

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Appeal No.815 of 2024
(*The State/ANF Vs. Muhammad Javeed*)

Date	Order with signature of Judge(s)
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Fresh Case

Date of hearing and Judgment:- 05.12.2024

Mr. Mohsin Ali Khan, Special Prosecutor ANF

J U D G M E N T

Adnan-ul-Karim Memon, J:- Appellant/Anti Narcotic Force (ANF) appeals the judgment dated 03.12.2024 passed by the Special Court-I (CNS), Karachi, whereby the application under Section 540 Cr. P.C., filed by the prosecution for the re-examination of PW HC Muhammad Naeem Moharrar of Malkhana was dismissed. An excerpt of the same is reproduced as follows:-

“Perusal of record shows that PW HC Muhammad Naeem was examined before this court on 13.11.2024 in this case at Ex.10 and full opportunity was provided to him to get his evidence recorded. It was he, who stopped any part of his evidence, therefore now the prosecution wants to fill in the legal lacuna. It is well settled by now that section 540 Cr.P.C cannot be invoked to fill in the legal lacunas of any party. Hence, for the foregoing reasons I do not see any merit in this application, consequently the same is dismissed. Order accordingly.”

2. The appellant's counsel argues that the trial court did not consider the case's severity and the submissions made. The witness inadvertently omitted to testify about handing over the sample parcel to the parcel witness. The prosecution's evidence indicates that the contraband substance was kept in the police station's Malkhana and then sent to the Chemical Examiner. He argued that section 311 of the Code of Criminal Procedure empowers the court to summon any person as a witness at any stage of a trial or inquiry to prevent a miscarriage of justice. He emphasized that this power can be used to summon witnesses for both the prosecution and the defense even for re-examination/recalling the witness if any omission has been made. He further argued that the all the documents viz entry of Register No. 19 and other relevant entries have already been produced by the witness in this case but inadvertently the witness could not deposed about handing over sample parcel to the parcel witness for depositing the same to the Chemical Examiner at the time of recording his examination and now the witness wants to depose in his re-examination with regard to the subject entry and the prosecution will be highly prejudice if the application submitted by the prosecution on 03.12.2024 before the trial court is not allowed. However, he added that the court must exercise this power judiciously and only when it is essential for a just decision in the case. He argued that Section 540 of the CrPC empowers the court to summon a witness at any stage of the trial if their

evidence is essential for a just decision. The court must ensure a fair trial and should not be hindered by technicalities. The court must exercise discretion to ensure that this power is not misused and that justice is served. The appellant's counsel relies on the case of Nawabzada Shazain Bugti and others v The State **PLD 2013 SC 160**. He lastly prayed that an impugned order dated 27.09.2022 may be set aside.

3. We have heard the learned counsel for the appellant on the maintainability of this Appeal and perused the record with his assistance.

4. The prosecution wanted to summon PW HC Muhammad Naeem Moharrar of Malkhana In-charge to re-examine him about handing over the sample parcel to the parcel witness. The trial court denied the request, on the premise that he was already examined on oath and his cross-examination had been conducted and now the prosecution wants to fill the lacuna. The reasoning of the learned trial court is justiciable for the simple reason that PW 4 Muhammad Naeem had already been examined by the trial court on 14.11.2024, in which he deposed clearly and produced certain documents and he was cross-examined by the defense.

5. The application filed by the prosecution was/is misconceived and was rightly rejected, for the simple reason that Section 540 of the Criminal Procedure Code (Cr.P.C.) empowers a court to summon a material witness or examine a person in attendance, even if they were not originally summoned, at any stage of an inquiry, trial, or other proceeding. This provision is crucial for ensuring a just decision in a case, as it allows the court to call upon additional witnesses whose evidence may be essential to the case. Section 540 Cr.P.C. allows the court, prosecution, or defense to summon a witness deemed essential for a just decision. However, the court has the discretion to consider the witness's relevance, the stage of proceedings, and potential prejudice to the other party. The assertion of the prosecution that he did not depose about handing over the sample parcel to the parcel witness is concerned, it is for the trial court to see this aspect when the entire evidence is recorded and the Chemical Examiner report is submitted.

6. No case for interference is made out, this criminal appeal is dismissed in limni. It is directed that the trial court may proceed with the trial uninfluenced by any observation made by this Court which may have the effect of prejudicing either party's case on merit.

JUDGE

JUDGE

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