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Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.7946 of 2026

Noor Ahmad.

Versus

The State, etc.

J U D G M E N T

Date of Hearing	**18.02.2026.**
For the petitioner	Ch. Muhammad Asif Shahzad, Advocate.
For Respondent No.2	Mr. Asad Abbas, Advocate.
Amicus Curiae	Mr. Haider Rasul Mirza, Advocate-*Amicus Curiae* assisted by Attir Raza Abdi, Talha Usman and Ahmad Dawood Bandial, Advocates.

Raheel Kamran J:-Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"), the petitioner calls in question the consolidated judgment dated 27.01.2026 passed by the Additional District Judge, Lahore. By way of the said judgment, the petitioner's appeal against conviction and sentence was allowed and as a result, the judgment dated 09.09.2025 passed by the Judge Family Court, Lahore while acting as Judicial Magistrate in terms of Section 20 of the Family Courts Act, 1964 was set aside and the matter was remanded to the trial Court for the limited purpose of recording of statement of the petitioner/accused under Section 342 of the Code of Criminal Procedure, 1898 ("Cr.P.C.") and for proceeding thereafter in accordance with law.

Respondent No.2/complainant also preferred an appeal assailing the said judgment and sought enhancement of sentence of

the petitioner. Although the matter was filed and titled as a criminal appeal, the Additional District Judge, Lahore, while passing the impugned consolidated judgment, treated it as a criminal revision and dismissed the same as having become infructuous.

The petitioner's grievance before this Court is that once it is admitted that his statement under Section 342 Cr.P.C. was not recorded, the appellate Court ought to have acquitted him rather than ordering a remand.

2. The facts giving rise to the filing of the instant petition, precisely are that the petitioner was married to respondent No.2 Mst. Humaira Shareef in accordance with Muslim rites. After the solemnization of marriage, the spouses started cohabitation as husband and wife. Two children were born during the wedlock. With the passage of time, differences arose and the relationship became strained. During the subsistence of the marriage, the petitioner contracted a second marriage on 31.03.2023 with one Maria Razi. Aggrieved, respondent No.2 instituted a complaint under Section 6(5) of the Muslim Family Laws Ordinance, 1961 ("the Ordinance") before the Family Court, Lahore. The complaint resulted in the petitioner's conviction, however, it is not disputed that, during the proceedings, the trial Court did not record the petitioner's statement under Section 342 Cr.P.C.

The petitioner challenged the conviction and sentence by way of appeal. The appellate Court, while accepting the appeal remanded the matter to the trial Court with the direction to record the petitioner's statement under Section 342 Cr.P.C. and to proceed further in accordance with law. Hence, the instant constitutional petition.

3. Learned counsel for the petitioner submitted that non-recording of the statement under Section 342 Cr.P.C. is not a curable irregularity of a merely technical nature, rather it goes to the root of the trial and renders the conviction legally untenable. On this

premise, it was argued that the proper appellate consequence was acquittal, not remand. Reliance in this regard has been placed on the cases of *"Muhammad Gulzar v. Muhammad Ashraf and 3 others"* **(PLJ 1981 SC 521)** and *Qaiser alias Aaun v. The State and another"* **(PLD 2026 Lahore 47)**.

4. Conversely, learned counsel for respondent No.2/complainant supported the impugned judgment contending that the appellate Court adopted a lawful and balanced course by directing the trial Court to remedy the omission through compliance with Section 342 Cr.P.C., without subjecting the parties to unnecessary duplication of the entire process.

5. The learned *Amicus Curiae*, submits with clarity that Section 342 Cr.P.C. contains two components: the enabling part permitting questions at any stage to clarify circumstances and the mandatory part obliging the Court—after prosecution evidence and before calling upon the accused to enter defence—to confront him with the incriminating material. According to him, the appellate Court must assess whether prejudice has been occasioned and may, depending upon the circumstances, either acquit the accused or remand the matter for compliance. It is further submitted that the power to order retrial/remand is traceable to Section 423 Cr.P.C. and that retrial does not invariably mean a trial *de novo*. The learned *Amicus Curiae* also points out that the opportunity of the accused to appear as a witness in defence under Section 340(2) Cr.P.C. ordinarily arises after examination under Section 342 Cr.P.C. and where an accused, duly represented, proceeds without objection and even enters defence, prejudice cannot be presumed as a matter of course.

