

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

Cr. Revision Application No.166 of 2026
(Sher Muhammad @ Shera vs. The State)

Date of hearing
& Order 13.08.2026

Mr. Tahir-ur-Rehman, advocate for applicant
Mr. Abrar Ali Khichi, Addl: PG Sindh

ORDER

Muhammad Iqbal Kalhoro, J:- Applicant, undergoing a trial as an accused in Special Case No.1065/2025 before the Special Judge (CNS), South, Karachi, arising out of Crime No.217/2025, u/s 6/9(i)3(e) Sindh Control of Narcotic Substance Act, 2024, registered at Police Station Mehmoodabad, Karachi, filed an application seeking indulgence of the Court for local inspection of the place of incident in terms of section 539-B Cr.PC. The necessity for him to file such application arose when he claimed the place of incident to be inaccessible for any vehicle, disputing essentially the prosecution case on this point.

2. As per record, applicant was arrested from “Wireless Ground”, opposite Munawar Masjid, Kala Pul Road, Chanessar Goth, Mehmoodabad, Karachi, when from the diggy/trunk of his car 98 kilograms of charas was allegedly recovered. The area otherwise is known as “Katchra Kundi.” The case of the applicant is that Kachra Kundi is a narrow place and no vehicle could pass through it to reach Wireless Ground, the alleged place of incident. Hence, it was necessary for the Court to exercise jurisdiction u/s 539-B Cr. PC and conduct a local inspection to confirm and verify the said fact.

3. The application was opposed by the prosecution mainly on the ground that it was filed belatedly, after more than one year, and meanwhile the area / place of incident had materially changed to look different than it was at the time when the recovery was effected. The trial Court accepted the said plea and observed further that power u/s 539-B CrPC is discretionary and has to be exercised when there is any ambiguity in identifying the spot through the prosecution evidence. With these findings, the trial Court has dismissed the application through the impugned order.

4. Before harping on the issue any further, we may say that earlier a Cr. Revision Application No.71/2026 in respect of the same issue vide order dated 22.04.2026 has been decided by us. In the said order, we have thoroughly analyzed jurisdiction of the Court u/s 539-B Cr.PC and the remedy available to an accused who, on any ground, disputes the place of incident to be either non-existent or materially different than the one alleged in the case. The construction followed by the findings recorded in the said order are *mutatis mutandis* relevant and applicable in the present case. However, for the ready reference and guidance, we reproduce paragraphs 9 & 10 of the said order herein below:

- “9. The case where the accused entirely disputes the place of incident, or claims that it does not exist, or that he was not arrested from it, like in the present case, indeed a different situation arises, which by resorting to section 249-A or 265-K Cr.PC, can be dealt with by the Court, and if necessary by inspecting the site, or by any other means available to the Court under the law and give its findings.
- 10. However, on such ground the accused cannot be allowed to ask the Court u/s 539-B Cr.PC to locally inspect the site and confirm such fact, and on the basis of such confirmation or otherwise decide the case. Because such proposal, if done as requested, would take the Court to go beyond the mandate of this provision. Any such observation, as is sought by the appellant, made by the Court invoking this provision would then be a fact by itself and not a supporting exercise in order to properly appreciate the evidence already on record qua the site.”

5. In addition, we would like to reiterate that jurisdiction under this provision is not mandatory and is discretionary, at best¹. It is invoked by the Court to properly appreciate the evidence recorded in the case in respect of place of incident and to clarify any ambiguity in this regard by preparing a memorandum of any relevant facts noted during the inspection². This provision has to be applied when the Court has come across any difficulty in properly understanding the evidence qua place of incident. Only and only in such situation, the Court may inspect the site to remove such ambiguity by gaining first-hand experience of physically inspecting the site.

