

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-

Mr. Justice Shamsuddin Abbasi

Mr. Justice Miran Muhammad Shah

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Criminal Jail Appeal No.721 of 2024

Criminal Appeal No.752 of 2024

Appellant	Dad Muhammad son of Ghulam Nabi through Mr. Muhammad Immad Qamar, Advocate.
Respondent	The State through Muhammad Iqbal Awan, Additional Prosecutor General [Sindh].
Date of Hearing	<u>19.10.2026</u>
Date of Judgment	<u>22.10.2026</u>

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J U D G M E N T

Shamsuddin Abbasi, J.- Dad Muhammad son of Ghulam Nabi, appellant, has called into question the validity of the judgment dated 03.09.2024, penned down by the learned Additional Sessions Judge-III, Karachi (Central), in Sessions Case No.982 of 2023 (FIR No.03 of 2022) registered at Police Station Excise, Karachi, for offences under Sections 6/9 read with Section 14 and 32 of Control of Narcotic Substances Act, 1997, through which he was convicted and sentenced to suffer rigorous imprisonment for twenty (20) years alongwith fine of Rs.8,00,000/- (eight hundred thousand) and to suffer simple imprisonment for a further period of six (06) months in lieu of fine. The benefit in terms of Section 382-B, Cr.P.C. was, however, extended to the appellant.

2. Briefly stated, the prosecution case, as set forth in the FIR is that on 14.09.2022 Inspector Abdul Haq Mari of P.S. Excise in pursuance of spy information got stopped a black coloured Honda Civic car bearing Registration No.BQQ-339 on the pointation of spy, which was being driven by Dad Muhammad son of Ghulam Nabi and on checking recovered 40 packets of charas weighing 48 kilograms, wrapped with yellow tap, which was sealed under a mashirnama prepared at the spot and thereafter the arrested accused and recovered property were brought at P.S. where FIR was lodged.

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 appellant was sent up to face trial.

4. Upon indictment, the appellant pleaded not guilty to the charged offence and claimed a trial. At trial, the prosecution has examined two witnesses namely, Inspector Abdul Haq as PW.1 at Ex.5 and EC Nawab Khan as PW.2 at Ex.6. Thereafter, the prosecution closed its side vide statement at Ex.7. In his statement under Section 342, Cr.P.C. recorded at Ex.8, the appellant has denied the allegations imputed upon him by the prosecution, professed his innocence and pleaded his false implication. He neither opted to make a statement on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence.

5. Upon culmination of the trial, the learned trial Court found the appellant guilty of the offence charged with and, thus, convicted and sentenced him as detailed in para-1 (supra). Aggrieved by the said conviction, the appellant preferred Criminal Appeal No.752 of 2024 on 03.10.2024 through his counsel and subsequently Criminal Jail Appeal No.721 of 2024 was filed by him through the Superintendent of Jail on 22.10.2024. As both appeals arise out of the same judgment and assail the same conviction and sentence, they are being heard and decided together through this common judgment.

6. At the outset, the learned Additional Prosecutor General drew our attention to a material legal infirmity in the proceedings before the learned trial Court. He submitted that although the learned trial Court has relied upon the chemical examiner's report while recording the appellant's conviction, no question whatsoever concerning the said report was put to the appellant during his examination under Section 342, Cr.P.C. It is next submitted that the chemical examiner's report constituted a material piece of evidence relied upon by the prosecution to establish the nature and identity of the alleged recovered substance, therefore, the appellant ought to have been afforded an opportunity to explain the incriminating circumstances arising therefrom and omission to confront him with such evidence vitiated the fairness of the examination under Section 342, Cr.P.C. and warranted the remand of the case to the learned trial Court for recording the appellant's statement afresh followed by a decision in accordance with law. The learned counsel appearing for the appellant has fairly conceded this position. He, however, submitted that the appeal may be heard on merits rather than being remanded to the learned trial Court.

