

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Misc. Appln. No.141 of 2017

Date	Order with signature of Judge
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1. For order on M.A No.4140/2018
 2. For hearing of case / arguments
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14.05.2018

Mr. Mahmood A. Qureshi, advocate for the applicant.
Mr. Zafar Ahmed, D.P.G.

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Nazar Akbar.J., The applicant is facing trial in FIR No.18/2004 under Section 302 & 324 PPC registered at P.S Balida, Hyderabad on 10.5.2004. The FIR was lodged by one **Qazi Talmiz @ Taani**. The accused was arrested and after two years imprisonment he was released on bail. However, meanwhile challan was submitted on 26.5.2004 and charge was framed on 1.2.2010. Since then the complainant and the main witnesses who were allegedly injured are not appearing in Court to record their evidence. Despite repeated efforts by the prosecution, the complainant has refused to appear in the witness box and the alleged injured in the FIR has also refused to appear in the witness box. In the last 10 years after framing of charge the failure of the prosecution to produce complainant and the injured can only mean that prosecution has no evidence. The avoidance of complainant to appear in Court means he knows he cannot withstand the test of cross examination. It is strange that for the last ten years the prosecution has failed to produce main witnesses, viz the complainant and injured who are readily available at their addresses and even notice summons / notices were published in Dawn newspaper to inform the complainant to appear in Court for recording of his evidence but he never turned up. This is one aspect of the case and other aspect of the case is that on the one hand the complainant has avoided to appear in the witness box and on the other hand he has contested the application of transfer of the sessions case

from Hyderabad to Karachi, which was allowed. The complainant has challenged the transfer order before Hon'ble Supreme Court, but his appeal was dismissed by order dated **23.12.2011**. The complainant has approached the Hon'ble Supreme Court after public notice for him to appear in the witness box. Therefore, the prosecution has undertaken before the Hon'ble Supreme Court that complainant Qazi Talmiz @ Taani will be produced alongwith two witnesses before the trial Court on the next date of hearing. Even from 2011 he never turned up and the prosecution still feels that he will ever appear in Court. He did appear only once in 2015 for taking a date and after taking date he never turned up. Complainant in **2015** also filed an application for transfer of the case, which was dismissed on **13.4.2015** and he again went to Hon'ble Supreme Court but did not press the petition before the Hon'ble Supreme Court. The conduct of the complainant indicates that in fact he has no evidence against accused that's why he is avoiding to appear in the witness box and prosecution is dragging the case on frivolous grounds. Learned Prosecutor has read the impugned order in which he emphasized that the Trial Court has ordered arrest and production of above named witness being material eye witnesses. I am unable to appreciate that under what provisions of law arrest of independent witness can be ordered if a witness is brought in chain he cannot be treated as free and impartial witness. Be that as it may, failure of the complainant to appear in witness box for the last 14 years despite being available around the Court is enough to dismiss the complaint and acquit the applicant / accused. Therefore, impugned order is set-aside and this Crl. Misc. Application is allowed as prayed.

JUDGE

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