

ORDER SHEET
IN THE HIGH COURT OF SINDH, AT KARACHI
Criminal Misc. Application No.632 of 2026

Date	Order with Signature(s) of Judge(s)
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Presents:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Abdur Rahman

For hearing of case

11.08.2026

Mr. Abbas Ali Abasi, advocate for the Applicant.
Respondent No.2 Syed Yousuf Jameel Rizvi, is present.
Mr. Ali Anwar Kandhro, Addl.P.G.

ORDER

MUHAMMAD IQBAL KALHORO J. Applicant, who is an accused in Special Case No.448 of 2021 filed an application u/s 540 Cr. P.C. before the Anti-Terrorism Court No.1 at Karachi for recalling the complainant and one P.W. Naveed Mushtaq for further cross-examination on the ground that some material questions were left from asking them during previous cross examination. The same ground has been reiterated by the counsel here to press this application. Learned Addl.P.G. has opposed this application.

2. This application has been dismissed by the trial court through impugned order holding that the case is at final stage and this application has been filed belatedly in order to delay the matter, in which the Supreme Court has already given direction for quick disposal.

3. Record reflects that applicant was represented by a counsel at the time of cross-examination of the complainant and his witness and was given a full opportunity to confront relevant facts to them. In the circumstances, the real issue before us is that whether the application for further cross-examination of the said witnesses can be allowed at such latter stage when the accused has meanwhile changed his counsel, who is of the view that certain questions, which should have been asked from the complainant and the witness in cross-examination were not put to them.

4. The Scheme under Section 540 Cr.P.C. suggests that recalling of a witness on this ground: certain questions were not asked from him, is not allowable. Even otherwise, if this ground is accepted, then the trial would never end because every time the counsel is changed (or for any other reason) he would move an application for recalling the witness to ask him certain questions, which in his view were vital but not asked.

5. It has been time and again reiterated that the purpose behind recalling and re-examination of the witness is to grant a witness an opportunity to explain any matter stated by him in cross-examination, provided the matter is strictly restricted to the questions raised in cross-examination. It is only when cross-examination has resulted in a confusion or inconsistent statement between his examination-in-chief and in his cross-examination disabling the Court to understand or sort out such confusion or the fall-out of the inconsistent statements, the Court may recall the witness to clarify such confusion and inconsistencies.

6. But, at the same time, it may be clarified that this provision is not available for rectifying the flaws and fill the gaps, or provide for what has not been referred to or revealed in cross-examination. Because, such an approach would be contrary to and jeopardise the very object of this provision i.e. to enable the court to do the complete justice. At the same time, before harping on further, it must be stressed that while doing so, the court shall guard itself from being dragged into the swamp under such concept and mistake an attempt to fill the gaps or to introduce new material to doing complete justice.

7. The benchmark in this respect is subtly clear, any confusion or inconsistency strictly restricted to the matter in cross-examination can be sought to be explained by recalling the witness. However, to fill the gaps or to provide for the matter which is not in the cross-examination, Section 540-A Cr.P.C. is not there to be invoked. However, it goes without saying that the court in appropriate cases can accord a serious consideration to invoking provision u/s 540-A Cr.P.C. when, due to any reason, the accused was not afforded a proper opportunity to cross-examine the witness. Or when it is essential for reaching the just

decision of the case and the object is to find out the truth, the court can exercise such power. In addition, when on account of mistake of either party in bringing the valuable evidence on record, failure of justice is likely to be occasioned, the court shall proceed to invoke the jurisdiction and recall the witness. But, it may be remembered that re-examination cannot be employed to rectify the flaws and fill the gaps or to introduce new facts or opinion at will¹. Honourable Supreme Court of Pakistan also in one case² has depreciated practice of moving application for re-summoning or re-examination of the witness at a belated stage in order to fill the lacunas holding that it is against the essence of law.

8. In the present case, the applicant was represented by a counsel and from the copies of evidence available on record it is apparent that he had conducted a lengthy cross-examination of the witness. There is nothing on record that in the evidence of witnesses any confusion etc. has arisen which entails recalling them. The complainant, in response to notice, has appeared and submits that he under the pressure had lodged FIR against the accused persons and had given evidence as such. From his assertions, it is clear that he at this stage after recording evidence on oath intends to introduce new facts, not stated by him earlier, in order to favour the accused. Such approach is alien to concept u/s 540-A Cr.P.C., and has markings of deregulating the criminal trial: allowing a party to back out from its earlier recorded evidence on oath for one or the other consideration.

9. We therefore, do not find any substance in this application and dismiss it.

10. The criminal miscellaneous application is accordingly disposed of.

JUDGE

JUDGE

¹ Muhammad Altaf Khan Vs. Mudassar Iqbal and 7 others (2004 P Cr. LJ 1939 Supreme Court A.J & K)

² Shah Jahan and another Vs. Raheem Shah and others (2022 SCMR 352)