

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.  
Cr. Rev. A. No.D- 25 of 2019

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case.

Date of hearing: 19.12.2019.

Date of decision: 19.12.2019

Mrs. Shahida Parveen A. Ghani, Special Prosecutor ANF for  
the applicant.

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The facts in brief necessary for disposal of instant Criminal Revision Application are that the applicant by way of making an application under Section 540 Cr.P.C prayed for examination of Incharge "Malkhana" and the person who took the Narcotic Substance to the Chemical Examiner as their witnesses to prove safe custody and transmission of the Narcotic Substance allegedly recovered from the private respondent. It was dismissed by learned trial Court vide its order dated 25.04.2019, which is impugned by the applicant before this Court by way of instant Revision Application, which is not being contested by the private respondent, hearing to him even otherwise in the case like present one is optional as is prescribed by Section 440 Cr.P.C.

It is contended by learned counsel for the applicant that the examination of the witnesses was essential for the prosecution to prove the safe custody and transmission of the Narcotic Substance to the Chemical Examiner. By contending so, she sought for direction against learned trial Court to call and examine the witnesses as are detailed in application u/s 540 Cr.P.C, by setting aside the impugned order.

We have considered the above arguments and perused the record.

In order to appreciate the issue involved in the instant matter, it would be pertinent to keep in mind the scope of section 540 Cr.P.C. which reads as under;

***“540. Power to summon material witness or examine persons present.---Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.”***

The bare reading of above section would show that it gives wide powers to the Courts to examine any person as a witness at any stage of trial. It enables the Courts to impose a duty on it, to summon any person as a witness who otherwise could not be brought before the Courts. Indeed, the above section of law is consisting of two parts, **one** gives discretionary powers to the Courts and **other** imposes an obligation on it to call and examine any person as a witness for just decision of the case before it.

In case of **Jamatraj Kewalfi Govani v. State of Maharashtra (AIR 1968 SC 178)**, while dealing with similar issue it was held by honourable Court that,

*“(10) Section 540 is intended to be wide as the repeated use of the word ‘any’ throughout its length clearly indicates. The section is in two parts. The first part gives a discretionary power but the latter part is mandatory. The use of the word ‘may’ in the first part and of the word ‘shall’ in the second firmly establishes this difference. Under the first part, which is permissive, the court may act in one of the three ways; (a) summon any person as a witness, (b) examine any person present in court although not summoned, and (c) recall or re-examine a witness already examined. The second part is obligatory and compels the Court to act in these three ways or any one of them, if the just decision of the case demands it. As*

*the section stands there is no limitation on the power of the Court arising from the stage to which the trial may have reached, provided the Court is bona fide of the opinion that for the just decision of the case, the step must be taken. It is clear that the requirement of just decision of the case does not limit the action to something in the interest of the accused only. The action may equally benefit the prosecution. There are, however, two aspects of the matter which must be distinctly kept apart. The first is that the prosecution cannot be allowed to rebut the defence evidence unless the prisoner brings forward something suddenly and unexpectedly'.*

If, the applicant is intending to examine certain witnesses to prove the safe custody and transmission of the narcotic substance to the Chemical Examiner, then he could not be denied such right, such denial obviously would be a denial to right of fair trial, which is guaranteed by Article-10(A) of the Islamic Republic of Pakistan 1973.

In view of above, the impugned order is set-aside with direction to learned trial Court to summon and examine the witnesses of the applicant as are detailed in application under Section 540 Cr.P.C.

The instant criminal revision application is disposed of in above terms.

JUDGE

JUDGE