IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS
Criminal Appeal No.S-154 of 2024

Appellants: 1. Abdullah S/o Luqman,
2. Maqbool S/o Abdul Latif,
Through Mr. Wafa Nawaz Shar, Advocate called absent.

Respondent: The State
Through Mr. Dhani Bakhsh Mari, A.P.G.

Dates of hearing: 30.12.2025

Date of Judgment: 30.12.2025

JUDGMENT

Muhammad Hasan (Akber), J.- Appellants Abdullah and Maqbool have assailed the judgment dated 29.11.2022, passed by the learned Additional Sessions Judge-I, Tharparkar @ Mithi, in Sessions Case No.107 of 2022, arising out of F.I.R No.17 of 2022 registered at Police Station Wild Life Mithi, for offence under Sections 9(i)(a), 21(i), 22, 24, 32, 39, 49 and 60 PPCM Sindh Act, 2020, through which they were convicted and sentenced to suffer R.I for one year each with fine of Rs.20,00,000/- (Rupees Twenty Lacs) as per prescribed rules of PPCM Sindh Wild Life Protection Act, 2020 including value of five lacs per head for offence under section 21 (i) (2) PPCM Sindh Wild Life Act, 2020(Smuggling Mammal Wild Animal) and to suffer R.I for six months with fine of Rs.20,000/- (Rupees Twenty Thousand) each for Offence under section 21 (i) (3) PPCM Sindh Wild Life Act, 2020 (Possession of Mammal Wild Animal) and in case of default of payment, appellant shall be dealt in accordance of provision of section 75 (i) & (2) of PPCM, Sindh Wild Life, Protection Act, 2020. The benefit of section 382-B PPC was awarded to the appellants.

2. The brief facts as per FIR are that on 03.11.2022 at 1020 hours near Ak-Wadho road, Taluka Chachro, District Tharparkar, complainant Rahib Khan Shar, Wild Life Inspector, during checking found both the above named appellant/ accused while were taking away four wild animal "Kid of Deer" (Two male and Two Female kid aged about 20 days) in one Silver colour GLI Car bearing Registration No.AZL-970 without any valid license. Thereafter, complainant arrested the appellants/ accused and recovered said four Kids/Fawns of deer under mashirnama prepared in

presence of official mashirs and then brought them and recovered property at Wild Life Station Mithi and lodged the F.I.R.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellants were sent up to face the trial. A charge was framed against the appellants, to which they pleaded not guilty and claimed the trial.

4. At trial, the prosecution has examined as many as two witnesses. PW-1 Complainant/Inspector Wild Life Protection Rahib, who is also I.O, at Ex.03 and PW-02 Game Watcher Mumtaz Ali, who is also mashir, was examined at Ex.04. Both of them have exhibited certain documents in their evidence. Thereafter, the learned Prosecutor closed side of prosecution's evidence vide statement Ex.05.

5. Statement of appellants under Section 342, Cr.P.C were recorded at Ex.06 and 07, wherein they have pleaded their guilt and prayed for mercy.

6. Upon culmination of the trial, the learned Trial Court found the appellants guilty of the offence charged with and, thus, convicted and sentenced them as detailed in para-1 (supra), which necessitated the filing of the instant appeal.

7. Heard appellants in person, as their counsel is called absent. They, at the very outset, submitted that they were not provided sufficient time to engage their counsel and opportunity of fair trial was not provided to them by learned trial court.

8. Learned Assistant P.G, very frankly, did not support the impugned judgment and has raised his no objection for remand of the case to the learned trial court for *de novo* trial.

9. From the perusal of record it reveals that on 16-11-2022, Charge was framed against the appellants and then matter was adjourned to 19-11-2022. On the said date, the appellants requested for time to

engage their counsel, whereupon the learned trial Court only granted four days' time to the appellants to engage their counsel, though admittedly they were confined in jail and the matter was adjourned to 23-11-2022. On the said date, on query appellants disclosed that they do not want to engage counsel. Thereafter, on the same date, the learned trial court examined complainant/ I.O Wildlife Inspector Rahib and P.W/mashir Game Watcher Mumtaz. Since the appellants were not represented by a counsel, therefore they being laymen did not cross examine the above said witnesses and surprisingly the learned Presiding Officer of the trial court also not bothered to put a single question to the P.Ws. Then after examining above said two P.Ws, the learned Prosecutor closed the prosecution's side and then statement of accused (appellants) was recorded wherein they pleaded their guilt and then final arguments heard and matter was finally decided on 29-11-2022. The record reflects that sufficient opportunity was not provided to the appellants to cross examine the witnesses, who were in custody, to engage their counsel and not a single question has been put by the appellants or by the Court to the complainant/I.O and P.W/mashir. This clearly shows that opportunity of fair trial was not given to the appellants.