6. In rebuttal, learned counsel for the petitioner clarifies that the petitioner's statement was not recorded under Section 340(2) Cr.P.C., however it is not controverted that the petitioner appeared as RW-1.

7. The controversy, therefore, turns upon the following questions: whether, in the admitted absence of examination under Section 342 Cr.P.C., the appellate Court was bound to acquit the petitioner/accused or whether it could remand the matter for recording of statement of accused under Section 342 Cr.P.C. to cure the defect.

8. Heard. Record perused.

9. The trial in the instant matter arose from a complaint under Section 6 of the Ordinance before the Family Court. In this regard, Section 20 of the Family Courts Act, 1964 ("the Act of 1964") is relevant, which provides:-

> *"20.* ***Family Court as Judicial Magistrate****.– (1) A Family Court shall be deemed as the Judicial Magistrate of the first class under the Code of Criminal Procedure, 1898 (V of 1898) for taking cognizance and trial of any offence under this Act; the Muslim Family Laws Ordinance, 1961 (VIII of 1961); and, the Child Marriage Restraint Act, 1929 (XIX of 1929).*
> *(2) A Family Court shall conduct the trial of an offence under subsection (1) in accordance with the provisions of Chapter XXII of the Code of Criminal Procedure, 1898 (V of 1898) relating to the summary trials.*
> *(3) An offence other than contempt of a Family Court shall be cognizable on the complaint of the Union Council, Arbitration Council or the aggrieved party."*

10. A plain reading of Section 20(2) of the Act of 1964 indicates that the Family Court, while trying offences under the Ordinance, has to adopt the procedure of Chapter XXII Cr.P.C. relating to summary trials. Section 262 of Cr.P.C. (contained in Chapter XXII) contemplates that in trials under this Chapter the procedure prescribed in Chapter XX shall be followed except as hereinafter mentioned. Section 263 Cr.P.C. dispenses with the recording of evidence and the drawing up of a formal charge, in cases where there is no appeal. There can be no cavil that failure to record the statement under Section 342 Cr.P.C. is a serious omission. The underlying rationale is anchored in the principle of *audi alteram partem*—no person should be condemned unheard. The provision obliges the Court to confront the accused with the material incriminating evidence and afford him a meaningful chance to explain

it before the Court draws adverse conclusions. Consequently, the safeguards that are inherent in magisterial trials—including compliance with Section 342 Cr.P.C.—retain their mandatory character even in summary proceedings[1].

11. In order to appreciate the issue in its proper perspective, it would be appropriate to reproduce Section 342 Cr.P.C., which reads as under:-

> *"342. Power to examine the accused. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.*
> *(2) The accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the Court may draw such inference from such refusal or answers as it thinks just.*
> *(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.*
> *(4) Except as provided by sub-section (2) of section 340, no oath shall be administered to the accused."*

Sub-section (1) of Section 342 ibid is structured in two distinct parts. The first part confers a discretionary power upon the Court to put questions to the accused at any stage of the inquiry or trial for the purpose of clarifying any circumstance appearing in the evidence against him. The second part, however, imposes a mandatory duty upon the Court that after the prosecution witnesses have been examined and before the accused is called upon to enter upon his defence, the Court shall question him generally on the case so as to afford him an opportunity to explain the incriminating circumstances emerging from the prosecution evidence. The real object of this provision is not to subject the accused to a process resembling cross-

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[1] *"Chan Shah alias Muhammad Hanif Shah v. The State"* **(PLD 1969 Peshawar 109)** and *"Sadiq Masih v. The State"* **(1993 P Cr LJ 547 Karachi)**.

