

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Crl. Revision Application No.S-154 of 2024

Crl. Revision Application No.S-156 of 2024

Applicants: Syed Aijaz Ali Shah son of Syed Oban Shah and Raza Muhammad Shaik son of Mohammad Bux through M/s. Maisum Hussain Sahar, advocate and Syed Shahzad Ali Shah, Advocates.

For the State: Ms. Shama Mehar, D.A.G. alongwith Mr. Shamshuddin Rajpar.

Date of hearing: 30-09-2025

Date of Order: 30-09-2025

ORDER

Jan Ali Junejo, J. – By this order, I intend to decide two Criminal Revision Applications, filed under Sections 435 and 439 read with Section 561-A, Cr.P.C., challenging the order dated 30-10-2024 passed by the learned Sessions Judge/Special Judge, Gas Utility Court, Jamshoro. Through the said order, an application filed by the Assistant Director (Legal), FIA Hyderabad under Article 47 of the Qanun-e-Shahadat Order, 1984, was disposed of, and the previous statement of the Investigating Officer (I.O.) recorded in earlier proceedings was directed to be treated as part of the evidence in the present *de novo* trial as secondary evidence.

2. Briefly, the relevant facts are that the applicants, along with others, was tried by the learned Special Judge, Anti-Corruption (Central), Hyderabad, in Case No. 12 of 2016 arising out of Crime No. 08/2016 registered under Sections 462-C, 462-E, 161, and 109, P.P.C. r/w Section 5(2) Act-II of 1947 at P.S. FIA Hyderabad. The said trial culminated in conviction, which was subsequently set aside by this Court vide judgment dated 29-04-2019 in

Criminal Appeals Nos. S-24, S-34, and S-35 of 2019, holding that the Special Judge, Anti-Corruption (Central), Hyderabad, lacked jurisdiction after promulgation of the Gas (Theft Control & Recovery) Act, 2016. Consequently, the entire trial proceedings and the resultant judgment were declared *coram non judice*, null, and void, and the matter was remanded for a *de novo* trial before the competent Gas Utility Court, Jamshoro. During the pendency of the *de novo* trial, the prosecution moved an application under Article 47 of the Qanun-e-Shahadat Order, 1984, seeking that the previous statement of the Investigating Officer (who had since expired) recorded in the earlier proceedings be treated as part of the evidence. The learned trial Court allowed the said application vide order dated 30-10-2024, which has been impugned in the present revision.

3. Learned counsel for the applicants contends that the impugned order is illegal and contrary to law, arguing that since the previous proceedings before the Special Judge, Anti-Corruption (Central), Hyderabad, were declared void *ab initio* and without jurisdiction, any evidence recorded therein cannot have legal sanctity. It is further argued that Article 47 of the Qanun-e-Shahadat Order, 1984, does not extend to proceedings conducted by a forum lacking jurisdiction, and as such, the earlier testimony of the I.O. cannot be imported into a fresh trial. Learned counsel submits that the prosecution has already examined PW-17, who verified the signatures of the deceased I.O., hence no necessity arises to rely upon the previous testimony.

4. Learned Deputy Attorney General have supported the impugned order to the extent that they have no objection if the same is set aside and the statement of any person well-acquainted with the handwriting and signatures of the deceased Investigating Officer is recorded to verify the same in accordance with law.

5. I have considered the arguments advanced by the learned counsel for the respective parties and have carefully examined the material available on record. For a proper appreciation of the controversy, it would be appropriate to reproduce Article 47 of the Qanun-e-Shahadat Order, 1984, which reads as under:

“47. Relevancy of certain evidence for proving, in subsequent proceedings, the truth of facts therein stated.— Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided that—

(a) the proceeding was between the same parties or their representatives-in-interest;

(b) the adverse party in the first proceeding had the right and opportunity to cross-examine; and

(c) the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this Article.”

A plain reading of Article 47 reflects that testimony given in a prior judicial proceeding may be relevant and admissible in a subsequent proceeding only when the following cumulative conditions are satisfied:

(i) The previous proceeding was before a competent judicial forum;

(ii) The witness is dead, missing, or otherwise unavailable; and

(iii) The adverse party had the right and opportunity to cross-examine, and the questions in issue were substantially the same.

The record shows that the Investigating Officer’s evidence was properly recorded in court, and the accused were given a full opportunity to cross-examine him. As the witness has since died, the second and third legal

conditions for admitting his prior testimony are met. This Court has already declared that the original trial before the Special Judge in Hyderabad was *coram non judice* and without legal authority. The relevance and admissibility of the Investigating Officer's prior evidence will be determined at trial, assessed under Article 47 of the Qanun-e-Shahadat Order, 1984, along with all other evidence.

