

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.
Crl. Rev Application No.S-79 of 2026.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Applicant: Khalid Maqsood Dahraj through M/S Syed Ali Murtaza Shah and Bakhtiar Ahmed, Advocate(s).

The State: Through Mr. Mansoor Ahmed Shaikh D.PG.

Complainant: Manzoor Ali Chohan in person

Date of hearing & order: 08.09.2026.

Suresh Kumar J:- Through this Criminal Revision Application under Section 435 and 439 Cr.P.C, the applicant has called in question the order dated 22.08.2026 passed by learned 1st.Additional Sessions Judge, Naushahro Feroze, through which he has dismissed the application under section 540 Read with Section 94 Cr.P.C, filed by the applicant, in which he has prayed to call/summon the proposed witness Muhammad Zaffar Siddiqui, ASP City Nawab Shah, as Court witness along with record.

2. The facts leading to this criminal revision application, as depicted in the FIR, are that on 04.07.2021, the complainant lodged the FIR alleging that on 30.06.2021, he, along with his witnesses, was sitting in his house when, at that relevant time, the accused named in the FIR, together with unknown culprits, arrived and stated that his brother could not work with the Waderas. After this conversation, they took away Shah Jahan in a vehicle. Thereafter, Shah Jahan was allegedly detained at the bungalow of Wadero Abdul Ghaffar Dahraj. Upon approaching them, the accused informed that they would return Shah Jahan after two days, but he was subsequently murdered after being tortured, and his dead body was left in

the hospital, where it was found to be decomposed. It is further alleged in the revision that the name of the applicant surfaced as one of the accused as a result of further statements made by the complainant and PWs dated 07.09.2021. The complainant also forwarded an application to the DIG Shaheed Benazirabad, which resulted in a departmental inquiry being ordered against the applicant. This inquiry was assigned to the then SP City, Muhammad Zaffar Siddiqui, who conducted the inquiry, recorded the further statements of the complainant and PWs, along with some other persons. Consequently, the applicant was found innocent, and his name was placed in column No. 2 of the challan. However, the learned Magistrate, being in disagreement with the final report, took cognizance against the applicant as well. It is also noted in the revision that after the examination of prosecution witnesses and the closing of the prosecution's evidence side, an application under Section 540 read with Section 94 Cr.P.C. for calling a witness as a Court witness was filed on behalf of the applicant, which was dismissed. Thereafter, the applicant has preferred this revision.

3. I have heard learned counsel for applicant, learned DPG so also respondent No.2/complainant who appeared in person.

4. Learned counsel appearing on behalf of the complainant has contended that order dated 22.08.2026 passed by learned 1st. Additional Sessions Judge Naushahro Feroze, is not sustainable under the law as it has been passed in dis-regard to the settled principle of law. He also contended that role of Court under section 540 Cr.P.C is inquisitorial, where it endeavored to discover the truth, suppressed by one or both parties to the case, so as to incapacitate the court to reach a just conclusion. He also contended that in the enquiry conducted by Muhammad Zaffar Siddiqui, ASP City Nawab Shah, the applicant was found innocent and such fact has

been admitted by the I/O in cross examination. He also contended that examination of Muhammad Zaffar Siddiqui, ASP City Nawab Shah is necessary for the just decision of the case. He relied upon the case law reported in PLD 2018 Supreme Corut-28, 2011 P.Cr.L.J-1248 and 2001 S C M R-308

5. Learned DPG for the State supported the impugned order passed by learned 1st. Additional Sessions Judge Naushahro Feroze. He further contended that applicant can call Muhammad Zaffar Siddiqui, ASP City Nawab Shah who conducted the enquiry as defense witness, therefore, an application under section 540 Cr.P.C was rightly dismissed by the trial Court. He lastly prayed that criminal misc. application may be dismissed. He relied upon the case law reported in 2026 MLD -118.

