

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No.D-32 of 2024

Date	Order with signature of Judge
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Before:

Mr. Justice Adnan Iqbal Chaudhry;

Mr. Justice Abdul Hamid Bhurgri.

Appellant : Bahar Ali son of Saifullah Marwat Pathan,
through Mr. Muhammad Nawaz Khan Tareen,
Advocate.

Respondent : The State, through Mr. Aitbar Ali Bullo, D.P.G.

Date of Hearing : ***11.02.2026.***
Date of Order : ***26.02.2026.***

J U D G M E N T

ABDUL HAMID BHURGRI, J.- Through the instant criminal appeal, the appellant, Bahar Ali son of Saifullah Marwat Pathan, has impugned the judgment dated 29.04.2024 passed by the learned I-Additional Sessions Judge/MCTC/CNS, Shikarpur, in Special Case No.782 of 2023 (Re: State v. Bahar Ali), arising out of Crime No.02 of 2023 registered at Police Station Excise Town, Shikarpur, for offence punishable under section 6,8,9(e) CNSA 1997 (Amended Act, 2022), whereby he was convicted in terms of Section 245(ii) Cr.P.C and sentenced him with life imprisonment (R.I) along with fine of Rs.8,00,000/- and, in default whereof, to suffer simple imprisonment for ten years. Benefit of Section 382-B Cr.P.C. was also extended to him.

2. Briefly stated, the prosecution case, as set out in the FIR lodged by complainant ENCI Khursheed Ahmed Shaikh, is that on 26.10.2023 at about 03:00 p.m., acting upon spy information regarding transportation of narcotics, the complainant along with subordinate staff intercepted a loader rickshaw near Sui Gas Office on Jacobabad Road, Shikarpur. Upon inquiry, the driver disclosed his identity as Bahar Ali, the present appellant. During search of the loader, 82 packets of charas, each weighing one kilogram, totaling 82 kilograms, were recovered from a secret cavity of the loader. The contraband was sealed at the spot and mashirnama was prepared. Thereafter, FIR was lodged and investigation

ensued, culminating in submission of challan before the competent Court.

3. The prosecution, in order to substantiate its case, examined the complainant/Investigating Officer and mashirs, who supported the prosecution version. The appellant, in his statement recorded under Section 342 Cr.P.C., denied the allegations but neither examined himself on oath under Section 340(2) Cr.P.C. nor produced any defence evidence.

4. Upon conclusion of trial, the learned trial Court, vide impugned judgment dated 29.04.2024, convicted and sentenced the appellant as stated above. Hence, this appeal.

5. Learned counsel for the appellant contended that the statement recorded under Section 342 Cr.P.C. does not fulfill the mandatory requirements of law, as the learned trial Court failed to confront the appellant with each incriminating circumstance separately and distinctly. He submitted that the prosecution evidence was reproduced in narrative form and only general and omnibus questions were put to the appellant, thereby depriving him of a fair and meaningful opportunity to explain the incriminating circumstances appearing against him.

6. Conversely, learned Deputy Prosecutor General supported the impugned judgment and contended that the prosecution has proved its case against the appellant through reliable and confidence-inspiring evidence and that no illegality or irregularity has been committed by the learned trial Court warranting interference by this Court.

7. We have heard learned counsel for the parties at length and have carefully examined the record.

8. Perusal of the statement of the appellant recorded under Section 342 Cr.P.C. reveals that the learned trial Court reproduced the prosecution evidence in narrative form and thereafter put only general and omnibus questions to the appellant without confronting him with

each incriminating circumstance separately and distinctly, as required by law.

9. Such mode of recording statement does not satisfy the mandatory requirements of Section 342 Cr.P.C., which obligates the Court to confront the accused with each incriminating circumstance separately and distinctly so as to afford him a fair and meaningful opportunity to explain the evidence appearing against him.

10. The Honourable Supreme Court of Pakistan, in the case of ***Muhammad Shah v. The State (2010 SCMR 1009)***, has held that any circumstance not put to the accused under Section 342 Cr.P.C. cannot be used against him. Similarly, in ***Muhammad Saddique v. The State (2018 SCMR 71)***, it was held that omission to confront the accused with incriminating evidence causes serious prejudice and renders the conviction unsustainable.

11. The Honourable Supreme Court of Pakistan, in the case of ***Jan Muhammad v. The State and others (Criminal Appeal No.77 of 2020)***, decided on 04.03.2021, has held that any piece of prosecution evidence not put to the accused during his statement recorded under Section 342 Cr.P.C. cannot legally be used against him. The rationale underlying this principle is that the accused must be afforded full knowledge of the incriminating circumstances appearing in the prosecution evidence and be provided a fair and meaningful opportunity to explain the same. In the said case, owing to defective compliance of Section 342 Cr.P.C., the Honourable Supreme Court set aside the conviction and remanded the matter to the learned trial Court with directions to record the statement of the accused afresh in accordance with law and thereafter decide the case accordingly.

12. The object of Section 342 Cr.P.C. is to provide the accused a fair opportunity to explain each incriminating circumstance appearing in the prosecution evidence. Failure to comply with this mandatory requirement results in denial of fair trial and vitiates the conviction.

13. In the present case, since the incriminating circumstances were not put to the appellant in the manner required by law, he was deprived of a fair and meaningful opportunity to explain the prosecution evidence against him. This defect goes to the root of the matter and has caused serious prejudice to the appellant.

14. It is well settled that where mandatory provisions of Section 342 Cr.P.C. have not been complied with, the conviction cannot be sustained and the proper course is to remand the matter to the trial Court for recording statement afresh and deciding the case thereafter in accordance with law.

15. For the foregoing reasons, appeal is allowed and the impugned judgment dated 29.04.2024 passed by the learned I-Additional Sessions Judge/MCTC/CNS, Shikarpur, in Special Case No.782 of 2023 arising out of Crime No.02 of 2023 registered at Police Station Excise Town, Shikarpur, is hereby set aside.

16. Consequently, the case is remanded to the learned trial Court with directions to record afresh the statement of the appellant under Section 342 Cr.P.C., strictly in accordance with law, by confronting him with each incriminating circumstance separately and distinctly.

17. It is clarified that the remand is limited in scope only to the extent of recording the statement of the appellant under Section 342 Cr.P.C. afresh. The prosecution evidence already recorded shall remain intact and shall be read in evidence. The learned trial Court shall proceed from that stage and, if the appellant so desires, he may examine himself on oath under Section 340(2) Cr.P.C. or produce defence evidence, if any, in accordance with law.

18. It is further clarified that this Court has not examined the merits of the prosecution evidence nor expressed any opinion regarding the guilt or innocence of the appellant, and all questions touching upon

the merits of the case shall remain open for independent determination by the learned trial Court strictly in accordance with law.

19. The learned trial Court shall thereafter decide the case afresh on the basis of evidence available on record by passing a reasoned judgment. Since the case pertains to the year 2023 and involves a serious offence under the Control of Narcotic Substances Act, 1997, (Amended Act, 2022), the learned trial Court is directed to conclude the proceedings expeditiously, preferably within a period of two months from the date of receipt of this judgment, without granting unnecessary adjournments.

JUDGE

JUDGE

Irshad Ali M/Steno