7. It may further be observed that the present case is still *pending trial and adjudication* before the learned Special Judge, Gas Utility Court, Jamshoro, and the trial Court has yet to record the evidence of the prosecution witnesses. Therefore, the determination of admissibility or relevancy of the Investigating Officer's earlier statement at this stage would be premature and may prejudice the rights of either party during trial. The question of whether such evidence can ultimately be relied upon must be determined by the trial Court upon a full and fair evaluation of the evidence adduced before it, in accordance with law.

8. Another relevant provision is Article 61 of the Qanun-e-Shahadat Order, 1984, which empowers the Court to form an opinion regarding the person by whom any document has been written or signed. Under this Article, the opinion of a person acquainted with the handwriting or signatures of the individual alleged to have written or signed the document is treated as a relevant fact for such determination. For convenience and clarity, the said provision is reproduced below:

“61. Opinion as to hand-writing when relevant. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation. A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents

written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him”.

Article 61 of the Qanun-e-Shahadat Order, 1984 pertains to the relevance and admissibility of opinion evidence in matters concerning handwriting. Where the Court is required to determine whether a particular document was written or signed by a specific person, the opinion of an individual acquainted with that person's handwriting constitutes a relevant fact and may be considered as evidence for forming the Court's conclusion. The Explanation to this Article clarifies the circumstances under which a person is deemed to be acquainted with another's handwriting, namely:

- (a) When he has seen that person write (direct observation);
- (b) When he has corresponded with that person, receiving written replies purporting to be from that individual; or
- (c) When, in the ordinary course of business, he has habitually received and examined documents purportedly written or signed by that person.

Thus, Article 61 enables the Court to take into consideration the opinion of any person personally familiar with the handwriting or signatures of another when determining the authorship of a document. Such familiarity may arise from personal observation, correspondence, or regular business interaction. However, this opinion, though relevant, is not conclusive and must be assessed in conjunction with other available evidence on record. Accordingly, the learned trial Court shall be at liberty to record the statement of any person well-acquainted with the handwriting and signatures of the Investigating Officer, in order to form an opinion regarding their genuineness and authenticity in accordance with law. In this regard, guidance may also be taken from the case of *M. Younis Habib v. The State (2005 P.Cr.L.J. 928)*, wherein a learned Division Bench of this Court observed as under:

“The rule laid down on the above aspect of the case by this Court in the case of Muhammad Malik Iqbal v. State PLJ 1988 Cr.C. (Kar.) 39, Saeed Muneer v. State PLD 1964 Pesh. 194 and the rule was confirmed in recent decision by the Honourable Supreme Court of Pakistan in the case Muhammad Akhtar v. Muna reported in 2001 SCMR 1700, appears to have not been taken into consideration by the trial Court. Apparently the learned Judge was of the opinion that to prove a signature of any person the only mode to prove the said is through Handwriting Expert but under Articles 59, 61, 78, 79, 81 and 84 of the Qanun-e-Shahadat Order there are other modes for proving the signature or writing of any person:--

(i) By admission or examining the person who signed the document (Articles 78 and 81).

(ii) By examining the person before whom the alleged document was signed (Article 79).

(iii) By referring the disputed document and the specimen signature of the person or admitted signature to the Handwriting Expert for his opinion (Article 59).

(iv) By examining the person who is conversant with the signature (Article 61).

(v) By comparison of the signature on the disputed document and on admitted documents by the Court (Article 84)”.

Emphasis supplied.

In another similar case, *Kaka Kishanchand and others v. The State and another (PLD 2003 Karachi 618)*, a learned Division Bench of this Court observed as follows: *“Before this case, we had examined the various provisions of Qanun e-Shahadat on the above point in a case Agha Wazir Abbas v. State reported in 2003 PCr.LJ 1353. In that case it has been observed that apart from other modes, one of the modes for proving the signature of a person is under Article 61 of Qanun-e-Shahadat Order. Under the said provision the signature on the document can be proved through a person who is conversant with the signature and writing of the person whose signature and writing is to be proved”.* The underlining is supplied.

9. In view of the foregoing discussion, both the Criminal Revision Applications stand disposed of with the observation that the learned trial Court shall proceed with the *de novo* trial strictly in accordance with law,

uninfluenced by any observations made herein. The learned trial Court shall determine the relevancy and admissibility of the evidence, including the previous statement of the Investigating Officer, as and when such question arises, in accordance with the statutory provisions and settled principles of law. The trial Court shall, however, be at liberty to record the statement of any person acquainted with the handwriting or signatures of the Investigating Officer, subject to providing the accused persons a fair opportunity of cross-examination. The trial Court may pass a fresh order in this regard at any stage of the proceedings in accordance with law. Upon completion of the *de novo* trial, recording of the statements of the accused persons, and after affording full opportunity of hearing to both sides, the trial Court shall pronounce judgment strictly in accordance with law.

10. The observations made in this order are purely tentative and confined to the disposal of the present matter. They shall not prejudice the merits of the case before the trial Court, which shall decide the same independently in accordance with law.

JUDGE

Ahmed/Pa,