

S. 540 Apped dismissed  
Pros. delaying Trial

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IN THE HIGH COURT OF SINDH KARACHI

Cr. Misc. Application No.248 of 2023  
Cr. Misc. Application No.249 of 2023  
Cr. Misc. Application No.250 of 2023  
Cr. Misc. Application No.251 of 2023  
Cr. Misc. Application No.252 of 2023

Date	Order with Signature(s) of Judge(s)
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FOR HEARING OF MAIN CASE.

12.10.2023

Mr. Muhammad Iqbal Awan, Additional Prosecutor General  
Mr. Rana Khalid Hussain, Special Prosecutor Rangers.  
Mr. Aamir Mansoob Qureshi, Advocate for Respondent No.15.  
Mr. Haider Farooq Jatoti, Advocate for Respondent No.5

ORDER

*Muhammad Karim Khan Agha, J.* We intend to dispose of all the above criminal miscellaneous applications by a common order.

2. In the above captioned miscellaneous applications learned counsel for the State has challenged the impugned order dated 27.03.2023 passed by the Anti-Terrorism Court No.XII, Karachi in Special Case No.59 of 2020 (Abdul Ghafoor & Ors. v The State) whereby the prosecution's application u/s.540 Cr.P.C. to call an additional witness was declined by the concerned trial Court.

3. Learned Additional Prosecutor General Sindh has stated that the State needs to examine a very important witness being an author of JIIT report which relates to the case who will exhibit the JIIT report. On the other hand, learned counsel for Respondent No.15 states that the trial has been lingering on for years and this Section 540 Cr.P.C. application is simply another delaying tactic by the State and that the impugned order is well reasoned and there is no legal infirmity in respect of the same.

4. We have heard learned Additional Prosecutor General Sindh and Special Prosecutor for Rangers as well as learned counsel appearing on behalf of Respondent Nos.15 and 5 and perused the record.

5. Impugned order dated 27.03.2023 (wrongly typed as "27.03.2022") is a very detailed order which amongst other things

deals with Article 10-A of the Constitution concerning the right to fair trial and the fact that the trial must be completed expeditiously.

6. We note that this case initially started in the year 2012 and subsequently the charge was amended in the year 2013, 2017 and thereafter in 2020; yet trial has not been concluded. This is a period of 11 years. In the first place prosecution should have included the witnesses who it had intended to produce the JIT report which, in any event, only has the legal value of Section 173 Cr.PC report. However, prosecution failed to add that witness to the list of witnesses. According to the learned counsel for Respondent No.5 who is also appearing before the trial Court, application under Section 540 Cr.P.C was moved in the year 2023 being 11 years after the commencement of the trial. We find that the prosecution has not been able to justify why this application was not made during this 11 years period. Prima facie, the belated application appears to be a delaying tactic on behalf of the prosecution to linger on a trial which has already lingered on for a very long period whilst the accused have remained behind the bars for a considerable period of time.

7. We agreed with paragraph No.8 of the impugned order, which reads as under:-

*"08. In order to meet with the aforementioned pathetic prosecution and for safe dispensation of justice coupled with the factum of tendency of illegal practice adopted by prosecution for lingering on instant case, the application under section 540 Cr.P.C. stands dismissed and the side of the prosecution is closed."*

8. The prosecution cannot keep the accused in jail for years on end by lingering on the trial for years on end and in this case when all the witnesses on its calendar who can be called have been called and then out of blue produce an application under Section 540 Cr.P.C to call further witnesses. Based on the particular facts and circumstances of this case the prosecution would have known well before the time they filed their application under section 540 Cr.P.C. that they intended to call

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the author of the JIT report to give evidence and prima face deliberately held that witnesses back to prolong the trial further. We have noted that this practice of moving application under Section 540 Cr.P.C at the fag-end of the trial has become quite common in trials being conducted by the State. In our view it shows a lack of preparation of the prosecution case pre-trial and a lack of trial management by the prosecution whilst the trial is proceeding.

9. On account of such conduct by the prosecution which is causing the delay in the trial the accused cannot be allowed to suffer as it is the State who decides to prosecute the accused and therefore, it is duty of the State to proceed with the trial expeditiously in accordance with Article 10(A) of the Constitution. If the PWs fail to appear despite being given notices under the law then the trial Court has every right when it deems it fit and appropriate to close the side of the prosecution as the accused cannot be continued to be prejudiced.

10. As such we dismiss these criminal miscellaneous applications and direct the Anti-Terrorism Court No.XII Karachi to complete the proceedings of the trial expeditiously but not later than three (03) months from the date of this order. In the event there is a supreme court order in the field directing expeditious disposal of this trial, this shall be placed before the concerned trial Court by learned counsel for the accused and learned trial Court shall also follow such order.

11. A copy of this order shall be sent to Anti-Terrorism Court No.XII Karachi for compliance.

12. These criminal miscellaneous applications are dismissed in the above terms along with all pending applications. Office to place copy of this order all other connected matters.