

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.798 of 2024

[Tariq Mehmood v The State & 3 others]

Criminal Misc. Application No.799 of 2024

[Tariq Mehmood v The State & 3 others]

Criminal Misc. Application No.800 of 2024

[Tariq Mehmood v The State & 3 others]

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Mr. Irshad Ahmed Jatoi, Advocate for the Applicant(s).

Mr. Rashid Mehmood Siddiqui, Advocate for the Respondent No.2.

Mr. Shahbal Ali, Advocate for the Respondent No.4.

Mr. Zahoor Shah, APG.

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Date of hearing **06.05.2025**

Date of order **16.05.2025**

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ORDER

Shamsuddin Abbasi, J.- Tariq Mehmood, applicant, is complainant in three FIRs (i) FIR No.279 of 2018 registered at P.S. Arambagh, Karachi, for offences under Sections 489-F and 420, PPC, (ii) FIR No.344 of 2019 registered at P.S. Arambagh, Karachi, for offences under Sections 489-F and 420, PPC and (iii) FIR No.277 of 2018 registered at P.S. Arambagh, Karachi, for offences under Section 489-F and 420, PPC. He has impugned three orders of same date (20.07.2024), penned down by the learned Additional Sessions Judge-VII, Karachi (South), whereby his criminal revisions applications were dismissed and the orders dated 30.05.2024, handed down by the learned Judicial Magistrate-XVIII, Karachi (South) granting exemption to respondents /accused 2 to 4 from personal appearance in the aforesaid FIRs were up-held.

2. Precise facts of the case are that the applicant /complainant lodged three FIRs against respondents 2 to 4, referred herein above. They sought exemptions from personal appearance under Section 205 Cr.P.C. in each FIR, which were granted by the learned Judicial Magistrate-XVIII, Karachi (South) vide orders dated 30.05.2024 allowing them to appear through their pleaders. The applicant/ complainant challenged the aforesaid orders in revision, which were dismissed by learned Additional Sessions Judge-VII, Karachi (South) vide order dated 20.07.2024, which necessitated

the filing of the instant Criminal Misc. Applications, which are being decided together through this single order.

3. It is contended on behalf of the applicant that the learned two Courts below while granting exemption from personal appearance to the respondents have failed to follow the mandatory requirements of Sections 205 and 353, Cr.P.C. and passed the impugned orders in haste without application of conscious judicial mind. It is next submitted that the respondents /accused were absent on the date of filing the applications despite the learned trial Court accepted the applications and exempted them from personal appearance. Per learned counsel, the impugned orders are violative of the provisions contained in Section 540-A Cr.P.C.

4. On the other hand, the learned counsel for the respondents as well as learned APG have supported the impugned orders and submitted that the learned counsel for the applicant has failed to point out any illegality or serious infirmity in the impugned orders, hence no case for interference is made out.

5. I have given my anxious consideration to the submissions of respective sides and perused the entire material available before me with their able assistance.

6. Under section 540-A, Cr.P.C. an accused can be exempted from personal appearance subject to conditions mentioned in the said Section. For the sake of brevity, Section 540-A Cr.P.C. is reproduced as under:-

"540-A. Provisions for inquiries and trial being held in the absence of accused in certain cases. (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied for reason to be recorded, that any one or more of such accused is or incapable of remaining before the Court, he may, in such accused is presented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons

to be recorded by him either adjourn such inquiry or trial or order that the case of such accused be taken up or tried separately".

7. The words "before the Court" can, therefore, not be assigned the strict meaning of personal attendance of an accused before the Court, because one of the necessary elements for attracting the jurisdiction of the Court under this Section is that an accused can be represented by a pleader and the Court may exempt an accused from personal appearance. A perusal of the record reveals that respondents /accused approached the learned trial Court seeking exemption from personal appearance under Sections 205 read with Section 540-A, Cr.P.C. citing their inability to appear on each and every date of hearing because they used to travel abroad frequently for business and family related matters. They have also reduced in writing an undertaking before the learned trial Court, which granted them exemption through order dated 30.05.2024, which has been affirmed by the learned Revisional Court vide its order dated 20.07.2024. Relevant extract of the said order is reproduced below:-

"On scrutiny of record, it appear that respondent No.2 to 4 deposited sureties and are appearing on each & every dates of hearing before the learned trial Court. The learned counsel for accused/ respondents 2 to 4 filed separate applications on the ground that accused Shahzad has brought attention to passing away of the accused's wife, leaving minor children behind and the family's residence in London emphasizing the necessity of the accused's presence for matters related to the children's education & other essential requirements. On the other hand, advocate for accused Owais Sheikh & Sharjeel Shafique have underscored that both accused individuals are not permanent residents of Karachi and have been traveling to the Court from Lahore and some times from abroad since 2018. The grounds agitated by the learned counsel for the accused /respondents No.2 to 4 are of worth consideration as it is beyond the control of accused /respondents No.2 to 4 to appear on each and every date of hearing in the instant case before the learned trial Court. For deciding the above nature applications, the Hon'ble Apex Courts have devised some principles which ought to be taken into consideration. It is held in PLD 2004 Supreme Court 160 that:-

"What our law requires the Court to appreciate before the grant of exemption is that, (i) there should be 'two or more' accused facing the trial; (ii) that the accused asking for exemption should be "before the Court"; and (iii) that, he be represented by a counsel. As already discussed with reference to law of our country, here the

words “before the Court” employ the physical presence of an accused before the Court. The words “incapable of remaining before the Court” also give a strong indication of the fact that the accused who at one time was before the Court, has now become, for some reasons or the other, incapable to remain present before the Court for future”.

Admittedly, accused were before the Court & now they require exemption on the ground of being incapable of remaining before the Court. I may also refer here the case law reported in 1980 P.Cr.L.J. wherein it is held that if an accused on bail prays for a permission to be represented through a counsel the request should be generally granted as there is no compelling legal necessity to force an accused to attend in person instead of being represented to a counsel. In another case reported in PLJ 2004 SC 533 wherein it is also held that if the accused becomes incapable of remaining before Court, exemption can be granted for reasons to be recorded. Exemption should have been granted to accused who had gone abroad to earn his livelihood and who in view of prevailing delays in disposal of cases cannot wait for commencement and conclusion of trial”.

8. It is noted that the findings recorded by the learned trial Court have been concurred by the learned Revisional Court and both the learned Courts below have refused to exercise their discretion in favour of the applicant. It is settled proposition of law that concurrent findings of fact cannot lightly be interfered. The learned counsel for the applicant has not raised any question of law that may require consideration by this Court in exercise of its jurisdiction under Section 561-A, Cr.P.C. He has also not been able to convince me that there is any illegality or serious infirmity committed by the learned two Courts below while granting exemption. I find that the learned subordinate Courts have passed the impugned orders after due application of mind and careful appreciation of record as well as applicable law. Hence, the impugned orders, passed by the learned two Courts below, do not suffer from any illegality, infirmity or material irregularity that may require interference by this Court. Resultantly, the Criminal Misc. Applications 798, 799 and 800 of 2024 are bereft of any merit stand dismissed.

JUDGE