

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Cr. Rev. Application No.41 of 2024**  
**( *Khuda Bux v. The State* )**

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**DATE:** **ORDER WITH SIGNATURE(S) OF JUDGE(S)**

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1. For orders on Office Objection at 'A'
2. For hearing of Main Case
3. For hearing of MA No.2437/2024 (Stay application u/s 561-A Cr.PC)

**19-3-2024**

Mr. Zakir Hussain Bughio, Advocate for Applicant  
Mr. Zahoor Shah, APG

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1. **Sana Akram Minhas, J:** The Applicant/accused ("**Applicant**"), currently undergoing trial in a case registered under FIR No.10/2015 (facing charges under sections 409, 420, 467, 468, 471 and 34 of the *Pakistan Penal Code, 1860* read with section 5(2) of the *Prevention of Corruption Act, 1947*) has challenged the order dated 27.1.2024 ("**Impugned Order**") issued by the learned Special Judge, Anti-Corruption Court (Provincial), Karachi, in Special Case No.22/2015 (*The State v. Abdul Wahab Abbasi & Others*). The Impugned Order (**at Court File Pg.17, Annex A**), dismisses the Applicant's application ("**Underlying Application**") (**at Court File Pg.123, Annex G**), filed under section 540 of the *Code of Criminal Procedure, 1898* ("**Cr.PC**") for summoning four new witnesses and for re-examining one witness.
2. Learned Counsel for Applicant states that the prosecution after leading its evidence closed its side vide Statement dated 24.9.2022 whereafter the Applicant recorded his statement under section 342 Cr.PC. Thereafter, the matter was posted for final arguments. Counsel submits that during the course of the final arguments, the prosecution filed an application dated 7.8.2023 under section 94 Cr.PC (**at Court File Pg.39, Annex C**) for verification of the appointment orders of the Applicant (Khuda Bux) and another person from the Education Department, arguing that the failure of the Investigation Officer to seek verification during investigation would prejudice the prosecution. The application was not opposed by the Applicant and was allowed by order dated 17.8.2023 (**at Court File Pg.41, Annex C-1**). Pursuant to it, a report dated 31.8.2023 (**at Court File Pg.45, Annex D-1**) was submitted by the Directorate of Schools Education (Primary), Hyderabad Region, Hyderabad. According to this report, the appointment order of Applicant was alleged to be fabricated.

3. Thereafter in September 2023, the Applicant filed a similar application (**at Court File Pg.51, Annex E**) for production and verification of the appointment order of the Applicant from the appointing authority. This application too was allowed by the Trial Court by order dated 13.9.2023 (**at Court File Pg.55, Annex E-1**). Pursuant to this order, a report dated 02.11.2023 (**at Court File Pg.57, Annex F**) was submitted on behalf of Secretary to Government of Sindh, which report alleged that the appointment of the Applicant for the post of Primary School Teacher was genuine whereas his appointment as High School Teacher was fake.
4. In this backdrop, the Applicant on 9.12.2023, moved the Underlying Application for summoning certain witnesses through Court, which was dismissed by the Trial Court vide the Impugned Order.
5. It is contended by the Counsel for the Applicant before this Court that the need to summon new witnesses was necessitated by the fact that since two new and contradictory documents (viz. verification reports) had come on record for the first time and were now in field, in order to ascertain their veracity, it would be just and fair that the Applicant was provided an opportunity to cross-examine the authors and/or sources who had submitted the two verification reports.
6. When questioned by this Court regarding the relevance of each of the four (4) new witnesses proposed to be summoned, the Counsel explained that the said witnesses were material for the following reasons:
  - (i) Proposed witness Abdul Latif Mughal, Director School Education (Primary) has signed the verification report dated 31.8.2023 (**at Court File Pg.45, Annex D-1**);
  - (ii) Proposed witness Abdullah Mallah (Deputy Director (ADMN) Directorate of School Education (Elementary, SEC & HSEC) Hyderabad Region, Hyderabad has signed letter dated 23.10.2023 which is referenced in the subsequent verification report dated 2.11.2023 (**at Court File Pg.57, Annex F**);
  - (iii) Proposed witness Pandhi Khan Talpur, District Education Officer (Primary) Jamshoro, has written letter dated 19.10.2023 (**at Court File Pg.65**) (which is addressed to the person mentioned at Sr. No.(i) viz. Abdul Latif Mughal, Director School Education [Primary]);
  - (iv) Proposed witness Additional Director (Directorate of School Education (Primary) Hyderabad Region, Hyderabad who has signed the letter dated 23.10.2023 (**at Court File Pg.61**) with regard to production and verification of appointment order of the Applicant.

7. Counsel had also sought recall and re-examination of the Investigation Officer (Imtiaz Ahmed Bandy) but during the course of his arguments before this Court, he states that the Applicant no longer wishes to summon the said Investigation Officer.
8. The learned Additional Prosecutor General (APG), in response, though supported the Impugned Order but failed to provide a compelling or sufficient explanation when questioned by this Court about the potential harm to the prosecution and the prospects of a just conclusion of case if the proposed witnesses were summoned.
9. I have heard the respective Counsel and have perused the record.
10. The need to summon and examine new witnesses arose for the Applicant when the Trial Court initially granted the prosecution's application and subsequently approved the Applicant's request for verification of the Applicant's appointment order. This process resulted in the submission of two separate, yet contradictory, verification reports. In the wake of this development, the Applicant moved the aforesaid Underlying Application under section 540 Cr.PC<sup>1</sup> for summoning witnesses.
11. A salutary principle of criminal judicial proceedings is to uncover the truth and reach a just conclusion, ensuring that an innocent individual is not punished due to technicalities, whether on his part or on the part of the court<sup>2</sup>. Further, the criminal justice system is inquisitorial rather than adversarial<sup>3</sup>. Therefore, it falls upon the court to arrive at a just decision in the case. Any evidence deemed essential for this purpose must be presented, though it remains open to challenge regarding its truthfulness through cross-examination.
12. The body of developed legal doctrine surrounding section 540 Cr.PC has established the following core tenets:
  - (i) The purpose of section 540 Cr.PC is to empower and enable the court to ascertain the truth of the matter in order to arrive at a just and proper conclusion<sup>4</sup>.

