IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Revision Application No.46 of 2025
[Syed Sajid Abbas Rizvi v Muhammad Atif Saeed & others]
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1. For order on office objection as at "A".
2. For order on MA No.2929/2025.
3. For hearing of case.
4. For order on MA No.2980/2025.

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Mr. Abbad ul Hussnain, Advocate for the Applicant.
Mr. Zahir Dephari, Advocate for the Respondents.
Ms. Amna Ansari, Additional Prosecutor General (Sindh).

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Date of hearing **15.05.2025**

Date of order **29.05.2025**

Shamsuddin Abbasi, J:- Applicant is complainant in Private Complaint No.2129 of 2019 [Re: Syed Sajid Abbas Rizvi v Muhammad Atif Saeed & others]. He has impugned an order dated 11.12.2024, penned down by the learned Additional Sessions Judge-II, Karachi (East), dismissing his application under Section 540, Cr.P.C., whereby he prayed to call son and daughter of respondent No.2/ accused namely, Syed Abid Hussain Rizvi, aged about 16 years, and Areej Fatima Rivi, aged about 19 years.

2. The main crux of the arguments advanced by the learned counsel for the applicant is that the learned trial Court while adjudicating upon the matter with respect to the application under Section 540 Cr.P.C. has gone beyond the scope of the law. He contends that it is an established principle of law that in criminal matters the Court can call a person as witness at any stage if his evidence is essential for arriving at a just and fair decision. Per learned counsel, the witnesses sought to be examined are prime and natural eye-witnesses, who at the time of filing of the complaint were minors and now they are mentally mature enough and their evidence is crucial and very much relevant in arriving at a just and fair decision in the matter. The learned counsel, therefore, prays that the impugned order may be set-aside and his application under Section 540, Cr.P.C. may be allowed.

3. On the other hand, the learned counsel for the respondents as well as learned Additional Prosecutor General (Sindh) have supported the impugned order and submitted that Syed Abid Hussain Rizvi and Areej Fatima Rizvi, who are sought to be summoned, are the son and daughter of respondent No.2, how could they deposed against their real mother and that they were not cited as witnesses at the time of filing of the complaint. It is next submitted that the complaint was filed in the year 2019 and the application under Section 540 Cr.P.C. has been filed in 2024 after the delay of about four years, therefore, at a belated stage such a request cannot be entertained. Per them, the impugned order is passed squarely in accordance with law and no case for interference is made out.

4. I have heard the learned counsel for the respective sides and minutely perused the entire material available before me with their able assistance.

5. Undeniably, Syed Abid Hussain Rizvi and Areej Fatima stand nowhere in the complaint as eye-witnesses and per the case of the applicant /complaint at that time they were minors, aged about 11 years and 14 years respectively. Before proceeding further, it would be appropriate to look in brief the case of the applicant as disclosed in the complaint. Per the case of the applicant, he was married with the respondent No.2 on 25.03.2000 according to Shia Muslim Law and in result three children namely Syed Arshad Hussain Rizvi, Syeda Areej Fatima Rizvi and Syed Abid Hussain Rizvi born. The respondent No.2 filed Family Suit seeking dissolution of marriage by way of Khula wherein she admitted performance of Nikah with respondent No.1, however, a preliminary decree of Khula was issued in favour of the respondent No.2 on 05.08.2013. The applicant in order to save the lives of the children went upto Hon'ble Supreme Court but remained unsuccessful and finally he approached the local police seeking an against respondent No.1 for performance of Nikah with respondent No.2 in existence of her previous Nikah with him and failing to receive any response filed the instant complaint.

6. The record is suggestive of the fact that the complainant has neither disclosed the names of Syed Abid Hussain Rizvi and Areej Fatima Rizvi as witnesses in his complaint nor made any kind of request at the time of recording his evidence to call them as witness. The filing of application after lapse of more than four years does not make sense as considerable time has already elapsed and it will certainly imprint that the said application is after thought.

7. No doubt the Courts have ample power to summon a person at any stage of the proceeding until and unless his evidence is necessary and essential for arriving at a just and fair decision. Since sufficient period has elapsed, therefore, at this stage, if said witnesses are permitted to be summoned for recording their evidence, certainly amount to bypass the scheme of law. Any application at a belated stage just on the ground that the witnesses were minors is no ground at all to call the said witnesses for recording their evidence, which is against the essence of law. No one can be permitted to fill the lacunas at a belated stage according to his / her own wishes and whims.

8. Admittedly, the respondents are facing charges under Section 493-A and 109, PPC. The main crux of the complainant is that respondent No.2 without seeking divorce from applicant/complainant contracted second marriage with respondent No.1. Undeniable, the proposed witnesses are son and daughter of the respondent No2, who is their real mother. What will the impact on the mentality of the witnesses while recording evidence against their real mother especially when she is facing the charges of Zina. Such a request of the applicant is indicative of his mental approach that how could a son and daughter feels to depose against their real mother in the matter relation accusation of Zina. Courts cannot act mechanically and have to examine each and every aspect of the matter from all four corners. Here I am in agreement with the learned trial Court that the case of the applicant with regard to preparation of forged documents is based on documentary evidence and if the proposed witnesses are allowed to be examined, their evidence in no way would be helpful to the case of the applicant.

9. Section 540 of the Code of Criminal Procedure, 1908 bestows power upon the Court to summon material witnesses if it deems necessary and essential for the just decision of the case. The impugned order reflects that the learned trial Court felt no need in this context. In fact while addressing this point the trial Court held otherwise. Further applicant was granted opportunity to produce any witness, he deemed essential, the same opportunity was not availed at that time, therefore, the instant application at a belated stage is not maintainable. Lastly under section 540, Cr.P.C. it is the prerogative of the Court to summon witnesses or not and not a right bestowed upon the parties. In these circumstances the impugned order is unexceptionable. Resultantly, this Criminal Misc. Application is bereft of any merit stands dismissed. The learned Trial Court shall proceed with the case in accordance with law without being influenced of any of the observations made herein above and try to dispose of the case as quickly as possible in the light of the directions of Hon'ble apex Court.

JUDGE

Naeem /PA