

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.

Criminal Miscellaneous Application No.S-659 of 2026.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Applicant: Muhammad Mursleen son of Abdul Salam Gardazi **through Mr. Danish Ali Bhatti, Advocate.**

Respondent No.4: Saifullah S/O Muhammad Sharif Rajput **through Mr. Abdul Raqeeb Noonari, Advocate.**

The State: Through Mr. Khalil Ahmed Maitlo D.PG.

Date of hearing: **19.10.2026.**

Date of order: **23.10.2026**

Suresh Kumar J:- Through this Criminal Misc. Application under Section 561-A Cr.P.C, the applicant has called in question the order dated 14.09.2026 passed by learned 1st.Additional Sessions Judge, Sukkur, through which he has dismissed the Criminal Revision Application and maintained the order dated 04.9.2026 passed by learned 2nd Judicial Magistrate Sukkur, on application under section 540 Cr.P.C wherein learned trial Court had declined to summon the proposed witness Baboo Razzaque (Stamp Vendor) as a Court witness.

2. The facts leading to the instant Criminal Miscellaneous Application, as depicted in the memo of application, are as follows: The complainant/respondent No. 4, Saifullah Rajput, lodged FIR bearing Crime No. 80/2025 for an offence punishable under Section 489-F of the Pakistan Penal Code (PPC). During the trial proceedings of the said case before the trial court, the applicant/accused filed an application under Section 540 of the Code of Criminal Procedure (Cr.P.C) for summoning the proposed witness, namely Baboo Razzaque (stamp vendor), who executed the agreement of both parties. This application was dismissed by the learned 2nd Judicial

Magistrate, Sukkur/trial court, via order dated 04.09.2026. The applicant/accused assailed this dismissal before the learned Sessions Judge, Sukkur, through Criminal Revision Application No. 46/2026. The said revision application was transferred to the court of the learned 1st Additional Sessions Judge, Sukkur, where the order passed by the trial court was maintained, and the Criminal Revision Application filed by the applicant/accused was also dismissed via order dated 14.10.2026. Therefore, the applicant/accused, being aggrieved, has impugned the said order dated 14.10.2026 and approached this Court through this Criminal Miscellaneous Application.

3. After filing of this application, the notices were issued to learned DPG for State as well as complainant/respondent No.4.

4. I have heard learned counsel for applicant/accused, learned DPG so also learned counsel for respondent No.4/complainant.

5. Learned counsel appearing on behalf of the applicant has contended that the impugned order dated 14.09.2026, passed by the learned 1st Additional Sessions Judge, Sukkur, which maintained the order dated 04.09.2026 passed by the trial court, is not sustainable under the law and has been issued in disregard of a settled principle of law. He has also contended that the role of the court under Section 540 of the Code of Criminal Procedure (Cr.P.C) is inquisitorial, wherein it endeavors to discover the truth that may be suppressed by one or both parties to the case, thereby enabling the court to reach a just conclusion. Furthermore, he contended that the trial court can call Baboo Razzaque (stamp vendor) as a court witness or direct the prosecution to produce the said witness for the recording of his evidence. Lastly, he contended that the examination of the proposed witness is necessary to discover the truth for a just decision in the case.

6. Learned Deputy Prosecutor General (DPG) for the State has supported the impugned orders passed by both the courts below. He has further contended that the applicant can call the proposed witness while providing his name in his statement under Section 342 of the Code of Criminal Procedure (Cr.P.C) as a defense witness, since the prosecution has closed its case before the trial court. Therefore, the criminal application filed by the applicant/accused has been rightly dismissed by both the appellate court and the learned trial court.

7. Learned counsel for respondent No. 4/complainant has adopted the same arguments advanced by the learned Deputy Prosecutor General (DPG). He has also strongly opposed the grant of the application.