10. In '***Muhammad Zia v. The State'*** (2007 P.Cr.L.J 359) it was held that, Examination of the accused under 342 is not a mere formality. In '***Ashiq Ali v. The State'*** (2005 P.Cr.L.J 48), it was held that the object of examination of accused is to give him an opportunity of explaining the circumstances which are likely to influence the mind of the judge in arriving at a conclusion adverse to him. Attention of the accused must have been invited to the inculpatory pieces of evidence or circumstances surfaced on record. Examination of the accused under section 342 Cr.PC. is not a mere formality but a necessity so that principles contained in the judicial maxim *audi alteram partem* is fully complied with. Use of the word 'shall' in the latter part of section 342(1) Cr.P.C. suggests that the Court, while examining the accused, is not only bound to question him on material points of the case, but is under a legal obligation to confront him with all those pieces of evidence, which could tend to incriminate him. In ***'Rehmat Khan v. Khalid Mehmood'*** [2009 P.Cr.L.J 1114 (AJ&K)] it was declared that the object of this section is to see whether the accused can explain the evidence put against him. Its object is to allow the accused to explain the evidence against him and not the allegations made in the FIR. In ***'Atta Muhammad v. The State'*** (1994 P.Cr.L.J 181) it was held that section

342 Cr.P.C is based upon the principle evolved in the maxim *audi alteram partem* that no one should be condemned unheard, and the accused should be heard not only what is proved against him but on every circumstance appearing in evidence against him. In ***'Sikandar v. The State'*** (1990 PCRLJ 396) it was held that material evidence should be brought to notice of the accused to enable him to give an explanation. The object of this provision cannot be achieved by putting a composite question to the accused. In ***'Jehandad v. The State'*** (PLD 1994 Peshawar 279) it was observed that the Statement under section 342 Cr.P.C. is an integral part of the legal system for enabling the Court to discover the truth, and it often happens that the accused's explanation, or his failure to explain, constitutes an incriminatory circumstance against him. The result of the examination may certainly benefit the accused if a reasonable explanation is offered by him. It may, however, be injurious to him if no explanation or an untrue or illogical explanation is provided. Non-compliance or failure to observe this essential part of the scheme can cause prejudice to either of the parties, and grievances can be made by any of the parties whose interests are affected as a result of the proceedings. In ***'Muhammad Aslam v. The State'*** (2005 YLR 2155) it was declared that the object of the statement under section 342 was to enable the accused to explain his conduct in respect of such incriminating evidence. In '***Muhammad Ayub v. The State'*** (2006 P.Cr.L.J 257) it was held that the object of the provision is to give the accused an opportunity of explaining the circumstances which could tend to incriminate him or would likely influence the mind of the judge in arriving at a conclusion adverse to him. Lastly, in 2009 PSC Criminal 707, it was held that once an accused chooses to surrender any explanation under section 342 Cr.P.C., it becomes the duty of the court to consider the same objectively. It is in this way that the provisions of law are given full meaning. An outright rejection of his explanation without giving due consideration will render such provision as redundant and defeating the object and purpose of the law. The Court is obliged to have regard for such purposive implementation of the provision of law. Moreover, Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 provides, "For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process". Article 10 of the Constitution provides that the accused shall not be denied the right to consult and be defended by a legal practitioner of his choice. The procedure adopted in the present case lacked the above mandatory requirements.

11. Moreover, it is admitted position on the record that at the time of framing of Charge on 16-11-2022, the appellants had not pleaded guilty and claimed trial but after passing of only 07 days i.e. on 23-11-2022, they pleaded their guilt at the time of recording of their statement under section 342 Cr.P.C. This also shows the lack of proper legal advice. Learned Assistant P.G looking to such position, also does not support the impugned judgment and extends his no objection for remand of the case to the learned trial court for *de novo* trial.

12. In view of above, the impugned judgment dated 29-11-2022 in Sessions Case No.107/ 2022 Re: *The State vs. Abdullah and another* passed by the learned Additional Sessions Judge-I, Tharparkar @ Mithi, is set aside; and case is remanded back to the learned trial Court for a *de novo* trial after providing due opportunity of a fair trial and cross examination to the appellants/ accused and a decision afresh strictly in accordance with law. Office is directed to return the R&Ps, if any, available in this case to the learned trial Court. Instant Criminal Appeal is disposed of in above terms. These are the reasons of short order dated 30-12-2025.

JUDGE