guilt upon which he was given show cause notice to explain that why he should not be convicted in the case on the basis of confession, whereupon, he failed to offer any explanation, rather regretted the commission of offence and undertook not to repeat the same. As such, he was convicted under section 9 (b) of the Control of Narcotics Substances Act, 1997 and sentenced to imprisonment for **“one year and nine months with a fine of Rs.13000/-”** in case of default to further undergo four months and fifteen days’ simple imprisonment. At the same time, considering his poor financial position, expression of repentance and desire to live a clean future life, he was placed on probation subject to furnishing of bond under the Probation of Offenders Ordinance, 1960.

2. The accused/ appellant preferred the instant appeal against his above conviction/ sentence, which was admitted for regular hearing by this Court vide order dated 27.08.2020. Today, the learned counsel for

the accused/appellant when confronted that since the conviction/sentence was recorded against the accused/appellant pursuant to his confessional statement, how the instant criminal appeal is maintainable, the learned counsel came out with the stance that as per section 8 of Probation of offenders Ordinance, 1960, a right of appeal is available to the appellant and as a matter of fact he would neither assail the conviction nor the sentence and the sole intention to file the instant criminal appeal is that the accused/petitioner is a student of 10<sup>th</sup> class, therefore, the conviction recorded against him may not jeopardize his future prospects.

3. Heard.

4. With the assistance of learned counsel for the accused/appellant as well as the learned Deputy Prosecutor General, we have examined the entire record and find no such perversity in the findings of conviction/sentence recorded by the learned trial court which could warrant interference therein, as the recovery of contraband is established, the chain of safe custody remains intact and the PFSA report is also supporting the prosecution case and more so, the conviction/sentence has been passed on the basis of confession voluntarily made by the accused/appellant, therefore, on merits we have found no weakness in the prosecution case to justify interference. Even otherwise, under section 412 Cr.P.C. after confession, a sentence could only be challenged **“to the extent or legality”**. Period of imprisonment for one year and 9 months in case u/s 9-B CNSA, 1997 was justified and we have not found any illegality in the impugned judgment as such. Yet right of appeal granted under section 8 of Probation of offenders Ordinance, 1960 is obviously to assail any terms of probation that affects the right of accused. For reference, relevant section is reproduced;

**8. Powers of court in appeal and revision:** — *Where an appeal or application for revision is made against conviction of an offence for which an order is made under section 4 or section 5 discharging the offender absolutely or conditionally or placing him on probation the appellate court or the court sitting in revision may pass such order as it could have passed under the Code, or may set aside or amend*



*the order made under section 4 or section 5 and in lieu thereof pass sentence authorized by law: Provided that the appellate court or the court sitting in revision shall not impose a greater punishment than the punishment which might have been imposed by the court by which the offender was convicted.*

This section is dealing with conviction one passed on merits and not on the basis of confession; therefore, legal position would stand as incorporated u/s 412 of Cr.P.C; however, when appeal is barred, remedy of revision is available to the affected person and in this case right to file revision against the conviction passed on the basis of confession would remain available; therefore, appellant can file a revision petition instead of present appeal. However, this court is not precluded to exercise revisional jurisdiction when sitting as a court of appeal and can pass any incidental order except to enhance the sentence. Same is the legal position as set out in section 8 of Ordinance under discussion. Thus, the conviction/sentence of the accused/appellant as imposed by the learned trial court is upheld.

5. However, the ultimate prayer of the learned counsel for the accused /appellant with regard to stigma of conviction/sentence, we are afraid that the apprehension of learned counsel for the accused/appellant on this particular aspect is farfetched and does not reflect the correct legal position. Section 11 of The Probation of Offenders Ordinance, 1960 (XLV of 1960) is very much clear. For ready reference, the said provision of law is reproduced hereunder: -

***“11. Effects of discharge and probation. 1) A conviction of an offence, for which an order is made under section 4 or section 5 for discharging the offender after the due admonition or conditionally or placing him on probation, shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the provisions of this Ordinance:***

*Provided that where an offender, being not less than eighteen years of age at the time of his conviction of an offence for which an order discharging him conditionally or placing him on probation is made, is subsequently sentenced under this Ordinance for that offence, the provisions of this sub-section shall cease to apply to the conviction.*

