

**ORDER SHEET  
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Crl. Revision Application No. D-84 of 2015**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For katcha peshi.
2. For hearing of MA 4175-15.

**06-09-2016**

Mr. Nazir Ahmed Junejo advocate for the applicant.  
Mr. Mehboob Ali Wassan advocate for complainant.  
Mr. Saleem Akhtar, Additional P.G. for the State.

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Through instant Crl. Revision Application, applicant Joat Ali alias Jooto has called in question order dated 7.9.2015, passed by learned Judge, ATC, Khairpur in special case No. 77 of 2014, whereby application under Section 540 CrPC for re-calling the witnesses has been dismissed.

2. Notice was issued to the Additional P.G. as well as complainant.
3. Learned advocate for applicant has mainly contended that four PWs Habibullah, Ellahi Bux, Fayaz Hussain and Dr. Rehmatullah have been cross-examined by trial court by appointing counsel for pauper accused. It is stated that counsel for applicant could not appear before the trial court and he moved adjournment application, but it was declined. It is argued that cross-examination is the right of the accused and by rejecting application, applicant has been deprived of such right.
4. Learned Additional P.G assisted by learned counsel for the complainant argued that charge was framed on 15.11.2014 and since then the counsel for applicant avoided to proceed with the case and trial court had no option except to

appoint the counsel on State expenses, as provided in ATA, 1997. He has further argued that trial court has assigned reasons for dismissal of the application.

5. We have carefully perused the order dated 7.9.2015. Relevant portion is reproduced as follows:

“The perusal of record shows that the evidence of complainant Habibullah and two PWs Ellahi Bux and Fayaz Hussain were recorded by this court on 09.05.2015 and they were cross examined at length by Mr. Nazeer Ahmed Kolachi Advocate who has already been appointed as an advocate for both pauper accused Zahoor Ahmed and Joat on the State Expenses, as on the same date Mr. Waheed Ali Samtio learned Advocate for accused Zahoor Ahmed was called absent without any intimation and Mr. Nazeer Ahmed Pathan learned Advocate for accused Joat sent adjournment through his Munshi on the ground of his ailment which was dismissed and the case was proceeded in accordance with law as stated supra. The case was again fixed on 06.06.2015 when PW Dr. Rehmatullah was present. Both the counsels of accused Zahoor Ahmed and Joat were present and they filed their respective application for adjournment which were dismissed and the evidence of Dr. Rehmatullah was recorded on the same date i.e. 06.06.2015 and Mr. Nazeer Ahmed Kolachi Advocate already appointed as pauper accused cross examined the said medical officer and after recording the evidence of above said witnesses the learned defence counsel filed present application on 08.08.2015 for re-calling them for their cross examination. As per record the charge against the accused was framed on 15.11.2014 since then the learned defence counsels avoiding to proceed with the case and sought adjournments on one or the other pretext, hence looking in to the gravity of offence the case was proceeded by this court through Mr. Nazeer Ahmed Kolachi advocate who has already been appointed by this court on the State Expenses. I do not find any merit in the instant application for re-calling the above named witnesses. Consequently present application stands dismissed. The prosecution is directed to proceed further with the case in accordance with law”.

6. Trial court has mentioned that charge was framed on 15.11.2014 and since then defence counsel avoided to proceed with the case and sought adjournments on one or other grounds and finding no other way and keeping in view the gravity of offence case was proceeded by appointing Mr. Nazir Ahmed Kolachi as counsel on State expenses for defending the accused. We have perused the

depositions of PWs Habibullah, Ellahi Bux, Fayaz Hussain and Dr. Rehmatullah, they have been cross-examined at length by Mr. Nazir Ahmed Kolachi, counsel appointed for pauper accused. Under the provisions of ATA, 1997, cases are to be decided expeditiously. Trial court has adopted legal course by appointing Mr. Nazir Ahmed for pauper accused on State expenses to defend him in order to avoid further delay in disposal of the case. Court has to exercise powers of recalling the witnesses judiciously for just decision of the case, keeping in view circumstances of each and every case. Such powers are not to be allowed to fill-in lacuna, as held in the case of **Muhammad Saleem v. Muhammad Azan and another (2011 SCMR 474)**. No illegality or irregularity has been pointed out in the impugned order by learned counsel for the applicant. Consequently, instant Crl. Revision Application is without merit and same is dismissed. Trial court is directed to decide the case expeditiously.

JUDGE

JUDGE

Ahmed