6. Complainant present in person supported the impugned order passed by learned trial Court.

7. Having given due consideration to the arguments advanced by learned counsel for the applicant, the learned Deputy Prosecutor General, as well as the complainant, and having perused the relevant material, it is revealed from the examination of the impugned order dated 22.08.2026 that the learned trial court has dismissed the application on the ground that Muhammad Zaffar Siddiqui, ASP City Nawab Shah, is neither the investigation officer of the present case nor a witness to the main proceedings; he can only be called as a defense witness. It is acknowledged that the accused has the right to examine any person as a defense witness, and by invoking Section 265-F of the Code of Criminal Procedure (Cr.P.C.), the accused can call any defense witness through the court. In the present case, the proposed witness conducted an inquiry in which the accused was found innocent, and such facts were admitted by the investigation officer

and other witnesses. It is a well-settled principle of law that the trial court has the power to summon witnesses as court witnesses; however, the legal standard for this is whether the person's evidence is 'essential to the just decision of the case.' Section 540 of the Cr.P.C. comprises two parts: in the first part, discretion lies with the court to examine any witness, while according to the second part, the court is bound to examine any person as a witness if his evidence appears to be essential for the just decision of the case, regardless of whether any party has requested it or not. In this regard, reliance is placed on the case of *State v. Muhammad Yakoob and others* (2001 SCMR 308). The Honourable Supreme Court, in the case of *Chairman NAB v. The State* (PLD 2018 Supreme Court 28), has defined the role of the court under Section 540 as follows:

“---S.540---Power of Court to summon material witness or examine person present---Scope—The role of the Court under the provisions of S.540 Cr.P.C. was inquisitorial, where it endeavored to discover the truth, suppressed by one or both parties, so as to incapacitate the Court from reaching a just conclusion. In exercising inquisitorial powers, the law imposes an obligation on the Court to discover the truth and to secure the ends of justice. Witnesses examined under S.540, Cr.P.C. are examined as 'Court witnesses' and not for the prosecution or defense; therefore, none of the parties to a case would claim such a right.”

8. From the above dictum, it is crystal clear that the law imposes obligations on the court to discover the truth and secure the ends of justice. In the present matter, the proposed witness, Muhammad Zaffar Siddiqui, ASP City Nawab Shah, conducted an inquiry regarding the allegations leveled in the FIR. If the witness is summoned to adduce evidence, both parties will have ample opportunities to exercise their right of cross-examination; thus, no harm will come to the case of either party. Conversely, if the inquiry officer is called as a defense witness, the accused may lose the right of cross-examination, as he would be his own witness, which could

hinder the ability to bring forth the real and actual facts of the inquiry. The Lahore High Court, in the case of Abdul Razzaq v. Muhammad Naeem and others (2011 P.Cr.L.J 1248), has held that the court possesses unfettered powers to compulsorily examine any person whose evidence will help elucidate or ascertain the truth, thereby reaching a just and fair conclusion of the case. Therefore, summoning the witness to adduce evidence ensures that both parties retain their rights to cross-examine, and thus, no harm will come to the case of either party.

9. Admittedly, the then ASP Muhammad Zaffar Siddiqui conducted the inquiry, and the applicant was found innocent; and on the basis of his findings applicant was placed in the column No.2 of the challan, therefore, the evidence of the enquiry officer/ ASP Muhammad Zaffar Siddiqui is necessary for the just decision of the case, and it will meet the ends of justice to summon the said witness as a Court witness, instead of as a defense witness.

10. With due respect and regard to the case law cited by learned DPG but the facts and circumstance of the said case law are quite distinguishable therefore, the same is not applicable in the present case.

11. For the reasons above, the instant Criminal Revision is allowed and impugned order dated 22.8.2026 passed by 1st.Additional Sessions Judge Naushahro Feroze is set-aside. Consequently the then Muhammad Zaffar Siddiqui, ASP City Nawab Shah is called/summoned as Court witness along with documents/enquiry report. Let copy of order of this Crl. Revision Application be sent to the concerned Court for compliance.

J U D G E

Hizbullah