8. Having given due consideration to the arguments advanced by learned counsel for the applicant/accused, learned Deputy Prosecutor General (DPG), as well as learned counsel for respondent No. 4/complainant, and having perused the relevant material, it is observed that the impugned order dated 14.09.2026, passed by the learned 1st Additional Sessions Judge, Sukkur, dismissed the application under Section 540 of the Code of Criminal Procedure (Cr.P.C) on the ground that the applicant/accused must lead evidence from the proposed witness as a defense witness, whom he considers necessary for substantiating his defense, and that he cannot compel the prosecution to produce a person as its witness. No doubt, the accused has the right to examine any person as a defense witness, and by invoking powers under Section 265-F of the Cr.P.C, the accused can call any witness through the court. In the present case, the proposed witness is said to have executed the agreement between the parties, and such facts were admitted by respondent No. 4/complainant and other witnesses during cross-examination in the trial before the learned trial court. It is a well-settled principle of law that the trial court has the power to

summon witnesses as court witnesses; however, the legal standard for this is whether the person's evidence is 'essential to the just decision of the case.' Section 540 of the Cr.P.C comprises two parts: in the first part, discretion lies with the court to examine any witness, while according to the second part, the court is bound to examine any person as a witness if his evidence appears to be essential for the just decision of the case, regardless of whether any party has requested it or not. In this regard, reliance is placed on the case of *State. V. Muhammad Yakoob and others* (2001 SCMR 308). The Honourable Supreme Court, in the case of *Chairman NAB v. Muhammad Usman and others* are reported in PLD 2018 Supreme Court -28 has been pleased to held asunder:-

“----S.540---Power of Court to summon material witness or examine person present---Scope—Role of the Court under the provisions of S.540 Cr.P.C was inquisitorial where it endeavored to discover the truth, suppressed by one or both so as to incapacitate the court to reach a just conclusion----in exercising inquisitorial powers, the law had imposed obligation on the court to discover the truth and to secure the ends of justice----Witnesses examined under S.540, Cr.P.C were examined as 'court witness' and not for the prosecution or defense, therefore none of the parties to a case would claim such a right.”

9. From the above dictum, it is crystal clear that the law imposes obligations on the court to discover the truth and secure the ends of justice. In the present matter, the proposed witness, Babo Razzaque (stamp vendor), and has executed the agreement between the parties. If the witness is summoned to adduce evidence, both parties will have ample opportunities to exercise their right of cross-examination; thus, no harm will come to the case of either party. Conversely, if the proposed witness is called as a defense witness, the applicant/accused may lose the right of cross-examination, as he would be his own witness, which could hinder the ability to bring forth the real and actual facts of the inquiry. The Lahore High Court, in the case of *Abdul Razzaque v. Muhammad Naeem and others* (2011 P.Cr.L.J 1248), has held that the court possesses unfettered powers to compulsorily examine any

person whose evidence will help elucidate or ascertain the truth, thereby reaching a just and fair conclusion of the case. Therefore, summoning the witness to adduce evidence ensures that both parties retain their rights to cross-examine, and thus, no harm will come to the case of either party.

10. Admittedly, the proposed witness, who is said to have executed the agreement between the parties and is a stamp vendor, has evidence that is necessary for the just decision of the case. Therefore, it would serve the ends of justice to summon the said witness as a court witness, rather than as a defense witness.

11. For the reasons stated above, the instant Criminal Miscellaneous Application is allowed, and the impugned orders dated 14.09.2026, passed by the learned 1st Additional Sessions Judge, Sukkur, and order dated 04.09.2026 passed by learned 2nd. Judicial Magistrate Sukkur on application u/s 540 Cr.P.C, are set aside. Consequently, the application filed under Section 540 of the Code of Criminal Procedure (Cr.P.C) before the trial court for summoning the witness is allowed, and witness Baboo Abdul Razzaque (the stamp vendor) shall be summoned as a court witness along with any relevant records, if available. A copy of the order of this Criminal Miscellaneous Application shall be sent to the concerned court for compliance.

JUDGE