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IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE.

JAIL CRIMINAL APPEAL NO.136/I OF 1994.

Pervez Hussain s/o
Fazal Din, resident
of Sheikhalbandi,
P.S Cantt: Abbottabad.
(now confined in Central
Jail Haripur) ... Appellant

Versus

The State ... Respondent

W For the appellant ... Mr.Muhammad Aslam Uns,
Advocate.

For the State ... Mr.Muzammil Khan,
Advocate

No.& date of F.I.R
Police Station ... No.625,dt.29.6.1993,
P.S Cantt: Abbottabad

Date of order of
the trial court ... 3.5.1994.

Date of Institution ... 26.5.1994.

Date of hearing ... 24.10.1994.

Date of decision ... 2.11.1994.

JUDGMENT

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Heroin weighing

16 grams was recovered from the right flank pocket of the shirt of appellant Pervez Hussain on 29.6.1993 at 1630 hours by Gulzeb Khan, ASI Police Station Cantt: Abbotabad. The appellant was sent up for trial before Sessions Judge Abbottabad who charged him under Article 4 of the Prohibition(Enforcement of Hadd) Order, 1979, to which the appellant pleaded not guilty and claimed trial.

2. After the conclusion of the trial the learned Sessions Judge convicted the appellant under Articles 4 and 24 of the Prohibition Order. For the offence under Article 4 of the Prohibition Order the appellant was sentenced to undergo rigorous imprisonment for 2 years, to suffer 2 stripes and to pay a fine of Rs.200/- or in default to undergo simple imprisonment for one month. For being a previous convict the appellant was sentenced to undergo rigorous imprisonment for 5 months and to pay a fine of Rs.1550/- or in default to undergo simple imprisonment for 3 months. The learned Sessions Judge also ordered the substantive sentences of imprisonment to run consecutively, however, giving benefit under section 382-B Cr.P.C to him. The convict has challenged his conviction and sentence by the appeal in hand, sent from jail.

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3. The only point raised by the learned counsel for the appellant was that proper procedure had not been adopted by the learned Sessions Judge for convicting the appellant under Article 24 of the Prohibition Order. I have very carefully gone through the entire record of the case. A list, Ex.P.2/3, of cases which were previously instituted against the appellant and wherein he was convicted and sentenced, was produced in evidence.

The appellant in his deposition under section 342 Cr.P.C was asked a question about his previous conviction and his reply was in the affirmative. The appellant also made a deposition on oath wherein he admitted that he was convicted and fined in 19 cases previously and most of them were of similar kind.

4. Under the provisions of section 75 PPC a previous conviction of an accused in cases of similar kind can be taken into consideration for imposing enhanced punishment. In this connection either copies of judgments whereby the accused was previously convicted and sentenced can be produced in evidence or a list of the same can be produced. That procedure had been complied with when the prosecution evidence was recorded against the appellant in the case in hand. The only question which arose was that in the charge sheet the previous conviction of the appellant had not been disclosed to him. However, this was not such an illegality or irregularity which could have caused any serious prejudice to the appellant for the reason that he was asked question in both of his

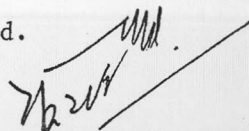

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depositions with oath and without oath and in both of them he had admitted his previous conviction. As such no serious prejudice had been caused to the appellant in defending himself.

5. For the aforesaid reasons I do not find any irregularity or illegality in the impugned judgment of the learned Sessions Judge and uphold the same. There is no merit in this appeal which is dismissed.

Fit for reporting.


CHIEF JUSTICE

Announced in open Court
on 2.11.1994 at Islamabad.
M.Akram/