

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

Criminal Revision Application No.S-120 of 2024

Applicant: Abdul Majeed through Mr. Rafique Ahmed Laghari, Advocate.

Respondent No.1: Dr. Haleema Sanjrani in person.

Respondent No.2: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Date of hearing: 22.11.2024

Date of Decision: 22.11.2024.

ORDER

AMJAD ALI SAHITO, J. Through this Criminal Revision Application, the applicant has challenged the order dated 16.08.2024, passed by learned 2nd Additional Sessions Judge/MCTC, Tando Allahyar on the application u/s 540 Cr.P.C. filed on behalf of the respondent/accused in Sessions Case No.545 of 2023 emanating from crime No.31/2023 registered at PS A-Section, Tando Allahyar for the offence under section 322 PPC, whereby learned trial Court allowed the application and issued notices to certain witnesses for their evidence to be recorded in the case.

2. The respondent No.1 was facing trial in the Sessions Case No. 545 of 2023 for the alleged commission of an offence under Section 322 PPC. During the course of proceedings, an application under Section 540 Cr.P.C. was filed on behalf of the respondent No.1 before the learned 2nd Additional Sessions Judge/MCTC, Tando Allahyar, seeking the summoning of certain witnesses whose testimonies were essential for the just and fair decision of the case. The trial Court, after hearing both parties allowed the application and issued notices to the witnesses for their examination. The complainant, being aggrieved by this

order, filed the present Criminal Revision Application before this Court, with prayer to set aside the impugned order.

3. Learned counsel for the complainant mainly contends that the application under Section 540 Cr.P.C. was ought to have been dismissed only on the ground that the respondent No.1 has opportunity to lead his defense evidence; however, it is the prosecution to lead evidence of any witness or give up any of the witness or witnesses. He further contends that the trial court erred in allowing the application filed under Section 540 Cr.P.C. He further contends that the application was made with mala fide intentions to delay the proceedings and that the witnesses sought to be examined were not necessary for the proper adjudication of the case.

4. On the other hand, learned A.P.G. supported the impugned order. The respondent No.1, who is doctor by profession, contends that the trial court has rightly allowed her application for calling the witness whose evidence is material for the fair disposal of the case. She further contends that the witnesses who have been noticed are very important to be examined and that their testimony could assist the court in determining the truth of the matter.

5. Heard and perused.

6. Before discussion in the matter, I would like to reproduce the operative part of the impugned order which reads as under:-

“I have gone through the whole prosecution file and after close scrutiny or charge sheet it transpires that learned counsel for applicant/accused filed application to call 08 witnesses who were remained part of the operation while learned counsel for complainant opposed the same on the ground that one witness Meharunisa was given up by prosecution while other witnesses have already given their statement before Sindh Healthcare Commission which is already mentioned in their report but before Court it would be better to examine material witnesses to bring up the truth and actual scene of the incident hence, with such observations I hereby allow instant application in hand. Let such notices be issued to witnesses to come up with their evidence.”

7. It is well-settled that under Section 540 Cr.P.C, the Court has ample discretion to summon any witness at any stage of the trial, if it is deemed necessary for the just decision of the case. The proviso to this section permits the Court to exercise this power in the interest of justice and to ensure a fair trial. Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 also assures the right of fair trial to every person. Learned trial Court, having considered the relevant facts and circumstances, exercised its discretion in allowing the application filed under section 540 Cr.P.C. The complainant failed to demonstrate any illegality, irregularity or gross abuse of discretion by the trial Court in allowing the application. Even otherwise, the learned trial Court can call on its own accord to any witness whose evidence is material to ensure a fair and just decision of the case. Further, it is a settled principle of law that the revisional jurisdiction of this Court is not to be exercised to disturb the discretion of the trial Court unless there is apparent error or obvious unfairness in its decision. Consequently, the impugned order is upheld and as a result what has been discussed above, instant Criminal Revision Application is hereby **dismissed.**

JUDGE