7. Heard arguments and record perused minutely.

8. Before advertng to the merits of the case, we consider it appropriate to address a fundamental legal infirmity in the proceedings before the learned trial Court, which has been pointed out by the learned Additional Prosecutor General and fairly conceded by the learned counsel for the appellant. A bare perusal of the record reveals that while recording the appellant's conviction, the learned trial Court has placed reliance upon the chemical examiner's report, however, the said report, constituting a material piece of incriminating evidence, was not put to the appellant while recording his statement under Section 342, Cr.P.C. The omission assumes considerable significance in the peculiar facts and circumstances of the present case, wherein the prosecution alleges recovery of 48 kilograms of charas from a vehicle allegedly driven by the appellant and relies upon the chemical examiner's report to establish the nature of the recovered substance. The report, therefore, constituted an important evidentiary circumstance which the appellant was legally entitled to explain before the Court could legitimately use it against him.

9. It is a fundamental and firmly settled principle of criminal jurisprudence that every material circumstance appearing in the prosecution evidence and intended to be used against an accused must be specifically put to him during his examination under Section 342, Cr.P.C. The underlying object of this provision is to ensure that the accused is fully apprised of the incriminating circumstances sought to be relied upon against him and is afforded a fair and effective opportunity to explain his position before the Court determines his guilt. The examination of an accused under this provision is not an empty formality or a procedural ritual to be performed mechanically rather it constitutes an essential safeguard against an unfair trial and an integral component of the right of an accused to defend himself. The responsibility to comply with this statutory requirement rests upon the trial Court, which must ensure that no material circumstance forming the basis of an adverse finding escapes the attention of the accused during such examination.

10. The legal consequence of failure to confront an accused with material incriminating evidence is equally well settled. Evidence which has not been put to the accused in his statement under Section 342, Cr.P.C. cannot lawfully be used against him for maintaining his conviction. This principle has been reiterated by the Hon'ble Supreme Court of Pakistan in *Muhammad*

Nawaz and others v. The State and others (2016 SCMR 267), wherein it was held that medical evidence not put to the accused during his examination under Section 342, Cr.P.C. could not be relied upon to maintain his conviction and sentence. The same principle finds support in *Muhammad Shah v. The State* (2010 SCMR 1009) and *Qaddan v. The State* (2017 SCMR 148).

11. More significantly, the principle has been elaborated in the case of *Khamiso v The State* (2023 P.Cr.L.J. 908) wherein the failure of the trial Court to confront the accused with material incriminating circumstances including the positive reports of the chemical examiner was treated as a serious illegality resulting in prejudice to the accused and vitiating the conviction and sentence. The Court observed that the omission to put material evidence to the accused is not merely an irregularity curable under Section 537, Cr.P.C. but may amount to an illegality which strikes at the validity of the trial itself. The said judgment further underscores that where the trial Court draws adverse inferences from circumstances which were never put to the accused, the resulting conviction cannot be sustained merely because such circumstances appear in the prosecution evidence. This principle has also been reiterated by the Hon'ble Supreme Court in *Abdul Hayee and Abdullah alias Ghazali and another v. The State and others* (2025 SCMR 281), with reference to the earlier judgments in *Fida Hussain Shah v. The State* (2024 SCMR 1622), *Haji Nawaz v. The State* (2020 SCMR 687) and *Mst. Anwar Begum v. Akhtar Hussain* (2017 SCMR 1710). The consistent legal position emerging from these authorities is that an incriminating circumstance which has not been put to an accused in accordance with Section 342, Cr.P.C. cannot be employed against him to sustain a conviction. The obligation is particularly compelling where the omitted circumstance forms an important link in the chain of evidence relied upon by the prosecution.