***(2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is discharged after due admonition or conditionally, or who is placed on probation, shall in any event be disregarded for the purposes of any law which imposes any disqualification or disability upon convicted persons, or authorizes or requires the imposition of any such disqualification or disability.***

*(3) The foregoing provisions of this section shall not affect—*

*(a) any right of any such offender to appeal against his conviction, or to rely thereon in bar of any subsequent proceedings for the same offence;*

*(b) the revisiting or restoration of any property in consequence of the conviction of any such offender.”*

The above reproduced provision of law manifests that for future, the conviction as imposed against the accused/appellant being solely under the Ordinance, *ibid*, shall not deem to be a conviction for any purpose, rather it would confine limited only to the proceedings wherein such order has been passed (Probation Ordinance) or any subsequent proceedings that too if taken against such convict again under the provisions of the Probation of Offenders Ordinance, 1960, alone.

6. Sub-section (2) of Section 11, of the Ordinance, *ibid*, makes the position further clear requiring that where any law imposes any disqualification or disability upon a convicted person, or authorized or required the imposition of any such disqualification or disability, then such conviction of an offender (under the Probation of Offenders Ordinance, 1960) shall stand disregarded for the purpose of such law which imposes any disqualification or disability upon convicted persons, or authorizes or requires the imposition of any such disqualification or disability. While observing so, we are fortified in our view by the judgment of Hon’ble Supreme Court of Pakistan in the case “MUMTAZ ALI and others versus DISTRICT RETURNING OFFICER and others” (2008 SCMR 751), wherein, the nomination papers of candidates for office of Nazim and Naib Nazim were rejected for having been convicted and sentenced under the Probation of Offenders Ordinance, 1960. The Hon’ble Supreme Court set-aside such rejection of nomination papers and allowed them to contest the election.

7. Effect of section 11 of Ordinance *ibid* reflects the intention of legislature to destigmatize the one who had once been trapped or caught into a penal regime should become a useful citizen and to urge his social contribution and participation in the economic life of the



country. This intention should be given a broader touch even for those who are already in the public service to save their families from starvation or like sufferings. Act of benevolence is regarded next to piety, Courts should endeavor to pass on the benefit of probation law to all first offenders, repenting their deeds, within the parameters of section 4 & 5 of the Probation of Offenders Ordinance, 1960.

8. Public Authorities sitting at top for maintaining the disciplinary matters, before initiating departmental inquiries on the touch stone of earned conviction should understand that conviction under Probation of Offenders Ordinance 1960 cannot be regarded as conviction for imposing penalty of dismissal or removal from service. Even in conviction, competent authority barring clause (a) of section 8 of the Punjab Efficiency, Discipline and Accountability Act, 2006, cannot proceed to dismiss the civil servant straightaway but it is considered only a ground for inquiry and the ensuing results may also be in the form of Minor or Major penalties, except removal and dismissal from service, which can well be imposed instead. For reference relevant section is reproduced.

**8. Action in case of conviction or plea bargain under any law:** – Where an employee is convicted by a court of law or has entered into plea bargain or has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude or affecting human body under any law for the time being in force, the competent authority, after examining facts of the case, shall–

- (a) dismiss the employee, where he has been convicted of charges of corruption or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily; or
- (b) proceed against the employee under section 7, where he has been convicted of charges other than corruption; or
- (c) proceed against the employee under section 9, where he has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude or affecting human body.

The above observations are supported by a verdict of Honourable Supreme Court in a case reported as “INSPECTOR-GENERAL OF POLICE PUNJAB, LAHORE and others versus MAHMOOD IKRAM” (1998 SCMR 765)

9. For what has been discussed above, while sustaining the conviction/sentence of the accused/appellant, in the light of above

referred judicial precedents, we have no hesitation to hold that the conviction recorded under the Probation of Offenders Ordinance, 1960 shall not stand in the way of all kinds of future prospects of the petitioner, except for the purpose of being dealt again under Ordinance ibid if he repeats the offence. With these observations, the instant appeal is dismissed.

(MUHAMAMD WAHEED KHAN)  
JUDGE.

(MUHAMMAD AMJAD RAFIQ)  
JUDGE.

Javed\*

**APPROVED FOR REPORTING**

JUDGE

