

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**Criminal Misc. Application No.173 of 2025**  
**[Ghulam Mustafa Shaikh vs. The State & another]**

For Applicant:	Mr. Muhammad Jibran Nasir, advocate
For State/Respondent No.1:	Mr. Mumtaz Ali Shah, the learned APG
For Respondent No.2:	Mr. Nadir Khan Burdi, advocate
Date of hearing:	18.03.2025
Date of judgment:	09.04.2025

**JUDGMENT**

**Jan Ali Junejo, J:--** The present Criminal Miscellaneous Application under Section 561-A of the Code of Criminal Procedure, 1898, has been submitted by Ghulam Mustafa Sheikh (hereinafter referred to as the “Applicant”) challenging the evidence of the Applicant recorded in Sessions Case No. 4203 of 2024, which is currently pending before the Court of the learned Additional Sessions Judge-VIII, Karachi-East, following a transfer order dated 11-02-2025 issued by this Court.

2. The Applicant Ghulam Mustafa Shaikh, lodged FIR No.871 of 2024 at P.S. Shahrah-e-Faisal, Karachi under Section 489-F, P.P.C. disclosing therein that he returned from Saudi Arabia after 1.5 years and found that Sikandar Ali Abro, to whom he had transferred money for property purchase, failed to deliver the property or provide a valid explanation. Instead, Sikandar issued five cheques totaling Rs. 62.3 million, which were later dishonored. The cheques were: Rs. 6.5 million (Cheque No. A77132948, dated 30/03/2024), Rs.1.5 million (Cheque No.A77132947, dated 30/03/2024), Rs.7 million (Cheque No. A77132950, dated 30/03/2024), Rs. 17.3 million (Cheque No. A77132949, dated 30/04/2024, UBL Bank, Gulistan-e-Jauhar Branch), and Rs. 30 million (Cheque No. 10221716,

dated 19/08/2024, Bank Al Habib, Gulistan-e-Jauhar Branch). Upon depositing them at Gulistan-e-Jauhar Branch, all were bounced.

3. During the investigation, I.O. collected relevant material and submitted a challan dated 08.10.2025 before the XVth Judicial Magistrate, East, Karachi, under sections 489-F, 420, and 468 PPC, read with Section 512 Cr.P.C., which was accepted on 18.10.2023, leading to the arrest of Respondent No. 2. As the investigation revealed offenses under sections 467 and 471 PPC, exclusively triable by a Sessions Judge, the applicant filed an application on 03.12.2024 under Section 537 read with Section 347 Cr.P.C., resulting in the case being referred to the XIth Additional Sessions Judge, who framed charges against Respondent No. 2 on 17.12.2024. During the trial, the applicant's Examination-in-Chief was recorded on 01.01.2025, where he exhibited a Sale Agreement (Exhibit 6/G) and WhatsApp chats (Exhibit 6/V), but during cross-examination on 07.01.2025, it was discovered that the original Examination-in-Chief, including the Sale Agreement, had been removed from the Court file and replaced with a tampered version, with the WhatsApp chats incorrectly marked as Exhibit 6/G. The applicant had taken pictures of the original Examination-in-Chief on 01.01.2025, confirming the tampering, and the court admitted to altering the record, claiming duplication of a sentence about WhatsApp chats. The applicant filed a transfer application (Cr. Transfer Application No. 02/2025) before the Sindh High Court, which transferred the case on 11.02.2025 without addressing the tampering allegations. The applicant now seeks to declare the trial de novo, re-record his evidence, and stay the proceedings, citing violations of Article 10-A of the Constitution and invoking Section 561-A Cr.P.C. to secure justice and prevent abuse of process.

4. The Court of XIth Additional Sessions Judge, Karachi-East, provided comments before this Court in transfer proceedings stating that during the trial

before the Magistrate, the applicant submitted an application under Section 537 read with Section 347 of the Cr.P.C., resulting in the case being referred to the Sessions Judge and later transferred to the current court for disposal, as it pertained to Section 471 PPC, which falls under the jurisdiction of the Sessions Court. On 17.12.2024, the court framed amended charges, and the proceedings were adjourned several times due to the respondent's failure to appear and time limitations. On 01.01.2025, the applicant's examination-in-chief was recorded, during which a duplicated sentence was corrected, and the revised document was signed by the applicant and both parties. Subsequently, the applicant accused the court of tampering with the evidence, but the court clarified that it was merely a correction and dismissed the allegation as unfounded, reaffirming its impartiality. The applicant's no-confidence motion filed on 8.1.2025 was also rejected. The court found no justified grounds for the transfer request but stated it had no objection if the case were reassigned to another court for further proceedings.