examination by the Court. Rather, its purpose is to draw the attention of the accused to those points in the prosecution evidence which may weigh with the Court in forming an opinion adverse to him, so that he may offer such explanation as he considers appropriate before any adverse inference is drawn. It is for this reason that the law obliges the Court to put to the accused every material incriminating circumstance appearing in the evidence. The examination of the accused under Section 342 Cr.P.C. has, therefore, been described by the courts as a mechanism intended to establish a meaningful dialogue between the Court and the accused whereby the latter is afforded a fair opportunity to respond to the prosecution case before the Court proceeds to determine his guilt or innocence. It is equally important to distinguish the statement of the accused under Section 342 Cr.P.C. from the option available to him under Section 340(2) Cr.P.C. The statement recorded under Section 342 Cr.P.C. is not made on oath and the accused is not subjected to cross-examination thereon. Its purpose is purely explanatory in nature. After such statement is recorded, it remains open to the accused, if he so chooses, to appear as a witness in his own defence under Section 340(2) Cr.P.C. In that eventuality, he enters the witness box on oath and becomes liable to cross-examination like any other witness. The distinction between the two provisions underscores that the examination under Section 342 Cr.P.C. is intended primarily as a procedural safeguard to ensure fairness of the trial rather than as a means of extracting testimonial evidence from the accused.

12. It is equally well-settled that an incriminating circumstance not put to an accused in his statement under Section 342 Cr.P.C. cannot ordinarily be used against him for conviction[2]. Once the object and mandatory character of Section 342 Cr.P.C. is understood in the above context, the question that naturally arises is not merely whether the omission vitiate the conviction, which it

[2] *"Haji Nawaz v. The State"* **(2020 SCMR 687)**

ordinarily does, but what should be the legally appropriate appellate response to such omission.

13. Where a conviction is recorded without compliance with the mandatory requirement of examining the accused under Section 342 Cr.P.C., the appellate Court is unquestionably duty-bound to interfere because the conviction resting upon a procedurally defective process cannot be sustained as it stands. The petitioner proceeds on the assumption that the defect inevitably culminates in acquittal. The law does not support such an inflexible proposition. The omission undoubtedly vitiates the conviction as recorded but the remedial course, whether acquittal or remand, must be determined in light of the statutory framework of the Code of Criminal Procedure and the overall demands of justice in the circumstances of the case. However, it is settled that the appellate Court is vested with a discretionary jurisdiction under Section 423 Cr.P.C. to determine the appropriate remedial course in light of the overall interests of justice. The law does not mandate acquittal as an inevitable consequence of procedural omission, rather the Court must weigh whether the accused suffered prejudice and whether the proceedings can be restored to a lawful stage without compromising fairness. This principle ensures that procedural safeguards are enforced while maintaining the integrity of judicial process, consistent with the maxim *actus curiae neminem gravabit*.

14. The Supreme Court of Pakistan in the case of *"S.A.K. Rehmani v. The State"* **(2005 SCMR 364)** while examining the impact of non-compliance of the provisions of Section 342 Cr.P.C. held that prime object of section 342 Cr.P.C. is to enable the accused to explain any circumstances appearing against him in the evidence and the intention of the provision is the furtherance of the ends of justice and to enable the Court to decide the question of the guilt of the accused. It was further held in the said judgment that every error or omission amounting to non-compliance with the provisions of this section does

not necessarily vitiate the trial and such errors fall within the category of curable irregularities.

15. The powers of an appellate Court while dealing with an appeal from conviction are delineated in Section 423 Cr.P.C., which expressly authorizes the Court to reverse the finding and sentence and either acquit or discharge the accused, or order him to be tried by a Court of competent jurisdiction subordinate to it. For reference, Section 423 Cr.P.C. is reproduced hereunder:-

> *"423.* ***Powers of Appellate Court in disposing of appeal****: (1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 411-A, sub-section (2) or section 417, the accused, if he appears, the Court may if it considers that there is no sufficient ground for interfering, dismiss the appeal or may:*
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> *(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or sent for trial to the Court of Session or High Court, as the case may be or find him guilty and pass sentence on him according to law;*
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> *(b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or sent for trial, or*
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> *(2) after the finding, maintaining the sentence, or, with or without altering the finding reduce the sentence, or*
>
> *(3) with or without such reduction and with or without altering the finding, alter the nature of the sentence but, subject to the provisions of section 106, sub-section (3) not so as to enhance the same;*
>
> *(c) in an appeal from any other order, alter or reverse such order;*
>
> *(d) make any amendment or any consequential or incidental order that may be just or proper."*
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> (Emphasis supplied by this Court.)