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<sup>1</sup> Section 540 Cr.PC:

**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. Summons 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.

<sup>2</sup> 2001 SCMR 308 (*The State v. Muhammad Yaqoob*)

<sup>3</sup> 1999 MLD 1069 (*Abdul Latif Aassi v. The State*); SHC (Division Bench) order dated 1.6.2021 passed in Cr. Revision Application No.29/2021 (*Rubina Mir v. The State*)

<sup>4</sup> 2004 SCMR 966 (*Muhammad Murad Abro v. The State*)

- (ii) This section comprises two components: one conferring discretionary authority upon the court, and the other imposing a duty upon it. Yet, in exercising discretion, the court must be vigilant against any attempt by litigants to misuse this authority, and should adhere to the guiding principle of serving the interests of justice<sup>5</sup>.
- (iii) So also, this discretion must be wielded judiciously since with great power comes a greater need for careful judicial reasoning<sup>6</sup>.
- (iv) For purpose of conducting proceedings under this section (whether the first or second part), it is allowable to consider material that has not been formally admitted as evidence, whether it is found in the judicial file, police file or elsewhere<sup>7</sup>.
- (v) In order to serve the overarching goal of justice, this section confers wide powers to the court to summon and examine any person as a court witness at any stage of the case and in certain cases imposes a duty on it to summon witnesses who cannot otherwise be brought before the court<sup>8</sup>, when their evidence is considered as crucial by the court for the just resolution of the case<sup>9</sup>.
- (vi) The court also possess the authority to examine any individual present, even if he has not been formally summoned as a witness. The ultimate objective is always to uncover the truth<sup>10</sup>.
- (vii) Where the evidence is essential for just decision of the case, it is incumbent upon the Court to allow its production and examination<sup>11</sup>.
- (viii) The calling of additional evidence is not always conditioned on the defence or prosecution initiating this request through an application but rather it is the duty of the court to ensure complete justice between the parties. Neither the negligence nor the lack of

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<sup>5</sup> 1987 SCMR 886 (*Painda Gul v. The State*)

<sup>6</sup> AIR 2007 SC 3029 (*Iddar v. Aabida*). This decision has been cited by the Supreme Court in PLD 2013 SC 160 (*Shah Zain Bugti v. The State*)

<sup>7</sup> PLD 1984 SC 95 (*Muhammad Azam v. Muhammad Iqbal*)

<sup>8</sup> PLD 2013 SC 160 (*Shah Zain Bugti v. The State*)

<sup>9</sup> 2007 SCMR 1631 (*Shahbaz Masih v. The State*)

<sup>10</sup> Ibid.

<sup>11</sup> 2011 SCMR 713 (*Ansar Mehmood v. Abdul Khaliq*)

awareness from either side, nor any resulting delays in concluding the case, should impede the pursuit of this objective<sup>12</sup>.

13. A perusal of the Impugned Order shows that it entirely focuses on and evaluates the Applicant's request to summon and re-examine the fifth witness (viz. Investigation Officer) but remains completely silent as regards the summoning of the other four witnesses. In the absence of assigning any reason, the Impugned Order appears arbitrary and unjust.
14. Articles 4 and 10-A of the *Constitution, 1973* command that all individuals enjoy equal protection under the law and are to be treated in accordance with law. Every person, whether determining civil rights and obligations or facing criminal charges, is entitled to a fair trial and due process, as guaranteed by the Constitution<sup>13</sup>. Failure to summon the aforementioned four witnesses may, thus, result in the denial of the Applicant's right to a fair trial. Likewise, in the absence of testimony from these witnesses, the court may find its ability to reach a fair decision hampered.
15. The emergence of conflicting verification reports has cast doubt on the authenticity and reliability of the evidence presented by both the prosecution and the Applicant. To ensure a fair adjudication, it is imperative to grant the Applicant the opportunity to summon and cross-examine new witnesses. Denying this right would constitute a violation of the Applicant's fundamental right to a fair trial and could potentially prejudice his case. The summoning and cross-examination of new witnesses are essential steps to address contradictions, clarify discrepancies, and ultimately establish the truth. Granting this opportunity is indispensable for upholding the principles of justice and ensuring a just and proper outcome in the trial proceedings.
16. In the wake of the foregoing, the Impugned Order cannot be sustained and is set aside. The learned Trial Court is directed to summon the four new witnesses named in the Underlying Application (and reproduced in paragraph 6 above) and examine them strictly in accordance with law after affording opportunities to the parties. Both the prosecution and the defence would be at liberty to cross-examine these witnesses. The instant Criminal Revision Application stands allowed in the above terms.

**JUDGE**

Shakeel PS

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<sup>12</sup> 2001 SCMR 308 (*The State v. Muhammad Yaqoob*)

<sup>13</sup> PLD 2014 SC 232 (*Sarfraz Saleem v. Federation of Pakistan*)