

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Justice Naeem Akhter Afghan  
Justice Salahuddin Panhwar

**Criminal Petition No. 1542 of 2023**

(On appeal against the judgment dated 27.11.2023 of the High Court of Sindh, Bench at Sukkur passed in Crl. A. No.S-60 of 2023)

Muhammad Yousif

...Petitioner

**Versus**

Faqeer Muhammad etc.

...Respondents

For the Petitioner : Mr. Muhammad Ikhlaque Awan, ASC  
A/w. petitioner

For Respondent No.1-3 : Mr. Shabbir Ali, ASC  
Mr. Hameed-uz-Zaman, AOR

For the State : Ms. Rahat Ahsan, Addl.P.G., Sindh

Date of Hearing : 11.09.2025

**ORDER**

**Naeem Akhter Afghan, J.-** On conclusion of trial in FIR No. 10/2018 Police Station (**PS**) Mirpur Mathelo, District Ghotki registered by the complainant Muhammad Yousuf on 29<sup>th</sup> January 2018 for the occurrence of 25<sup>th</sup> January 2018, respondent Nos. 1 to 3 were awarded conviction under section 324 read with section 114 of the Pakistan Penal Code (**PPC**) by the learned Additional Sessions Judge-II, Mirpur Mathelo (**trial court**) *vide* judgment dated 23<sup>rd</sup> June 2023 and were sentenced to suffer five years rigorous imprisonment (**RI**), to pay fine of Rs.100,000/- by each respondent to the victim Zulfiqar Ali and in default thereof to further suffer simple imprisonment (**SI**) for one month; the respondent No.3 (Jamal Faqeer) was also convicted under section 336 PPC by the trial court and was sentenced to suffer five years RI for causing injuries to Zulfiqar Ali and to pay Arsh equivalent to one half of the Diyat amount, in failure to pay the Arsh amount he was ordered to remain in jail till payment of the *same*; the respondent No.3 was also convicted under section 337-A(iii) PPC on two counts for causing two injuries and sentenced to suffer five years RI on two counts and to pay Arsh equivalent to 10% of the Diyat amount on two counts. The convicts were also extended benefit of section 382-B of the Code of Criminal Procedure (**Cr.P.C.**) by the trial court and the awarded sentences were ordered to run

concurrently by the trial court. The case file was kept in dormant to the extent of absconding accused Nazeer Ahmed.

2. Respondent Nos. 1 to 3 preferred Criminal Appeal No. S-60 of 2023 before the High Court of Sindh, Bench at Sukkur (**the High Court**). After hearing learned counsel for the convicts, learned counsel for the complainant and the learned Additional Prosecutor General (**Addl.P.G.**), instead of deciding the appeal on merits, the High Court remanded the matter to the trial court *vide* impugned judgment for conducting *de novo* trial from the stage of framing charge on the grounds that the charge was defective i.e. it does not disclose the actual place of the occurrence, it does not speak of section 337-A(iii) PPC and it does not state the offences with which the convicts were charged and that section 342 Cr.P.C. statements of respondent Nos.1 to 3 are also defective as all the incriminating material was not put to them and they were not confronted with nature of the injuries sustained by the victims.

3. Feeling aggrieved of the impugned judgment passed by the High Court, whereby the matter was remanded to the trial court to conduct *de novo* trial, the complainant has preferred the instant petition.

4. After hearing learned counsel for the petitioner, learned counsel for the complainant and the learned Addl.P.G. we have perused the available record which transpires that the charge as well as section 342 Cr.P.C. statements of respondent Nos. 1 to 3 were defective. The defect is curable by amending the charge as well as by reexamining the respondent Nos.1 to 3 under section 342 Cr.P.C. There was no occasion for the High Court to direct the trial court to conduct *de novo* trial as the complainant as well as the learned Addl.P.G. were satisfied with the statements of the ten prosecution witnesses recorded at the trial. It is feared by learned counsel for the petitioner as well as the learned Addl.P.G. that in case of *de novo trial* it would not be possible now for the prosecution/complainant to procure attendance of the witnesses who have already been examined at the trial. Moresoever, the prosecution as well as the complainant are satisfied with the statements of the prosecution witnesses recorded at the trial.

5. According to section 227 Cr.P.C. trial court may alter or add to any charge at any time before judgment is pronounced. The trial court is competent to amend the charge if circumstances so justify subject to one condition that it should be done prior to pronouncement of judgment in

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order to eliminate possibility of any prejudice to the accused. Being a procedural defect, neither it demolishes the prosecution case nor it vitiates the trial<sup>1</sup>.

6. The defective charge and section 342 Cr.P.C. statements of respondent Nos.1 to 3 can be rectified by remanding the matter to the trial court to make suitable amendment in the charge and to reexamine the respondent Nos.1 to 3 under section 342 Cr.P.C. There is no need for *de novo* trial of respondent Nos.1 to 3 by re-examining all the prosecution witnesses as it may cause prejudice to the prosecution/complainant.

7. For the above reasons, while granting leave, the petition is converted into appeal and same is disposed of in the terms that the trial court shall make suitable amendment in the charge by reframing the same and shall also reexamine the respondent Nos. 1 to 3 under section 342 Cr.P.C. The respondent Nos. 1 to 3 are held at liberty to get their statements recorded on Oath under section 340 (2) Cr.P.C., if opted. The prosecution witnesses already examined at the trial shall not be recalled and their already recorded statements shall be considered by the trial court. Similarly, the statements of the defence witnesses already recorded at the trial shall also be considered by the trial court. However, respondent Nos. 1 to 3 will be afforded further opportunity by the trial court to produce any further witnesses in their defence whereafter the trial court shall pass a speaking judgment after hearing arguments of learned counsel for the parties as well as the prosecutor.

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**Islamabad**

11<sup>th</sup> September 2025

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**NOT APPROVED FOR REPORTING**

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<sup>1</sup> Muhammad Jameel Azeem v. Ghulam Shabbir and others (2011)  
M Younus Hahib v. The State (PTD 2006 SC 153)