The language of the provision, particularly the expression "order him to be retried", used in subsection (1)(b)(1) clearly demonstrates that the appellate jurisdiction is not confined to a rigid binary between maintaining conviction and acquitting the accused. Rather, the statute expressly contemplates situations where the interests of justice require

that the proceedings be restored to a lawful stage so that the trial may proceed in accordance with law.

16. It is also important to observe that the concept of retrial or remand contemplated under Section 423 Cr.P.C. is not confined to directing a trial *de novo* in every case. Depending upon the nature of the illegality or irregularity identified, the appellate Court may direct that the proceedings recommence from the stage where the defect occurred so that the irregularity is cured without undoing the valid part of the proceedings already undertaken[3]. Thus, where the defect lies in the omission to examine the accused under Section 342 Cr.P.C., the appellate Court may lawfully set aside the conviction and restore the case to the stage where compliance with that provision becomes mandatory, i.e., the stage immediately following the conclusion of prosecution evidence. In the case of *"Rashid Ahmad v. The State"* **(PLD 1971 SC 709)**, the Supreme Court of Pakistan held that where additional evidence is brought on record after the examination of the accused under Section 342 Cr.P.C., such material must again be put to the accused for explanation as failure to confront the accused with that evidence caused prejudice to the accused. Consequently, the conviction was set aside and the matter was remanded to the trial Court to proceed from the stage at which the additional evidence had been recorded. In the case of *"Asghar Ali and other v. The State*" **(1993 SCMR 51)**, the Supreme Court observed that failure of trial Court in pointing out the incriminating pieces of evidence to the accused after recording fresh evidence had resulted in prejudice to the accused. Resultantly, the matter was remitted to trial Court to examine the accused under Section 342 Cr.P.C. with reference to the incriminating pieces of evidence freshly recorded against them and to proceed further in accordance with the direction given in the earlier order of remand.

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[3] *"Shahmand and 6 others v. The State"* **(1991 P Cr LJ 833)**.

17. A Division Bench of this Court in the case of *"Muhammad Shahid Mehmood v. The State"* **(2025 P Cr LJ 922)** while dealing with an appeal against conviction under Section 9(c) of the Control of Narcotic Substances Act, 1997, encountered a similar omission in that the statement of the accused under Section 342 Cr.P.C. had not been properly recorded. Applying the principle embodied in the maxim *actus curiae neminem gravabit*, it was held that such omission was attributable to the Court and not to the parties and, therefore, the appropriate course was to remand the matter to the trial Court to continue the proceedings from the stage where the irregularity occurred and thereafter decide the case afresh after affording an opportunity of hearing to both sides. In the judgment in the case of *"Muhammad Qasim v. The State and others"* **(2020 P Cr L J 1473)**, this Court while dealing with an appeal against conviction in a murder case, observed that a corrigendum issued by the Medical Officer had not been put to the accused in his statement under Section 342 Cr.P.C. and remanded the matter to the trial Court for retrial from the stage where irregularity occurred i.e., from the stage of questioning the accused under Section 342 Cr.P.C. Relevant excerpt from the said judgment is as hereunder:

> *"22. From the above discussion it follows that the appellate court has to examine all the incriminating material produced by the prosecution and see what damning piece of evidence or circumstance has not been put to the accused and its impact on the fate of the case. Similarly, it would determine whether the questions put to him were in accordance with law and he was not misled by any of them. If it comes to the conclusion that non-compliance with the provisions of section 342, Cr.P.C. has prejudiced the accused it may remit the matter to the trial Court for retrial from the point where the irregularity occurred, that is, from the stage of questioning the accused under section 342, Cr.P.C. The trial Court would then examine the accused again and record the defence witnesses, if any, and decide the matter afresh.*
>
> *23. A careful study of the decided cases would reveal that even where the court took exception to non-compliance of section 342, Cr.P.C. the accused was acquitted "not solely on account of the fact that not all material had been put to him whilst recording his 342, Cr.P.C. statement but for a host of other*

> *legal infirmities in issue" in those cases. Reference in this regard may be made to a Division Bench judgment of the Sindh High Court in Mohammad Bilal v. The State (2019 MLD 1291) and also to Bashir Ahmad and 2 others v. The State (PLD 2008 Lahore 146) and Habibullah Khan and another v. The State (1989 PCr.LJ 1555).*
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> (Emphasis supplied by this Court.)

