

**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Revision Application No.D-19 of 2022.
Criminal Revision Application No.D-29 of 2022.

Present
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Amjad Ali Sahito.

Date of hearing & decision: 21.09.2022.

Mr. Shahnawaz Brohi Special Prosecutor ANF.
Mr. Riazat Ali Sahar advocate for accused Imdad Ali.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Anti Narcotics Force Hyderabad has filed revision application (No.D-19 of 2022) challenging an order dated 09.05.2022 whereby its application u/s 540 CrPC for summoning chemical examiner as a witness to give an expert opinion that whether due to lapse of time any alteration in weight of narcotics substance is likely to happen or not, has been dismissed. Whereas accused Imdad Ali has filed Criminal Revision Application (No.D-29 of 2022) against an order dated 17.12.2021 whereby his application to send for Call Data Record (CDR) of complainant's mobile phone to ascertain his location in Hyderabad on the spot, has been dismissed.

Both the revision applications have been heard together. Record shows that trial had reached advanced stage, fixed for final arguments. But the accused Imdad Ali's criminal revision application before this Court seeking directions for reweighing narcotics allegedly recovered from him was allowed vide order dated 26.10.2021 and in compliance thereof when property was reweighed, some discrepancy in the weight was found. In order to address the same, prosecution/ ANF filed an application u/s 540 CrPC for summoning chemical examiner who had tested the substance and given opinion about it through chemical report, which was allowed vide order dated 08.01.2022. However, before the said expert could be examined, he expired, which necessitated filing of a fresh application by ANF for summoning the incumbent

chemical examiner for such purpose which has been, as stated above, dismissed through impugned order.

This request of ANF is being opposed by accused/respondent mainly on the ground that it will fill up lacuna left by prosecution and that this application has been filed at a belated stage. On the other hand, ANF is opposing the application of the accused for sending for CDR of complainant's phone from relevant franchise on the ground that the same cannot be considered as a valid piece of evidence and is not a conclusive proof of the location of the complainant in the light of dictum laid down in 2021 SCMR 522 (Mian Khalid Perviz v. The State). However, Special Prosecutor ANF during course of arguments in reply to a query has not controverted that all the questions raised by him can only be attended to and appreciated post presentation of a document on record and verified and not before it. Furthermore, it is not disputed that not only in cross-examination, the accused has put questions to the complainant suggesting his presence at Karachi and not at the spot in Hyderabad at the time of incident, but also has already submitted a copy of CDR of his cell phone in his 342 CrPC statement. But since it is only a Photostat copy, he is seeking indulgence of the Court for its verification to have been generated by the relevant franchise. A copy of CDR is also available in file that, we have seen, has been generated through computer. Since already relevant suggestions have been put to the complainant and this document has been brought on record by the accused through 342 CrPC statement, its verification by relevant franchise of the Phone Company to have been prepared by it is not likely cause any prejudice to the prosecution in that after a document is brought on record it becomes duty of the Court to consider it and give its opinion in accordance with law which position in the present case can only be achieved after the verification or otherwise of the document.

Insofar as revision application filed by ANF is concerned, the only objection voiced by accused is that chemical examiner may not be examined as a prosecution witness but as a court witness. In our opinion, in the backdrop of peculiar circumstances of the case, it is not significant or relevant whether the chemical examiner is examined as the prosecution witness or the court

witness, what is important is his opinion regarding discrepancy in the weight of narcotics, which prosecution claims to have occurred due to lapse of time, but is disputed by the accused. Be that as it may, it may be mentioned that this whole controversy erupted only when on the motion of accused property was reweighed and discrepancy was found, which therefore, has made it necessary to seek an expert opinion about a reason, if any, causing such discrepancy.

For the foregoing discussion, both the revision applications are allowed in the terms whereby learned trial Court is directed to summon the chemical examiner, may be as a court witness, to seek his opinion subject to cross-examination by any party, if it so wishes; and to summon some official from relevant franchise of mobile company, the number of which is being used by complainant for verification of CDR already brought on record for appreciation in accordance with law at the time of final judgment.

Both the criminal revision applications are disposed of.

JUDGE

JUDGE