

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD

Cr. Rev. A. No. S- 188 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
25.01.2016	

1. For Orders on Office Objection
2. For Katcha Peshi

Mr. Amjad Ali Sehto, Advocate for applicant  
Mr. Aghis-us-Salam Tahirzada, Advocate for complainant  
Syed Meeral Shah, D.P.G.

The applicant is accused in S.C. No. 87 of 2012 pending before the Additional Sessions Judge, Tando Allahyar arising out of Crime No. 310 of 2010 of police station Tando Allahyar registered under Section 302 PPC. In the trial, complainant Muhammad Asif and one Ghluam Hussain police officer have been examined by the trial court. After their examination, the applicant filed an application under Section 540 Cr.P.C. for recalling them for re-examination. His application has been dismissed vide impugned order.

Learned counsel for the applicant in support of his application has mainly argued that the important questions which are material to the facts of the case have not been put to the witnesses. According to him, the complainant belongs to a different sect whose presence at the spot is doubtful, therefore, on this aspect certain questions were to be put to the complainant but the previous counsel of the applicant did not do so.

Mr. Aghis-us-Salam Tahirzada, counsel for complainant has opposed this application. His case is that a full opportunity was given to the counsel of the applicant to cross-examine the witnesses and in fact he did so. He further states that the application has been filed only to linger on the matter and to fill in the lacunas.

Syed Meeral Shah, DPG has supported the impugned order.

I have heard counsel for the parties and perused the material available on record.

Record shows that the applicant was previously represented by a counsel other than the present one who has had a lengthy cross-examination of the witnesses. After change of the counsel, applicant moved the subject application. In my view this can hardly be a ground for recalling the witness and if this process is allowed, there would be no end to it, and on every change of the counsel by the accused, he would bring a fresh application for recalling the witnesses. The witness already examined could only be recalled where re-examination appears to be very essential and helpful to the court to arrive at a just conclusion. It may be so that certain questions which now appear to be important to the present counsel have not been asked by the previous counsel from the witnesses, but on that ground the application cannot be allowed. The failure of the counsel to ask certain questions despite the opportunity given to him would not justify recalling the witness under the law. The application is devoid of merits and is dismissed accordingly.

JUDGE