IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No. 156 of 2022

Applicant	:	Tahir Ahmed Khalid s/o Allah Rakha Shahid, Through Syed Ali Ahmed Tariq, advocate.
Respondent	:	The State Through Mr. Muhammad Mohsin Mangi, Asstt: P.G Sindh
Date of hearing	:	07.05.2025
Date of order	:	12.05.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. – The applicant has invoked the Revisional Jurisdiction of this Court against the order dated 13.05.2022 passed by the learned XI Additional Sessions Judge, Karachi East, whereby the prosecution's application under Section 540 Cr.P.C. was allowed, permitting summoning of two additional witnesses, namely Salman and his father Haji Zulfiqar, after conclusion of the trial.

2. The applicant is facing trial in Sessions Case No. 876 of 2015, arising out of FIR No. 68/2014 registered at P.S. A-Section, Tando Allahyar, offence under Sections 295-B, 337-A(i), and 337-F(i) PPC. The case was transferred from the original Sessions Court at Tando Allahyar to Karachi by administrative order dated 06.04.2015 in view of serious security threats to the applicant, who belongs to the Ahmadiyya community. These concerns were substantiated by reports of mob violence and documented attempts to forcibly evict members of the said community from the locality.

3. After the usual trial process, including framing of charge, examination and cross-examination of prosecution witnesses, recording of statement under Section 342 Cr.P.C., and conclusion of final

arguments, the matter stood ripe for judgment. It was at this final stage that the learned ADPP submitted an application under Section 540 Cr.P.C for summoning the said two witnesses, asserting that their evidence was essential for the just decision of the case.

4. The application was contested by the defense on multiple grounds, including delay, non-disclosure of the witnesses in the initial list under Section 173 Cr.P.C., absence of justification for their belated inclusion, and the apprehension that their testimony was being procured to fill perceived gaps in the prosecution's case.

5. The learned trial Court, however, allowed the application, observing that the powers under Section 540 Cr.P.C. are discretionary and can be exercised at any stage of proceedings. Section 540 Cr.P.C. certainly empowers the Court to summon or recall witnesses at any stage of the inquiry or trial; however, this discretion is not absolute and must be exercised judicially, for the ends of justice, and not to serve the strategy of one party, especially after conclusion of trial.

6. The impugned order reflects that the learned trial Court primarily relied on earlier precedents such as 2011 P Cr. L J 1150 and 2013 P Cr. L J 1623, both of which recognize that courts can allow the summoning of additional witnesses in the interest of justice, even at a late stage, if the evidence is deemed necessary. Undeniably, these decisions enunciate important and valuable principles of judicial discretion and procedural flexibility. However, with due respect, it must be noted that the said decisions stand overridden by the later and binding authority of the Supreme Court in case of *Sajid Mehmood v. The State* (2022 SCMR 1882), which was rendered by a Full Bench, and hence has overriding effect in terms of Article 189 of the Constitution.

7. In 2022 SCMR 1882, the apex Court categorically laid down that:

> *"Section 540 Cr.P.C. cannot be employed to re-open a trial or proceedings that have reached the stage of conclusion, unless failure to summon such witness would amount to miscarriage of justice. The prosecution cannot be allowed to fill lacunae or bring in evidence belatedly which it failed to produce at the appropriate stage despite having full opportunity."*

8. The judgment underscores that after the closure of prosecution evidence and conclusion of final arguments, the trial court must be exceedingly cautious in allowing any such application, particularly where no satisfactory explanation is offered for earlier non-examination of the proposed witnesses.

9. In the present case, the prosecution has not furnished any cogent explanation for failing to name or examine Salman or Haji Zulfiqar during the trial proceedings, even though they were purportedly known to the complainant. Their names do not feature in the list of witnesses submitted with the challan, nor were they ever mentioned in any of the interim police reports under Section 173 Cr.P.C.

10. Permitting their examination at this belated stage, particularly after conclusion of trial, would prejudice the rights of the accused and amount to giving the prosecution a second opportunity to reconstruct its case, which is impermissible in law. The risk of introducing tainted or tailored evidence in a sectarian case of this nature, where allegations are deeply polarizing and involve threats to life, is particularly grave.

11. Moreover, such a course would run afoul of the fundamental right to fair trial and due process under Article 10-A of the Constitution, which mandates that proceedings must be free of arbitrariness and late-stage surprises.

12. The impugned order dated 13.05.2022 suffers from material illegality and misapplication of law. Although the case law cited by the learned trial Court, 2011 P Cr. L J 1150 and 2013 P Cr. L J 1623, contains useful guiding principles, the same has been impliedly overridden and is no longer good law in view of the binding judgment of the Full Bench of the Supreme Court reported as 2022 SCMR 1882, which lays down a stricter and more definitive test for post-conclusion summoning of witnesses under Section 540 Cr.P.C.

13. Resultantly, the impugned order cannot be sustained. The same is set aside, and the prosecution's application under Section 540 Cr.P.C. is dismissed. The learned trial Court is directed to proceed with the case from the stage it had reached prior to the filing of the said application and conclude the same within reasonable span of time, without further unnecessary delay.

JUDGE