

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Revision Application No.S-147 of 2022

Date of hearing: 09.12.2022 & 16.12.2022  
Date of decision: 16.12.2022.

Syed Shafique Ahmed Shah along with Mr. Muhammad Sadiq Laghari, advocate for applicant.  
M/s Hameedullah Dahri, Ahsan Gul Dahri and Badal Gahoti, advocates for respondents.  
Mr. Imran Ali Abbasi, Assistant Prosecutor General.

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**ORDER**

**MUHAMMAD IQBAL KALHORO, J.-** Applicant is complainant of Crime No.75/2019 PS Shahpur u/s 302, 201, 34 PPC. Respondents No.1 to 4 are standing a trial in the same crime and offence as accused. The trial has concluded, all the witnesses have been examined, even statement of accused u/s 342 CrPC has been recorded and now the matter is fixed for final arguments.

2. Notwithstanding, applicant filed an application under Article 164 of Qanun-e-Shahadat Order 1984 requesting the court to send a USB, produced by the IO in his evidence, for FSL report to confirm genuineness of its contents: accused purportedly admitting guilt after arrest before the investigating officer. This application has been dismissed vide impugned order dated 19.10.2022.

3. Learned counsel for applicant has argued that Article 164 of Qanun-e-Shahadat Order 1984 allows the court to exercise its power thereunder and send a piece of evidence obtained through mechanical means for verification; that prosecution case is based upon verification of voice in USB; that still the trial has not completed and it is a trite law that at any stage, evidence can be brought on record for a just decision of the case; that no prejudice would be caused to accused because this recording contained in the USB was made during investigation by the IO and is part of the prosecution case duly mentioned in report u/s 173 CrPC. He has relied upon the cases reported as 2019 SCMR 1982 (ALI RAZA alias PETER and others versus The STATE and others), PLD 2010 Federal Shariat Court 215 (MUHAMMAD SHAHID SAHIL versus THE STATE and another), 2021 SCMR 522 (Mian KHALID PERVIZ

versus The STATE through Special Prosecutor ANF and another). and 2011 SCMR 713 (ANSAR MEHMOOD versus ABDUL KHALIQ and another).

4. On the other hand, learned counsel for respondents have opposed this application stating that only to fill up lacunas the application was filed with mala fide intention; that this piece of evidence is inadmissible and it has got no value in law; that the Honourable Supreme Court in the case reported as PLD 2019 Supreme Court 675, has already set down the principles regulating bringing audio-tape or video-tape on the record and how to appreciate it; that source of recording has not been produced by the prosecution; that entire trial has been concluded and only to cause delay in the trial, this application has been filed; that no fruitful purpose would be achieved by allowing this application because even if this application is allowed and the USB is sent for FSL report, the other questions whether such evidence can be relied upon in terms of other relevant articles of Qanun-e-Shahadat Order 1984 would still be there to answer; that this exercise is nullity in law and will not bring forth any positive result and will be only a wastage of time putting the respondents in further peril because they are in jail.

5. I have considered arguments of the parties and perused material available on record including the case law cited at bar. The trial court has dismissed application mainly on the ground that it has been filed at a belated stage and that it was basically the job of the investigating officer to send the same for FSL report and that the trial court cannot perform the job of the IO. Little realizing that the purpose of the trial essentially is to find out the truth in the allegations leveled against accused by appreciating all available evidence brought on record. And not to dismiss the trial or any of its parts merely on technicalities. It is to be noted that the USB sought to be sent for FSL report is a part of the prosecution case from the very beginning. The conversation and video clip etc., contained in USB was recorded during the investigation and it has been produced by the investigating officer during his evidence. The necessity to send the same for FSL report arose only when its genuineness was challenged by the defense in cross-examination of the IO. The genuineness of evidence collected through mechanical means is not invariably questioned by the

defense and it is always presumed to contain the contents as they have been recorded through mechanical means unless, of course, it is claimed to have been tampered with. But, when it is not the case and the defense comes up with an idea/claim questioning its validity and genuineness, it becomes all the more important to check the same through expert opinion, not for the benefit of the complainant but also for the benefit of accused as well. It may be clarified, nonetheless, that such report would not mean that USB will be considered having evidentiary value and that there are no exceptions to it. But merely a piece of evidence under Article 164 of Qanun-e-Shahadat Order, 1984 to be considered subject to just all exceptions. Its evidentiary value or otherwise is a different question which can be answered by the trial court keeping in view all the circumstances and after appreciating the entire evidence and its context vis-à-vis the evidence available through mechanical means.

6. In my view, since this USB is part of the prosecution case and has been produced in evidence, Lab. report in respect of which will not prejudice the case of respondents in any manner. But, on the contrary the trial court will have an opportunity to appreciate the case on merits by seeing through all the evidence including the USB. Mere fact that the application for sending the USB for FSL report was filed after evidence of prosecution witnesses would not mean that it cannot be entertained or the trial court is debarred from sending the same for such report. Section 540 CrPC confers ample powers to the trial court to call for such evidence and bring it on record. I am, therefore, of the view that the impugned order is not sustainable and is accordingly set aside. The application filed by applicant/complainant is allowed as prayed.

JUDGE

