

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

Cr. A No.468-P/2021.

**Muhammad Zabit**  
**Vs**  
**The State**

**JUDGMENT**

Date of hearing 16.07.2021

Appellant (by) Sardar Ali Khan, Advocate

State (by) Ms. Sophia Noreen, Assistant A.G

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**MUSARRAT HILALI, J.-** This criminal appeal is directed against the judgment dated 03.03.2021 of the learned Additional Sessions Judge-VI / Child Protection Court, Kohat, passed in case FIR No. 144 dated 03.02.2020 under Section 9-C CNSA 3/4 P.O, registered at Police Station, Cantt. Kohat, whereby the appellant has been convicted and sentenced to suffer rigorous imprisonment for four years with fine of Rs.60,000/- or in default thereof to suffer further imprisonment for three months S.I with benefit u/s 382-B Cr. P.C.

2. Allegations against the accused-appellant are that on 03.02.2020 at 16.00 hours near Chakarkot Graveyard, the local police of police station Cantt. Kohat recovered a blue plastic shopper containing 360 grams chars from side pocket of appellant. Accordingly, he was arrested and the ibid case FIR was registered.

3. The learned trial Court, on the basis of plead guilty by the appellant, convicted and sentenced him, as referred to above. Hence, the instant appeal.

Arguments heard and record perused.

4. Under Section 412 Cr.P.C, when an accused person has pleaded guilty and has been convicted, there shall be no appeal except as to the extent and legality of the sentence. In the instant case, as per the contents of the FIR, 360 grams chars was allegedly recovered from the possession of the accused-appellant. The accused-appellant was arrested, whereafter on 14.02.2020, he was allowed bail by the learned Additional Sessions Judge, Kohat. On 03.03.2020, the accused-appellant submitted

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an application before the learned trial Court wherein by waiving the right of trial and right of appeal, he pleaded guilty and left himself at the mercy of the learned Court. On the same day, charge was framed and on his own plea, the accused was convicted and sentenced to rigorous imprisonment for four years with fine of Rs.60,000/- and in-default of payment of fine he was to suffer three months imprisonment. The accused-appellant has challenged his sentence on the ground that he submitted the application expecting the Court to award him the lesser possible sentence, however, to his utter surprise and shock, the sentence awarded was harsh and vulnerable.

5. The procedure in cases where the accused "*plead guilty*" is different from the procedure adopted in the cases where the accused "*plead not guilty*". In cases where the accused pleads guilty, no further proceedings in respect of the offence is conducted and after looking into the nature of the offence by taking a lenient view the

minimum sentence (if prescribed by the Statute) is awarded.

6. In cases where the Court intends to award maximum punishment, the accused shall be forewarned about the implication of the charge and the effect of plead guilty. The Court shall disclose its mind to the accused that even if he pleads guilty, the Court is not going to take lenient view and if the accused still stands by his position then the Court shall decide the case according to the nature of the charge. In the instant case, the accused was not found guilty rather he pleaded guilty only to come out from the rigors of the prolong trial. Looking into the merits of the instant case, it appears that if the accused had not pleaded guilty and claimed trial, he would have been acquitted. On perusal of the entire record of the instant case, it is found that there is nothing on the record showing that the learned Court before awarding the impugned sentence, satisfied itself that the plea of guilt was made by the accused after the charge

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had fully been explained to him and that the accused understood the charge and its implication and that the same was voluntary.

As has been mentioned in the preceding para that there is a bar of appeal under Section 412 Cr.P.C on the matters decided on plead guilty, therefore, without touching the conviction, it is held that the sentence awarded to the accused-appellant is harsh, thus the same is modified in terms that the sentence of four years is reduced to the period which he has already spent in custody. The fine imposed upon him is also set aside.

**Announced**  
**16.07.2021**

  
**JUDGE**

**(SB) Hon`ble Justice Musarrat Hilali**

Noor Shah