12. Applying the foregoing principles to the case in hand, we find that the learned trial Court relied upon the chemical examiner's report while adjudicating upon the appellant's guilt, yet failed to confront him with that report during his examination under Section 342, Cr.P.C. Consequently, the appellant was deprived of an opportunity to explain the evidentiary circumstance arising from the report, including its bearing upon the prosecution's allegation concerning the nature of the recovered substance.

The omission is material because the very evidence relied upon by the learned trial Court to support its conclusion was not brought to the appellant's attention in the manner prescribed by law. It follows that the appellant was denied a meaningful opportunity to explain a circumstance which the learned trial Court subsequently treated as incriminating against him. We are, therefore, unable to regard the omission as a minor procedural defect or a technical irregularity having no bearing upon the fairness of the proceedings. The statutory requirement under Section 342, Cr.P.C. is mandatory in substance, and its observance cannot be dispensed with merely because the prosecution considers the evidence conclusive or the allegation against the accused to be grave. Where a material circumstance is withheld from the accused at the stage of his examination and is nevertheless employed against him in the judgment, the resulting prejudice goes to the fairness of the trial and the legality of the conviction founded upon such evidence. The gravity of the alleged offence cannot dilute the procedural safeguards guaranteed by law; rather, the more serious the consequences of a conviction, the greater the obligation upon the Court to ensure strict adherence to the prescribed procedure.

13. We are mindful that the appellant has been sentenced to rigorous imprisonment for twenty (20) years, besides payment of a substantial fine, in a case involving the alleged recovery of a considerable quantity of narcotic substance, however, neither the quantity allegedly recovered nor the severity of the sentence can justify sustaining a conviction recorded in disregard of a mandatory safeguard governing the examination of an accused. The administration of criminal justice demands not only that offenders be brought to account in accordance with law but also that no person be convicted except through proceedings conducted in conformity with the legal requirements governing a fair trial. We have also considered the submission of the learned counsel for the appellant that the appeal may be decided on its merits rather than the matter being remanded to the learned trial Court. Nevertheless, in view of the material omission identified above, we are of the considered view that the impugned judgment cannot be allowed to stand without first rectifying the defect in the proceedings. Equally, the omission cannot, in the circumstances of the present case, be treated as automatically entitling the appellant to acquittal without examining the appropriate legal consequence. The question is not whether the chemical examiner's report may ultimately be relied upon, but whether it can lawfully be used against the

appellant without his having been afforded the opportunity expressly contemplated by Section 342, Cr.P.C. In these circumstances and in keeping with the principle laid down in *Khamiso's* case (supra), the appropriate course is to set aside the impugned judgment and remand the case to the learned trial Court for proceedings afresh in accordance with law. The appellant shall be re-examined under Section 342, Cr.P.C., and shall be confronted with all material incriminating circumstances appearing in the prosecution evidence specifically including the chemical examiner's report and the circumstances arising therefrom. The questions put to him shall be framed in clear and intelligible terms so as to afford him a genuine opportunity to explain the evidence relied upon against him. He shall also be afforded an opportunity, in accordance with law, to lead evidence in his defence or to make a statement on oath under Section 340(2), Cr.P.C., should he so desire. Thereafter, the learned trial Court shall reassess the evidence in its entirety, hear the parties, and pronounce a fresh, reasoned judgment in accordance with law, uninfluenced by its earlier findings.

14. For the foregoing reasons, the impugned judgment dated 03.09.2024 is set aside, and the case is remanded to the learned trial Court for a fresh decision in accordance with law after re-examining the appellant under Section 342, Cr.P.C. in the manner indicated above. The learned trial Court shall ensure that all material incriminating circumstances are duly put to the appellant and that his explanation is considered objectively alongside the remaining evidence on record. The learned trial Court shall assess the evidence on record uninfluenced by its earlier findings and shall ensure that the proceedings are concluded as quickly as possible preferably within a period of two months.

15. The Criminal Appeal No.752 of 2024 and Criminal Jail Appeal No.721 of 2025 stand disposed of in the foregoing terms.

JUDGE

JUDGE