ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Rev. Application No.42 of 2024

(Bilal @ Abbas Vs. The State & another)

Date	Order with Signature of Judge

1. For hearing of case.
2. For hearing of MA No.9690 of 2025.

Mr. Aamir Nazir Shaikh, Advocate for the applicant.
Mr. Muhammad Iqbal Awan, Addl. P.G. Sindh.
Mr. Zakir Hussain bughio, Advocate for respondent No.2
a/w respondent No.2.

Date of hearing: 29.12.2025
Date of Judgment: 02.01.2026

O R D E R

Dr. Syed Fiaz Ul Hasan Shah; J: The applicant has challenged the order dated 02.02.2024 **("impugned order")** passed by the learned Ist Additional Sessions Judge / MCTC (1), Karachi, Central **("trial Court")** in Sessions Case No.596 of 2021 arising out of FIR No.122 of 2021 under Sections 302, 392, 397 and 34 PPC registered with P.S. Sharifabad.

2. The facts of the case are that on 22.02.2021 Muhammad Hanif Bandhani son of Khuwaja Mohammad Ismail lodged the complaint that his son Saeed through mobile phone received a call that his grandson Osama Saeed has sustained bullet and was taken to hospital where he had already passed away. On inquiry, he had come to know that his grandson Osama / deceased victim went to Al-Reheem Autos in Block-1, Sharifabad, Karachi, for his motor car issue while Zeeshan was sitting on front seat of the case / vehicle checking the scanner and the deceased victim was sitting on the driving seat when at about 2110 hours one unknown person identified by faces knocked at the vehicle glass and on gun point asked the deceased victim

to hand over all his belongings and articles which were handed over including wallet and iphone with two sims and the mechanic Zeeshan sitting on the adjacent seat has also handed over his purse and the culprit went away on motorcycle and suddenly he returned back and he fired directly upon the grandson of the complainant Osama who succumbed injuries. The people rush him to Aga Khan Hospital where victim Osama was pronounced dead. The eyewitnesses Zeeshan Yousuf and Faizan have seen the occurrence which had taken place in their presence.

3. Subsequently, the applicant and other accused were arrested and after conducting trial they were convicted by the trial Court vide judgment dated 10.03.2025, however, in Cr. Jail Appeal No.188 of 2022 and other connected appeals, this Court vide judgment dated 20.02.2023 set aside the conviction and sentence while remanded the matter to the trial Court for examination of the four prosecution witnesses as earlier their evidence was recorded in the absence of the defence counsel.

4. Consequently, the trial Court has recorded the evidence of four prosecution witnesses in compliance of above-mentioned Judgment of this Court. In the meanwhile, the prosecution side has moved an application under Section 540 Cr.P.C. to also examine the police officials Muhammad Ibrahim and Muhammad Akhtar whose names have already been incorporated in the calendar of charge sheet. This application was initially dismissed by the trial Court vide order dated 09.12.2023, however, on the second application moved by the prosecution side, the learned trial Court allowed the same vide order dated 02.02.2024 allowed the same.

5. Heard the counsel for the parties as well as learned Addl. P.G. Sindh and perused the record.

6. The learned counsel for the applicant contends that in the first round of litigation before delivering the earlier judgment dated 10.03.2022 the prosecution has filed a statement for the closing of side dated 21.02.2025 at Exh.22. According to the learned counsel in view of that statement the prosecution has given up those two witnesses and, therefore, subsequent application and its dismissal and the second application warrant no merits and the impugned order is bad in law. I find no merit in the contentions of learned counsel for the applicant as the statement dated 21.02.2022 filed by the prosecution was for closing of side termed that names of these two official were given up by the prosecution voluntarily, therefore, both official cannot be called now as prosecution witnesses. Whatever be the perspective, the provision of Section 540 Cr.P.C. does not preclude the prosecution side to move application under Section 540 Cr.P.C. and it does not restrict the trial court not to call the material witness whose presence is just and proper for the purposes of trial. The names of both official were given in the charge sheet to the knowledge of Applicant who are the Mashirs of recovery and arrest. The trial Court has given a reason that the names of official witnesses were overlooked by the prosecution and the Court.

7. In the present case the grandson of the complainant was murdered in daylight and definitely they were going to be adversely affected by a willful failure or oversight of the prosecution to bring on record the material evidence against the accused party, therefore, it cannot be said that there was any lacuna going to be filled or a new version has to be introduced as the names of the witnesses are already available in the calendar at charge sheet and they are the official witnesses and mashirs of the event of recovery and arrest; hence their testimony will not prejudice the applicant. In ***Ansar Mehmood Vs. Abdul Khaliq*** **(2011 SCMR 713),** the Hon'ble Supreme Court has observed

that “complainant is not supposed to suffer for the fault of prosecution who was negligent in discharging duties and functions”.

8. The trial Court has explained that the earlier omission to summon the two official witnesses was due to prosecutorial oversight. In light of the principles laid down by the Hon’ble Supreme Court, the first contention of learned counsel is therefore rejected. As to the second contention—that the application under Section 540 Cr.P.C. was filed belatedly to fill a gap or lacuna in the prosecution case, thereby prejudicing the applicant—I find no merit in this argument. The examination of the two witnesses cannot be construed as an attempt to cure deficiencies or fill up lacuna in the prosecution case, nor is it detrimental to the applicant’s interests. These witnesses are not witnesses to the occurrence itself, but official mashirs of arrest and recovery, and would have to testify to an already explained event which was not denied by the applicant. Their testimony will remain subject to cross-examination, affording the applicant full and ample opportunity to challenge and test the truth. Moreover, the burden of proof continues to rest squarely upon the prosecution. Accordingly, this contention is devoid of substance and carries no weight.

9. The proviso to Section 540 Cr.P.C. operates as an exception to the adversarial system, supplementing inquisitorial principles and serves as an overarching component of the criminal justice framework. Jurisprudence has evolved to recognize that a witness, even if earlier given up, may be summoned either as a prosecution or defence witness. The trial Court retains discretionary authority to permit parties to put questions to their own witnesses under Article 150 of the Qanoon-e-Shahadat Order, 1984. Such questioning does not render the witness hostile or partisan; rather, it is intended solely to elicit the truth. Section 540 Cr.P.C. empowers the trial

Court, at any stage of inquiry or trial, to summon, examine, recall, or re-examine any person as a witness. The legislative intent behind the phrase “any person” is broad, encompassing all relevant individuals without restriction as to timing or stage of proceedings.

10. In the present matter, the witnesses in question were already named in the charge sheet as prosecution witnesses. Following this Court’s earlier Judgment of remand with direction to examine four prosecution witnesses once again, the trial remains ongoing. Upon conclusion of the prosecution evidence, the trial Court is required to record the statements of the accused under Section 342(1) Cr.P.C. and thereafter deliver judgment in accordance with law. Consequently, the impugned order has been passed strictly within the statutory framework and based on discretionary authority, therefore warrants no interference. I do not find any merits in the instant criminal revision application which stands dismissed alongwith listed application. The trial Court is directed to record the evidence of the parties expeditiously and no adjournment should be granted for more than three days being an old matter on record.

This Criminal Revision stands dismissed alongwith listed application.

JUDGE

Asif