

HIGH COURT OF SINDH, KARACHI

Cr. Rev. Application No.D-143 of 2025
[Muhammad Haroon vs. The Anti-Terrorism Court No.XV & Ors]

Before:

Justice Adnan Iqbal Chaudhry
Justice Tasneem Sultana

Applicant	Muhammad Haroon: Through Mr. Farrukh Usman advocate and Barrister Ghulam Nabi Abbasi
Respondent No.1	The Anti-Terrorism Court XV: Through Syed Mumtaz Ali Shah Assistant P.G
Respondents No.2to6	Muhammad Yasir, Amjad Abbasi, Asif, Muhammad Rustam @ Andha & Muhammad Fayyaz: Nemo
Date of hearing	31.07.2025
Date of judgment	<u>16.</u> 09.2025

J U D G M E N T

TASNEEM SULTANA, J: Through this Criminal Revision Application, the Applicant, **Pak-Arab Refinery Company (PARCO)**, assailed the order dated 09.05.2025 passed by the learned Judge, Anti-Terrorism Court No. XV, Karachi (**Trial Court**), whereby an application under Section 493, Cr.P.C, filed on behalf of the Applicant seeking permission to assist the prosecution, was dismissed.

2. Briefly stated that the case bearing FIR No. 138/2025 was registered at P.S. Korangi, Karachi under Sections 462-C, 462-B, 427, 380, 34 PPC read with Section 21 ATA, 1997, concerning a large-scale theft of crude oil from PARCO's strategic pipeline.

3. The FIR was lodged by the State through ASI Muhammad Faisal. During investigation, law enforcement apprehended a gang alleged to have tampered with PARCO's pipeline and installed illegal connections, leading to theft of approximately 75,000 liters of crude oil. Further recovery of 4,500 liters of stolen

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oil and illegal refining equipment was made on the alleged pointation of accused Rustam @ Andha.

4. The Applicant PARCO, being directly affected by the sabotage of its infrastructure, filed an application under Section 493, Cr.P.C before the trial Court, praying that its counsel be permitted to assist the Public Prosecutor in order to ensure that relevant technical and factual aspects are required to be properly brought before the Court.

5. The learned trial Court, however, declined the request on the ground that PARCO was not the complainant, and that the prosecution is being conducted by the State. The Court further observed that PARCO appeared to be attempting to conceal its own negligence.

6. Aggrieved by such refusal, the Applicant has preferred this revision, contending that the trial Court erred in law in denying its statutory right to assist the prosecution under Section 493, Cr.P.C.

7. Learned counsel for the Applicant submitted that PARCO is the true victim of the alleged offence, being owner of the tampered pipeline and suffering direct loss; that exclusion of PARCO from participation results in serious prejudice and amounts to denial of natural justice; that Section 493, Cr.P.C specifically permits a pleader engaged by a private party to act in the prosecution, and Courts have recognized that aggrieved parties may assist the Public Prosecutor to ensure fair trial; that an aggrieved party has locus standi to be heard and to assist prosecution even at bail stage. He placed reliance on the case of State through National Bank of Pakistan vs. Mumtaz Ahmed (1984 SCMR 594), Medichetty Ramakistiah vs. State of Andhra Pradesh (AIR 1959 A.P. 659) and Malik Asad Khan vs. The State (1969 P. Cr. L.J 1058).

Shameem

8. Conversely, learned Assistant P.G opposed the revision by arguing that the scheme of Section 493, Cr P C vests conduct of prosecution solely in the Public Prosecutor and any private counsel may only act under his directions; that recognition of an independent right in PARCO's counsel would lead to dual prosecutors, which is impermissible in law.

9. The core question before this Court is therefore whether the victim company's counsel is entitled to an independent right of conduct or whether his role is limited to assistance under the directions of the Public Prosecutor.

10. To answer to above question, we have gone through the Section 493 of the Code of Criminal Procedure, 1898 (Cr.P.C), which provides that the Public Prosecutor shall conduct the prosecution and any pleader instructed by a private person shall act therein under his directions. The distinction between "conduct" and "act" has been judicially recognized.

