

**DRAFT**

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

*Criminal Jail Appeal No. D- 194 of 2019*

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<b>Date</b>	<b>Order with signature of Judge</b>
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Present.  
Mr. Justice Muhammad Saleem Jessar &  
Mr. Justice Khadim Hussain Tunio.

**Date of hearing :** 20.10.2021

**Date of Judgment:** 20.10.2021

*Mr. Amanullah G. Malik Advocate for appellants.*

*Mr. Mohsain Ali Khan Special Prosecutor A.N.F.*

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**J U D G M E N T.**

**Khadim Hussain Tunio, J.** *Appellants Nabi Bakhsh Ranhuja and Khalil Ahmed Brohi were tried by the learned Additional Sessions Judge-III/MCTC-II Sukkur in special case No. 87 of 2012 Re: State versus Nabi Bux and another under section 9 (c) Control of Narcotic Substances Act, 1997 registered at P.S A.N.F Sukkur. After regular trial, they were convicted under section 9-C CNS Act and sentenced to suffer imprisonment for life and pay fine of Rs. 100,000/- (One lac) each and in case of failure to pay fine to suffer S.I for one year more. However, benefit of section 382-B Cr.P.C was extended to the appellants.*

2. It is alleged that on 24.11.2012 at 1745 hours near Bypass Shikarpur road Sukkur, a party of ANF Police Sukkur headed by Inspector Ghulam Abbass stopped the Bed Ford Truck bearing registration No. TKS-162 driven by Nabi Bakhsh along with second driver Khalil Ahmed at the pointation of both accused complainant party secured 270 K.Gs of charas from secret cavities of Bed Ford Truck in

presence of mashirs HC Shamrez Khan and PC Muhammad Haneef. On their personal search some documents, cash and other articles were also recovered. On 25.11.2012 at about 1400 hours Police party also secured 35 kilograms of charas on further pointation of accused beneath the driving seat while Bed Ford truck was parked at ANF Police station. Thereafter case was registered under section 9-C CNS Act, 1997 against the accused.

3. After compliance of Section 265-C Cr.P.C a charge was framed against accused to which they pleaded not guilty and claimed to be tried.

4. In order to prove its case, the prosecution has examined P.W-1 ASI Shamrez Khan at Exh. 8, who produced memo of arrest and recovery, departure and arrival entry, memo of recovery of 30 kilograms of charas, FIR, letters for chemical examination, chemical Examiner's reports. P.W-2 Mashir PC Muhammad Haneef, thereafter prosecution side was closed.

5. Statement of appellants were recorded u/s 342 Cr.PC in which they have denied the allegations leveled against them by the prosecution and pleaded their innocence and false implication in this case. However, appellants neither examined themselves on oath in disproof of the charge nor they examined any witness in their defence.

6. Learned trial court after hearing the learned counsel for respective parties and scanning the evidence, convicted and sentenced the appellants as mentioned in the preceding paragraphs, hence this appeal has been preferred.

7. At the very outset, learned counsel for appellants argued that the learned trial Court has committed illegalities and irregularities while framing the charge against the appellants. He has also argued that there is no mention of recovery of 35 kilograms of charas on the pointation of appellants on 25.11.2012 at 1400 hours alleged to have been recovered

on the pointation of appellants who during interrogation disclosed that the 35 kilograms of charas also lying under beneath of the driving seat of Bed Ford truck. He has also argued that the learned trial Court has mentioned in the charge regarding recovery of one and half kilograms of opium from the secret cavities of said truck. He has also argued that the said facts have also been mentioned in the statements of accused under section 342 Cr.P.C. He has lastly argued that serious prejudice has been caused to the appellants, therefore, the impugned judgment may be set aside and he matter may be remanded to the trial Court for de-novo trial.

8. Learned Special Prosecutor ANF has recorded no objection if the case is remanded to the trial Court.

9. We have heard the learned counsel for the respective parties and have gone through the entire record with their able assistance.

10. Perusal of record reveals that after usual investigation, the proceedings in terms of Section 87 and 88 Cr.P.C were initiated against co-accused Babu Khan and Qayoom Brohi and after such proceedings, the case of co-accused was kept on dormant file. It also appears that the learned trial Court has not specifically mentioned the recovery of 35 kilograms of charas on 25.11.2012 at 1400 hours on the pointation of appellants in the charge framed on 03.06.2014. It also appears that the learned trial Court while recording statements of appellants/accused under Section 342 Cr.P.C has not specifically mentioned about recovery of 35 kilograms on the pointation of appellants from the said Bed Ford truck. It further appears that the learned trial Court has also mentioned in the statements of appellants/accused U/S 342 Cr.P.C that one and half kilograms opium has been recovered from said truck. It also appears that learned trial Court while recording statement of appellants under Section 342 Cr.P.C has not put material pieces of evidence in statement of accused more particularly regarding recovery of 270 kilograms charas on 24.11.2012 at about 1745 hours and 35 kilograms of charas on 25.11.2012 at

1400 hours on the pointation of appellants/accused which is against the principles of natural justice and has caused serious prejudice to the appellants. At the time of recording of 342 Cr.P.C statements of appellants, the learned trial Court has put the piece of evidence in the statement of accused that one and half kilograms of opium was recovered from said Bed Ford truck on the pointation of appellants/accused which is against the principles of natural justice and has caused serious prejudice to the appellants.

11. It may also be observed that the charge being the foundation of the trial, legislature has provided an elaborative procedure for framing the charge. Rational is that accused should know the exact nature of accusation made against him so that he could give a proper reply and should not at later stage come with a plea of being misled of prejudice in his defense and charge should contain all material particulars as to time, place and specific name of the alleged offence, the manner in which offence is committed and particulars of the accused to afford him opportunity to explain the matter with which he was charged. Moreso the purpose of recording statement of accused as provided by Section 342 Cr.P.C is to inform the accused about the prosecution case so as to enable him to explain the circumstances creating in the evidence against them and also for the purpose of preparing their defense, which is right of the appellants as per law and failure to comply with such mandatory requirement of law being incurable under the provisions of section 537 Cr.P.C, would vitiate the conviction and sentence awarded to the appellants.

12. In view of the above, the instant appeal is partly allowed and the conviction and sentence awarded to the appellants Nabi Bakhsh and Khalil Ahmed vide impugned Judgment dated 02.09.2019 is set aside and case is remanded back to the learned trial Court for framing a fresh charge and recording of evidence of P.Ws afresh and statement of appellants under section 342 Cr.P.C after confronting them with each and every

material incriminating piece of evidence as discussed above so as to enable to them to furnish their explanation thereto and then to re-write the judgment afresh after providing opportunity of hearing to the learned counsel for the respective parties within a period of ninety (90) days from the date of receipt of R & Ps under intimation to this Court. Office is directed to return the R & Ps of the case to the learned trial Court immediately for compliance.

**J U D G E**

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Irfan/PA