5. The learned counsel for the Applicant contends that the trial proceedings before the Additional Sessions Judge- XI, Karachi-East, were compromised due to serious irregularities, particularly the alleged tampering of the applicant's examination-in-chief. He further contends that the original examination-in-chief, which included the Sale Agreement (Exhibit 6/G) and WhatsApp chats (Exhibit 6/V), was unlawfully removed from the court file and replaced with a tampered version, where the WhatsApp chats were incorrectly marked as Exhibit 6/G. He argues that the applicant had photographic evidence of the original examination-in-chief, which confirms the tampering. He further argues that despite this, the trial court admitted to altering the record, claiming it was a correction for a duplicated sentence. He contends that the applicant filed a transfer application (Cr. Transfer Application No. 02/2025) before the Sindh High Court, which transferred the case without addressing the tampering allegations. He asserts

that the applicant now seeks to declare the trial *de novo*, re-record his evidence, and stay the proceedings, citing violations of Article 10-A of the Constitution and invoking Section 561-A Cr.P.C. to secure justice and prevent abuse of the judicial process. He emphasizes that the integrity of the trial has been compromised, and the applicant's right to a fair trial has been violated, necessitating the intervention of this Honourable Court. The learned counsel has relied upon the case law reported in **2014 P.Cr.L.J. 1598**.

6. Per contra, the Learned Counsel for Respondent No. 2 contends that the present Criminal Miscellaneous Application is not maintainable under the law, as the applicant failed to move any application before the learned trial Court regarding the alleged tampering of evidence or irregularities in the examination-in-chief. He further contends that no order of the trial Court has been challenged before this Honourable Court, rendering the application procedurally defective. He argues that the applicant's allegations of tampering are baseless, as the trial court had merely corrected a duplicated sentence in the examination-in-chief, which was duly signed by the applicant and both parties. He emphasizes that the applicant's no-confidence motion was rejected by the trial court, and no valid grounds for transfer were established. He urges the Court to dismiss the application, as it lacks merit and is an attempt to delay the proceedings unnecessarily. The learned counsel has relied upon the case laws reported in A.I.R. 1929 Calcutta 390; and A.I.R. 1925 Patna 378.

7. The learned APG contends that the present Criminal Miscellaneous Application is devoid of merit and should be dismissed. He argues that the applicant failed to raise the issue of alleged tampering or irregularities before the trial court, and no formal application or objection was filed at the appropriate stage. He further contends that the trial court's correction of a duplicated sentence in the examination-in-chief was a routine administrative action, duly

acknowledged and signed by the applicant, and does not constitute tampering. He asserts that the applicant's allegations are unsubstantiated and lack concrete evidence, as the photographic evidence presented does not conclusively prove any malicious intent or procedural misconduct. He emphasizes that the applicant's no-confidence motion was rightly rejected by the trial court, and there is no justification for declaring the trial "de novo" or staying the proceedings. He concludes that the application is an attempt to delay the trial and should be dismissed to ensure the timely dispensation of justice.

8. I have carefully considered the arguments presented by the learned counsel representing both parties and thoroughly reviewed the material on record with great attention and caution, in light of the applicable laws. Given that the provisions of Section 561-A of the Cr.P.C. have been invoked, it is appropriate to examine and reproduce the relevant provision of the law as follows:

***"561-A. Saving of inherent power of High Court : Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice".***

A plain reading of the aforementioned legal provision reveals that it confers inherent powers on the High Court to issue orders in three primary scenarios:

1. To enforce any order under the Criminal Procedure Code (Cr.P.C.).
2. To prevent the misuse of the judicial process by any court.
3. To ensure the attainment of justice.

This provision acknowledges that inherent powers are crucial for the High Court to intervene in situations where a strict interpretation or application of the law might lead to injustice. A careful examination of Section 561-A of the

Criminal Procedure Code (Cr.P.C.), along with the settled jurisprudence of this Court, makes it abundantly clear that the inherent powers vested under this provision cannot be invoked to interfere with, obstruct, or circumvent the established legal procedures prescribed by law. Moreover, this section does not operate as an alternative remedy where specific statutory avenues for relief already exist. This principle was authoritatively affirmed by the Supreme Court in ***Ali Gohar and Others v. Pervaiz Ahmed and Others (PLD 2020 Supreme Court 427)***, wherein the Apex Court categorically held that: “*Moving on, one must not lose sight of another fundamental settled principle that the inherent jurisdiction of the High Court under section 561-A, Cr.P.C. cannot be invoked as a substitute to any other remedy provided under the Cr.P.C.*” Likewise, in the case of ***F.I.A. through Director General, FIA and others v. Syed Hamid Ali Shah and others (PLD 2023 Supreme Court 265)***, the Apex Court made the following observation: “*First of all, we want to make it clear that a High Court has no power under section 561-A, Cr.P.C. to quash an FIR or an investigation proceeding; therefore, the criminal miscellaneous applications filed under section 561-A, Cr.P.C. by some of the accused persons in the High Court for quashing the FIR and investigation proceeding in the present case were not maintainable. This is because jurisdiction of a High Court to make an appropriate order under section 561-A, Cr.P.C. necessary to secure the ends of justice, can only be exercised with regard to the judicial or court proceedings and not relating to proceedings of any other authority or department, such as FIR registration or investigation proceedings of the police department. This has been authoritatively held by a five-member bench of this Court in Shahnaz Begum. A High Court, therefore, can quash a judicial proceeding pending before any subordinate court under section 561-A, Cr.P.C., if it finds it necessary to make such order to prevent the abuse of the process of that court or otherwise to secure the ends of justice; however, it should not ordinarily exercise its power under section*

