

**ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Jail Appeal No.D-04 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

For hearing of main case.

21.01.2019.

Mr. Farhad Abro, Advocate for appellant.
Syed Meeral Shah Bukhari, Addl: P.G and Ms. Rameshan Oad,
Assistant P.G. for the State.

===

With the assistance of learned counsel for the parties as well as learned Additional Prosecutor General Sindh, we have gone through the evidence of prosecution witnesses and statement of the appellant recorded under section 342, Cr.P.C. Learned counsel for the appellant has stated that statement of appellant u/s 342 Cr.P.C has not been recorded properly and the prosecution case as alleged in the evidence has not been put to the appellant for the purpose of seeking his explanation which has seriously prejudiced him to defend his case against the incriminating evidence. He further states that in the prosecution case it is alleged that not only the samples separated from recovered charas but subsequently the entire property was sent for chemical examination, but even that fact has not been put to the appellant. This position has not been denied by learned Prosecutors appearing for the State. All the counsel have consented that this matter in view of such legal flaw causing prejudice to the appellant in defending his case may be remitted to the learned trial Court after setting aside the impugned judgment with direction to the trial Court to record the statement of the appellant afresh by confronting him every piece of incriminating evidence for the purpose of seeking his explanation thereon and then after hearing the parties announce the judgment within a certain period.

We have considered submissions as above and have noted that the trial Court has not complied with the provisions of section 342, Cr.P.C,

as required by law, and has omitted to put relevant questions regarding circumstances appearing in evidence against him. The prosecution witnesses have deposed that the appellant was travelling on a roof of the Coaster and was sitting on two gunny bags from which the charas weighing 75 K.Gs was recovered and in addition from the fold of his shalwar 02 K.G charas was also recovered but surprisingly the learned trial court in the statement u/s 342, Cr.P.C has asked from the appellant that it is alleged that he on the day of incident was selling narcotics and 75 kilograms of charas was recovered from his possession, which is not the case of prosecution against him as stated above. The prosecution case further shows that from one bag 36 packets of charas in white colour plastic bag and 37 packets of charas from other bag were recovered and each packet was containing two patties/strips and from each strip 10 grams of charas in all 150 samples were separated which were sent on 20.01.2014 to Chemical Examiner and subsequently the entire remaining property too was also sent on 28.01.2014 to Chemical Examiner who, as such, has furnished two reports which were duly exhibited by the prosecution as Ex.6/E and Ex.6/F, but the learned trial court has not even put these incriminating pieces of evidence to the appellant to enable him to explain the same, which is against the mandatory provisions of section 342, Cr.P.C as well as the decisions of the superior court in this regard. Therefore, the impugned judgment is set aside, the case is remitted back to the trial Court with direction to record statement of the appellant u/s 342, Cr.P.C afresh and put him every circumstance appearing against him in evidence including but not limited to as suggested above to enable him to explain the same and then after hearing the parties afresh pronounce the judgment within a period of one month hereof.

In the above terms, this appeal is disposed of.

JUDGE.

JUDGE.

