

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Rev. Application No. 188 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of main case.

26-01-2023

Mr. Badar Hussain, Advocate for applicant.
Mr. Sarfraz Ali, Advocate for respondent No.2.
Mr. Talib Ali Memon, APG.

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Omar Sial, J: Naeem Malik has filed this application praying that an order dated 02.11.2020 passed by the learned 12th Additional Sessions Judge, Karachi West in Direct Complaint No. 4 of 2019 (regarding illegal dispossession) be set aside. Through the order impugned the learned judge partially dismissed an application under section 540 Cr.P.C. moved by Naeem Malik to summon 2 witnesses by the name of Mohammad Hanif and Abdul Waheed. The application, a copy of which is on record, puts the burden of the lapse, in not including the 2 men as witnesses, on the incompetency of the learned counsel representing Naeem Malik at trial. The reason given for summoning the 2 witnesses was that they had been examined by the SHO during the inquiry which he had conducted and thus were important witnesses.

2. I have heard the counsels for the applicant and the answering respondent as well as the learned APG.

3. The record reflects that the learned trial court allowed summoning of witness Mohammad Hanif but declined the prayer as far as Abdul Waheed was concerned. The learned judge noted that while Mohammad Hanif had a nexus with the inquiry conducted by the SHO, Abdul Waheed was not examined in the inquiry and hence there was no need to summon him. Learned counsel has failed to point out any in-correction in the observation

of the learned judge. The provision of section 540 Cr.P.C. empowers a court to summon and examine or recall and re-examine any person if his evidence appears to be essential for a just decision of the case. The provision cannot be put into motion solely for the purpose of delaying trial or filling in lacunas in the prosecution case. In the order impugned, the learned court has given cogent reasons for not requiring the evidence of Abdul Waheed for a just decision in the case.

4. Above are the reasons for the short order dated 24-1-2023.

JUDGE