*561-A, Cr.P.C. to make such order unless the accused person has first availed his remedy before the trial court under section 249-A or 265-K, Cr.P.C.”* An examination of the legal principles established by the Apex Court of Pakistan confirms that Section 561-A of the Cr.P.C. is a comprehensive legal provision. A review of the legal principles established by the Apex Court of Pakistan reveals that Section 561-A of the Cr.P.C. is a comprehensive legal provision. It is a well-settled principle of law that this section does not require the filing of an application before the Trial Court. However, its application is contingent upon the fulfillment of exceptional circumstances explicitly outlined within the provision itself.

9. Since the Applicant has contested the actions of the learned Trial Court, specifically the XIth Additional Sessions Judge, Karachi-East, who modified the Applicant's evidence recorded in Sessions Case No. 4203 of 2024 (now pending before the learned VIIIth Additional Sessions Judge, Karachi-East following a transfer order passed by this Court on 11-02-2025). In its comments, the then-learned Trial Court acknowledged that on 01.01.2025, the Applicant's examination-in-chief was recorded, during which a duplicated sentence was corrected, and the revised deposition was signed by the Applicant. A review of the record further indicates that the Applicant's deposition was also signed by him as an acknowledgment. Consequently, the Applicant cannot now dispute the contents of his deposition, having already endorsed it by signing. It is also appropriate to examine and reproduce the relevant Section 360 of the Cr.P.C. as follows:-

***“360. Procedure in regard to such evidence when completed: (I) As the evidence of, each witness taken under Section 356 or Section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.*”**

*(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting, the evidence make a memorandum thereon of the objection, made to it by the witness, and shall add such remarks as he thinks necessary.*

*(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language, which he understands”.*

A plain reading of Section 360 of the Cr.P.C. indicates that once the evidence of each witness, recorded under Section 356 or Section 357, is completed, it must be read back to the witness in the presence of the accused, if present, or his pleader, if represented by one. Any necessary corrections shall then be made. Subsection (2) further stipulates: “If the witness disputes the accuracy of any part of the evidence when it is read back to them, the Magistrate or Sessions Judge may, instead of making corrections, note the witness’s objections in a memorandum and add any remarks deemed necessary”. In the present case, there is no record indicating that the Applicant raised any objections or denied any part of the evidence when it was read back to him. Furthermore, the Applicant did not submit any application before the trial Court seeking correction of any portion of the evidence. Upon careful review of the record, it appears that the Applicant’s evidence was incompletely recorded. The examination-in-chief was conducted on 01-01-2025, and partial cross-examination was recorded on 07-01-2025, with the remaining cross-examination still pending. As such, the learned Court retains the authority to re-examine the Applicant under Section 540 of the Cr.P.C., provided he files an application meeting the conditions outlined in that provision. The cases of ***Bhagwat Singh and others v. Emperor*** (A.I.R. 1925 Patna 378) and ***Kamini Kumar Chakravarty v. Emperor*** (A.I.R. 1929 Calcutta 390) relied upon by the learned counsel for Respondent No.2 are not applicable to the unique facts and circumstances of this case. Additionally, the Applicant has the option of re-



examination, subject to fulfilling the requirements under Articles 132(3) and 133(3) of the Qanun-e-Shahadat Order, 1984. Given the existence of comprehensive legal provisions, such as Section 540 of the Criminal Procedure Code, 1898, and Articles 132(2) and 133(3) of the Qanun-e-Shahadat Order, 1984, the present Criminal Miscellaneous Application is not maintainable before this Court under ordinary circumstances. Moreover, the Applicant has failed to demonstrate exceptional circumstances that would warrant discarding the previously recorded evidence by invoking the powers under Section 561-A of the Cr.P.C. in the ongoing proceedings.

10. In light of the aforementioned reasons, the present Criminal Miscellaneous Application filed under Section 561-A of the Code of Criminal Procedure (Cr.P.C.) is hereby disposed of in accordance with the above-stated observations. The Applicant shall have the right to submit an application under Section 540 of the Cr.P.C. before the learned trial Court or to record his re-examination, provided that the conditions stipulated under Articles 132(3) and 133(3) of the Qanun-e-Shahadat Order, 1984, are duly met at the appropriate stage of the proceedings.

**JUDGE**