

# IN THE HIGH COURT OF SINDH AT KARACHI

## Cr. Revision Application No.184/2016

Javed, son of Sofan Arfani.....Applicant

Versus

The State.....Respondent

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Date of hearing: 13.07.2017

Mr. Ejaz Muhammad Bangash, Advocate for Applicant  
Muhammad Ali complainant in person  
Mr. Zahoor Shah DPG

## **ORDER**

**ADNAN-UL-KARIM MEMON,J:-**In instant Cr. Revision Application, the Applicant has impugned Order dated 31.10.2016 passed by learned I-Additional Sessions Judge, Karachi, Malir in Sessions Case No.285/2015, whereby Application under Section 540-Cr.P.C. moved on behalf of Applicant was dismissed.

2. Brief facts of the case are that Complainant namely Muhammad Ali lodged FIR No.24/2015 at Police Station Memon Goth, Karachi for offences under section 302/34 P.P.C. Police submitted Charge Sheet against accused Javed and others before learned Trial Court. Thereafter, charge was framed against Applicant and trial proceeded with recording of evidence. On 09.11.2015 learned Trial Court examined Complainant (Muhammad Ali), P.W. Khuda Bux and P.W. Wasand. All were thoroughly cross examined by the defence counsel. Applicant in the meanwhile moved Application under section 540 Cr.P.C. with prayer to recall witness namely Khuda Bux, son of Ghulam Rasool

(examined on 09.11.2015) on the ground that some material questions are left out which are necessary to ascertain truth. Learned Trial Court after hearing the parties dismissed the said Application vide order dated 31.10.2016.

3. Mr. Ejaz Muhammad Bangash, learned counsel for the Applicant has contended that P.W. Khuda Bux sworn an affidavit on 07.10.2016 in which he has stated that he gave statement before police on 14.03.2015 and testimony before learned Trial Court on the instigation of Complainant (Muhammad Ali). He next contended that besides some important questions which could not be asked due to bonafide mistake P.W Khuda Bux also needs to be confronted with his affidavit which is very material, for just decision of the case. He next added that learned Trial Court failed to appreciate this aspect and dismissed the application causing grave prejudice to the case of Applicant which needs to be reversed by this Court. He next contended that no prejudice shall be caused to the prosecution if P.W Khuda Bux is recalled and re-examined as the same shall serve the purpose of justice. The learned counsel in support of his contention has relied upon in the case of Muhammad Murad Abro Vs. The State (2004 SCMR 966), Ansar Mehmood Vs. Abdul Khaliq & others (2011 SCMR 713) and Pervez Ahmed Vs. Muneer Ahmed (1998 SCMR 326).

4. Mr. Zahoor Shah learned DPG has opposed the grant of Criminal Revision Application. He contended that prosecution has already examined P.W-1 (complainant), P.W-2 (Wasand) and P.W-3 (Khuda Bux) on 05.11.2015 and 09.11.2015 respectively who were

thoroughly cross examined by learned defence counsel. He next contended that affidavit of P.W Khuda Bux shows date of oath as 07.10.2016 whereas; prosecution has already examined P.W Khuda Buxon 19.11.2015. Per learned state counsel Pw has fully supported the prosecution case; that the circumstances prima facie reveal that said affidavit of P.W. Khuda Bux has been procured by Applicant with aim to create doubt in the case of prosecution, with malafide intention, therefore, the Application under Section 540 Cr.P.C. was rightly rejected by learned Trial Court and no indulgence of this Court is required.

5. Complainant (Muhammad Ali) present in person adopted the arguments of learned State Counsel and prayed for dismissal of instant Criminal Revision Application.

6. I have heard learned counsel for the parties and perused the material available on record.

7. Record reflects that prosecution examined Complainant (P.W-1) as well as two witnesses namely Wasand (P.W.-2) and Khuda Bux (P.W.-3) on 05.11.2015 and 09.11.2015 respectively. Deposition of the witnesses are on record which prima-facie show that P.W.s were thoroughly cross examined by the defense counsel. Record also shows that Applicant filed copy of Affidavit of P.W-3 Khuda Bux showing 07.10.2016 as date of oath. In the said Affidavit P.W.-3 (Khuda Bux) has stated that during trial he deposed against the Applicant on the instigation of the Complainant whereas, Examination-in-Chief of P.W-3 (Khuda Bux)

shows that it was recorded on 09.11.2015 that is, almost 11 months before filing of above said Affidavit. Prima-facie the Application under section 540 Cr.P.C is an afterthought attempt by the Applicant to discard evidence of the case, brought on record.

8. I am cognizant of the fact that under section 540 Cr.P.C. learned Trial Court can exercise powers to summon material witness or to examine person present in Court and at any stage of the trial so also re-examine the witness if the evidence appears to it essential to the just decision of the case. Whereas, in the present case Applicant has invoked section 540 Cr. P. C. after 11 months of recording of evidence of P.W.-3 (Khuda Bux) without bringing any substantial material on record.

09. The power to recall the witness under section 540 Cr. P.C. cannot be exercised as a matter routine unless grave illegality or irregularity is shown to have been taken place. Facts and circumstances of the present case reveals that by granting permission to re-cross examine the witness Khuda Bux, who had already been cross-examined thoroughly by defence counsel, which amounts filling up the lacuna. Therefore, at this juncture no sufficient ground has been shown by the applicant for re-cross examination of the witness.

10. I have also gone through impugned Order passed by learned 1st Additional Sessions Judge, Malir, Karachi, who dismissed the above said application by assigning cogent reasons within the scope of law. Therefore, I do not find any illegality or irregularity in the impugned order. Consequently, instant Criminal Revision Application is dismissed.

11. The case law cited by the learned counsel is distinguishable from the facts and circumstances of the case.

12. The above observations are tentative in nature which shall not prejudice the case of either party at the trial.

13. Foregoing are the reasons of short order dated 13.07.2017.

Karachi  
Dated:

JUDGE

S.Soomro/PA