

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

Criminal Revision Application No. S-03 of 2023

*(Muhammad Anees Panhwar Vs. The State & others)*

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1. For Orders on MA No. 377/2023) (u/s 435 Cr.P.C).
  2. For Orders on MA No. 378/2023 (Ex./A)
  3. For hearing of main case.

**ORDER.****27-02-2024.**

Syed Ali Murtaza Shah, advocate for the applicant.  
Mr. Shafi Muhammad Mahar, DPG for the State.

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The facts in brief necessary for disposal of instant Crl. Revision Application are that the evidence of certain witnesses was recorded by learned Judge, Anti-Terrorism Court, Naushahro Feroze without appearance of counsel engaged by the applicant and others to defend them, ignoring the fact that it was a murder case; subsequently, the case was transferred to the Court of ordinary jurisdiction, it was assigned for disposal to learned Ist Additional Sessions Judge/(MCTC) Naushahro Feroze, wherein an application u/s 231 Cr.P.C was made for re-calling and re-examination of the witnesses, who have been examined without appearance of the counsel engaged by the applicant and others to defend them, it was dismissed by learned Ist Additional Sessions Judge/(MCTC) Naushahro Feroze vide order dated 01-12-2022, which is impugned by the applicant before this Court.

It is contended by learned counsel for the applicant that it was a murder case; therefore, it was not to have been proceeded without appearance of counsel engaged by the applicant and others to defend them; therefore, learned trial Court to be directed to re-call and re-examine the witnesses on appearance of counsel for the applicant and others.

None has come forward to advance argument on behalf of the private respondent; hearing to him in terms of section 440 Cr.P.C even otherwise was optional. However learned DPG for the State was fair enough to say that it was a murder case; therefore, evidence of the witnesses was not to have been recorded without appearance of the counsel engaged by the applicant and others to defend them.

Heard arguments and perused the record.

As per paragraph 6 of Chapter VII of Federal Capital and Sindh Courts Criminal Circular, every criminal case which entails capital punishment could be proceeded on appearance of qualified legal practitioner engaged by the accused himself or engaged for the accused on State expenses. Apparently the present case has been proceeded without appearance of counsel which was engaged by the applicant and others to defend them; such act obviously has prejudiced the applicant and others in their defence seriously; it is contrary to the mandate contained by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which prescribes right of fair trial to everyone for determination of his criminal as well as civil obligations and rights; consequently the impugned order is set aside with direction to learned trial Court to re-call the re-examine the witnesses, who have been examined without appearance of the counsel engaged by the applicant and others to defend them.

The instant CrI. Revision Application is disposed of accordingly together with listed applications.

J U D G E