

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.606 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
Appellant	: <u>Muhammad Imran son of Nisar Ahmed, through Mr. Javed Ahmed Shar, Advocate.</u>
Respondent	: <u>The State through Mr. M. Iqbal Awan, Additional Prosecutor General, Sindh.</u>
Date of hearing	: <u>03.6.2025</u>
Date of decision	: <u>05.6.2025</u>

ORDER

Dr. Fiaz ul Hassan Shah, J. This is an Appeal against Judgment dated 08.8.2024 passed by the learned 4th Additional Sessions Judge/ Special Judge (CNS), Malir, Karachi (hereinafter referred to as the ("**trial Court**") in Sessions Case No.1135/2024.

2. During hearing of the Appeal, it has appeared that statement under Section 342 CrPC of the appellant was not recorded in accordance with the provisions under Section 364(2) CrPC, as the learned Presiding Officer has not issued certificate under his handwriting which is mandatory required under Section 364(2) CrPC.

3. In criminal proceedings, the statement of an accused under **Section 342 Cr.P.C** (taken without oath) and the statement under **Section 340(2) Cr.P.C** (recorded on oath) serve distinct purposes

and hold different evidentiary values. These statements cannot be equated or substituted for one another. A statement recorded under **Section 342 Cr.P.C** is not considered evidence on oath and is primarily used to allow the accused to explain circumstances appearing in the prosecution's case. Conversely, a statement under **Section 340(2) Cr.P.C** is recorded on oath, making it admissible as evidence, subjecting the accused to cross-examination.

4. The mandatory requirement under **Section 364 Cr.P.C** ensures that the statement of the accused recorded under **Section 342 Cr.P.C** is properly documented, with the presiding judge appending a handwritten certificate to validate its authenticity. Courts have consistently held that failure to comply with this requirement can lead to serious procedural irregularities.

5. It is well established principles that if the certificate is not written by the judge in his own handwriting, the case may be **remanded** for fresh recording of the accused's statement in accordance with **Section 364 Cr.P.C**. This principle was upheld in *"Kafeeluddin v. State", (1989 PCr.LJ Karachi 25)* where the court ruled that non-compliance with **Section 364 Cr.P.C** constitutes an irregularity that can be cured by remanding the case for retrial after properly recording the accused's statement. The case of *"Mehboob Karim v. The State", (1987 MLD 1536 Karachi)* reaffirmed that a violation of **Section 364 Cr.P.C** is an irregularity that can be cured by remanding the case to the Trial

Court for retrial after properly recording the accused's statement. This ruling underscores the importance of procedural compliance in criminal trials, ensuring that the rights of the accused are protected and that judicial integrity is maintained.

6. The handwritten certificate by the presiding judge is not merely a procedural formality but a crucial safeguard ensuring the authenticity and voluntariness of the accused's statement. Section 364 of the **Code of Criminal Procedure (Cr.P.C.)** mandates that the accused's statement be properly recorded in a specific manner, ensuring its reliability and preventing any coercion or undue influence.

7. Non-compliance with this requirement can lead to serious consequences, including the statement being deemed inadmissible, which may ultimately affect the trial's outcome. Courts are expected to strictly adhere to this provision to uphold the integrity of the judicial process. The mandatory nature of Section 364 Cr.P.C. ensures that no wrongful convictions occur due to procedural lapses. Therefore, Trial Courts must meticulously follow this legal requirement to maintain the credibility of criminal proceedings. In ***“Nazeer Ahmed v. State”, (PLD 2003 SC 704)***, the Apex Court has held that the Court held that what is required under Section 342 Cr.P.C. is the personal examination of the accused by the judge. In ***“Muhammad Rafique v. the State”, (PLD 1981 SC 246)***, the Apex Court has held that non-compliance with proper recording or failure to put

crucial questions to the accused under 342 was held to be a serious irregularity that could vitiate the trial.

8. In ***“Raj Kumar Singh v. State of Rajasthan”, [(2013) 5 SCC 722]***, the Indian Supreme Court held that the examination of the accused under Section 313 Cr.P.C (equivalent to 342 Cr.PC) must not be treated as a mere formality. It should reflect what incriminating material was found and offer the accused an opportunity to respond.

9. Failure to comply with this requirement can lead to **serious** legal consequences, including the statement being deemed inadmissible, which may significantly impact the trial’s outcome. Courts are obligated to strictly adhere to this provision to uphold the **integrity of the judicial process** and ensure fair proceedings. The mandatory nature of Section 364 Cr.P.C means that it cannot be bypassed or ignored when awarding a conviction. Judicial precedents have consistently held that non-compliance with this requirement constitutes an **irregularity**, often leading to cases being remanded for fresh recording of the accused’s statement. This principle was reaffirmed in **Mehboob Karim** (supra), where the court ruled that violations of **Section 364 Cr.P.C** could be **cured** by remanding the case for retrial after properly recording the accused’s statement.

10. To maintain the **credibility of criminal proceedings**, Trial Courts must **meticulously follow** this legal requirement, ensuring that every statement recorded under **Section 364 Cr.P.C**

withstands scrutiny and upholds the principles of **fairness and justice**. Consequently, the impugned Judgment passed by the trial Court in Session Case No.1135 of 2024 emanating from FIR No.303/2024 registered under section 6/9(1), (3) of CNC Act, 1997 with PS: SSHIC, Karachi is set aside and the case is remanded to trial Court to record the statement of the Appellant afresh and after hearing the State Prosecutor and Defence Counsel pass a fresh Judgment in accordance with law.

JUDGE

JUDGE

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