18. Another principle of interpretation relevant to the present controversy is that redundancy cannot be attributed to the Legislature. Every word employed in a statutory provision is presumed to have been used deliberately and must be given meaningful effect[4]. If the petitioner's contention were accepted—that every instance of non-compliance with Section 342 Cr.P.C. necessarily results in acquittal—the express power conferred upon the appellate Court under Section 423 Cr.P.C. to "order him to be tried" would effectively be rendered otiose. Such an interpretation would be inconsistent with the settled canon that statutory provisions must be read harmoniously so as to give effect to all parts of the legislative scheme.

19. There is yet another well-established principle which bears directly upon the present controversy, namely the maxim *actus curiae neminem gravabit* i.e., an act of the Court shall prejudice none. This doctrine, which has repeatedly been recognized by the Supreme Court of Pakistan including in the case reported as *"Khushi Muhammad through L.R.s and others v. Mst. Fazal Bibi and others"* **(PLD 2016 SC 872)**, is founded upon justice and good sense and ensures that no party suffers because of the mistake or omission of the Court. The rule is meant for the protection of litigating parties and it would be illogical to apply the maxim in a manner that confers advantage upon one party while causing prejudice to the other. Where the omission to comply with Section 342 Cr.P.C. is attributable to the Court itself, the principle underlying this maxim requires that the proceedings be

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[4] *"Collector of Sales Tax and Central Excise (enforcement) and another v. Messrs Mega Tech (Pvt.) Ltd."* **(2005 SCMR 1166)**, *"Messrs Pakistan Television Corporation Limited v. Commissioner Inland Revenue (Legal), LTU, Islamabad and others"* **(2017 SCMR 1136)**, *"Directorate of Intelligence and Investigation-FBR, through Director and others v. Taj International (Pvt.) Ltd. and others"* **(2025 PTD 1270)**.

restored to the lawful stage so that neither side suffers on account of the Court's lapse.

20. In the instant case, the trial Court after recording the prosecution evidence, proceeded to convict the petitioner without examining him under Section 342 Cr.P.C. It may further be observed that in the judgments referred to in paragraph No.16 and 17 above, the Courts ordered remand in circumstances where the statement of the accused under Section 342 Cr.P.C. had in fact been recorded but was found to be legally deficient inasmuch as certain incriminating pieces of evidence had not been put to the accused. In the present case the situation is even more fundamental, for no statement of the petitioner under Section 342 Cr.P.C. was recorded at all. If remand was considered the appropriate corrective course even where the statement had been recorded but was procedurally defective, the same course, a *fortiori*, cannot be regarded as impermissible where the omission consists of a complete failure to examine the accused under the said provision. This aspect further reinforces the correctness of the course adopted by the appellate Court. Instead of directing an outright acquittal, the appellate Court restored the proceedings to the lawful stage by directing the trial Court to record the petitioner's statement under Section 342 Cr.P.C. and thereafter proceed in accordance with law. Such course neither perpetuates an unsafe conviction nor deprives the petitioner of the procedural safeguard guaranteed by law, rather it ensures that the accused is afforded the opportunity mandated by Section 342 Cr.P.C. while preserving the complainant's right to have the matter adjudicated on its merits through a process that is fair, complete and consistent with law.

21. The reliance placed by the petitioner on *"Qaiser alias Aaun v. The State and another"* **(PLD 2026 Lahore 47)** and "Muhammad Gulzar v. Muhammad Ashraf and 3 others" **(PLJ 1981 SC 521)** does not advance his case to the extent of establishing an absolute proposition that every failure to record a statement under

Section 342 Cr.P.C. must necessarily culminate in acquittal. The governing principle remains that such omission vitiates the conviction as recorded, however, the appropriate corrective course must be determined in light of the appellate powers contained in Section 423 Cr.P.C. and the overall demands of justice in the circumstances of each case.

22. For the reasons recorded above, this writ petition being devoid of merit, is dismissed.

(RAHEEL KAMRAN)
JUDGE

Announced in the open Court on_____

JUDGE

Approved for reporting.

JUDGE

Azhar*