6. The view of the Superior Courts held time and again about the local inspection is the same that it is a discretionary power of the Court; it has to be invoked in order to properly appreciate the evidence on the point already available on record. It is not used to collect any additional evidence with the aim to substitute the prosecution evidence³. If the accused disputes the

¹ Asfandiyar and another vs. Kamran and another (2016 SCMR 2084)

² State of Himachal Pradesh vs. Mast Ram (MANU/SC/0746/2004)

³ (AIR 1927 All 350), (MANU/UP/0451/1972 & (MANU/MH/0178/1973)

place of incident in cross-examination on any ground including that he was not arrested from it, its description does not match with the actual place of incident etc, it does not automatically give rise to a necessity for local inspection by the Court to determine such fact. Because if the Court does it and bring the facts noted by it on the record, it will make itself a witness. Such position would be contrary to import and object of the very provision resulting into a serious error of law⁴.

7. But, at the same time, it must be stressed that when despite the evidence on record and any lead made by the Investigating Officer, some questions are left requiring clarity qua place of incident, the Court may decide to inspect the site to remove the confusion and vagueness. The underlying purpose of this provision is to enhance level of understanding of the Court by physical inspection of the site, so that it could arrive at a right inference about contours and identity of place of incident. As is obvious, the object of this provision is limited to only properly appreciating the evidence, this provision cannot be invoked to collect further or additional evidence in order to rebut the prosecution case and use it as evidence in juxtaposition with the stance taken by the prosecution in this respect.

8. A survey of different case laws⁵ confirms that a local inspection is permitted only for the purpose of properly appreciating the evidence in the case and it cannot take the place of evidence. The power under this provision is used not only for understanding the evidence but also for testing the veracity of the witness as regards the features of locality. However, the facts as observed by the Magistrate/Judge on the spot may not fall strictly within the meaning of the term evidence as defined in law, but they constitute “matter before the Court.” Local inspection is advisable where the evidence is conflicting, or the guilt or innocence of the party depends upon local peculiarities of the situation. The local inspection may explain any points in the evidence and help the Court decide which of the contending parties is telling the truth.

9. Yet, it has been warned that the Magistrate/Judge should not import into the case facts, which he himself has observed because he would be introducing the evidence which has not been subjected to test and in regard to which, he may have been misled by his senses or bias in favour of either party. And that it is on this account that many judges refuse to make a local

⁴ Keisam Kumar Singh and ors vs. State of Manipur (MANUSC/0077/1985)

⁵ PLD 1974 Quetta 28 PLJ 1974, Quetta 109 (DB)+PLD 1963 Dacca 852 PLD 1959 Dacca, Air 1946Ca. 537+AIR 1923 Mad 694, 13 Cr. L.Jour 156=39 Ca. 476, 19 All 302+13 Cr. L Jour 156=9 Ca. 476, 1884 All N.W. 264, PLD 1953 Azad J&K 13+AIR 1937 Sind 125+AIR 1956 S.C. 415+AIR 1929 Lah. 120+11 Cr. L Jour 110 (Lah), AIR 1939 Ca. 487

inspection. The Magistrate/Judge making a local inspection, if prepares a map and uses it as evidence in the case, he would place himself in the position of a witness, which is not warranted under this section.

10. Here, the impugned order shows that the trial Court has no reservation or ambiguity in identifying the place of incident, nor therefore, it considers local inspection in the case as necessary to invoke jurisdiction under the said provision. The trial Court *prima facie* seems to have come to terms with the fact that due to afflux of time, changes happen, and any deviation, even if noted at the place of incident, would not necessarily negate prosecution case on the point. We therefore find no error in the impugned order to upset it here in this application.

11. Yet, at the same time, we may observe that in the cases, where the accused seriously disputes the place of incident claiming that it does not exist, or that its description contradicts the actual place of incident, or that probability of the police reaching the place of incident is non-existent to raise suspicion on the prosecution case. He is basically hitting the roots of the case and claiming his false implication. It is altogether a different scenario and could be dealt with by the Court by invoking powers, if approached or otherwise, u/s 249-A or 265-K Cr.PC, as the case may be, and if necessary by locally inspecting the site to appreciate ground of the accused.

With such conclusion, we dismiss the application in hand and dispose it of accordingly.

JUDGE

JUDGE