

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Revision Application No.S-110 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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29.05.2023

Mr. Ahsan Gul Dahri, advocate for applicant.
Mr. Bashir Ahmed Almani, Assistant Attorney General for
Pakistan.

MUHAMMAD IQBAL KALHORO, J.- Applicant has challenged order dated 26.04.2021 passed by learned Special Judge Anti-Corruption (Central) Hyderabad dismissing his application u/s 540 CrPC for recalling the witnesses for the purpose of cross examination.

I have heard the parties and perused material available on record. A perusal of impugned order shows that earlier to subject application, when due to failure of the applicant and his counsel to cross-examine the witnesses, prosecution side was closed and the case was posted for statement of accused u/s 342 CrPC, an identical application was filed which was allowed with consent and an undertaking in the form of a statement was obtained from learned defense counsel for his appearance without fail for cross-examination of the witnesses. However, despite such undertaking and indulgence shown by the trial court by reopening the prosecution side allowing the defense to cross-examine the witnesses, the counsel remained absent when the witnesses, re-summoned, were present in the court. And as a result, the side of the prosecution was again closed. Instead of presenting the accused for his statement u/s 342 CrPC, again the application u/s 540 CrPC was moved by the applicant which, in consideration of the aforesaid scenario, has been dismissed.

Learned counsel has prayed for setting aside the impugned order.

Learned Assistant Attorney General has submitted that earlier application of the applicant was allowed subject to fare charges to PWs and if at this time cost of Rs.50,000/-, Rs.10,000/- for each witnesses, is paid by the applicant, he would have no objection for re-opening side of prosecution. Proposal of learned Assistant Attorney General appears to be justified in the given facts and circumstances when despite the chance given to the accused

and his counsel to cross-examine the witnesses after being re-summoned, they failed to do so.

Accordingly, this application is allowed subject to payment of cost of Rs.50,000/-, Rs.10,000/- for each witness in the trial court. After the cost is paid by the applicant, the trial court would re-summon the witnesses on one date when counsel for the applicant shall be present without fail and cross-examine the witnesses. If the cross-examination of the witnesses is not completed, then case shall be posted on next date for the same purpose and this shall continue till the cross-examination is completed. However, if the learned counsel fails to turn up in the court on the given date, the side would be deemed to have been closed.

In the above terms, this application is accordingly disposed of.

JUDGE

Ali Haider