11. In *Medichetty Ramakistiah vs. State of Andhra Pradesh (AIR 1959 A.P. 659)*, a Full Bench of the Andhra Pradesh High Court dealt extensively with the scope of Section 493, Cr.P.C. The Court drew a sharp distinction between the terms "conduct" and "act." To "*conduct*" a prosecution, the Bench observed, is to control the proceedings, decide the strategy, select the witnesses, determine the order of their examination and generally carry the carriage of the case. In contrast, to "*act*" in the prosecution is a narrower function, meaning to perform certain tasks such as examining or cross-examining witnesses, addressing the Court, or producing documents, but always under the supervision of the Public Prosecutor. The Court was emphatic that permitting a private pleader to actually "conduct" the case would destroy the legislative intent and substitute the impartial hand of the State with a partisan interest. This reasoning has been consistently followed in both Indian and Pakistani jurisprudence, and it firmly establishes that while assistance is contemplated, independent conduct is not permissible.

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12. The Hon'ble Supreme Court of Pakistan in State through National Bank of Pakistan v. Mumtaz Ahmad and others (1984 SCMR 594) laid to rest the apprehension usually expressed for ousting the complainant's counsel from prosecution and provided a balancing test under section 493 Cr.P.C. for assisting the prosecution in following terms:

"9. There is no doubt that the counsel of the complainant do normally represent the interests of their client more vigorously and effectively than a Public Prosecutor. However, a criminal act is not only a crime committed against the person or the institution harmed by that act, but it is also a crime against the society and is, accordingly, punished by the State. Hence, it is the representative of the State who prosecutes the accused party and is incharge of the prosecution, maintaining a fair balance between the perpetrator of the crime and the aggrieved party. However, if it appears that the Public Prosecutor is not performing or cannot perform this duty satisfactorily, the State may be moved to permit the counsel for the complainant to conduct the prosecution, in that particular case, which permission can, in suitable cases, be allowed on the same analogy as Mr. Anwar, Barrister-at-Law, counsel for the complainant in the reported case mentioned above was appointed as Special Public Prosecutor to conduct the prosecution in the said case."

The reference above to "the reported case" was to Lahore High Court's seminal pronouncement in Malik Asad Khan case, which, while invalidating the elevation of complainant's privately engaged counsel into a Special Public Prosecutor, unequivocally affirmed that such counsel may nevertheless "act" under Section 493 Cr.P.C., but always in subordination to and under the directions of the Public Prosecutor, who alone conducts the prosecution and remains incharge of all important matters.

Again, in the case of Zarif Khan v. The State (1987 SCMR 1353) it was observed that though the Public Prosecutor always remains incharge of the case, a private pleader can examine or cross-examine the witness under directions of the Public Prosecutor and under his supervision.

Dr. Arif

13. The *raison d'être* of Section 493 Cr.P.C. is to ensure that prosecutions are carried out by officers of the State who are accountable to law and not to private interests. Criminal law is a matter between the State and the accused; the complainant's role, though important, is necessarily secondary. If private parties were given an independent right to prosecute, criminal trials could become instruments of private vengeance rather than vehicles of justice. However, at the same time, the superior Courts have recognized that if circumstances so warrant, section 493 Cr.P.C. envisages an avenue for the complaint to assist the prosecution subject to the direction and supervision of the Public Prosecutor.

14. In light of the foregoing, the trial Court erred in dismissing PARCO's application outright. While it was correct to hold that PARCO cannot conduct the prosecution independently, the learned trial Court failed to appreciate that Section 493 Cr.P.C. expressly permits assistance under the Public Prosecutor's control. The offence alleged was not ordinary theft, but theft under the technical provisions of Sections 462-C and 462-B PPC with which the complainant was most familiar. Therefore, before dismissing the application outright, the learned trial Court should have issued notice to the Public Prosecutor to inquire whether the complainant's expertise in the matter would assist the prosecution. If the Prosecutor had then declined the need for assistance and the Court was also satisfied, the complainant could have been left other remedies available at law.

15. The trial Court's further observation that PARCO sought to "conceal its negligence" is entirely irrelevant to the issue at hand. Section 493 Cr.P.C. does not condition assistance on whether the complainant was negligent or vigilant in protecting its property. Such extraneous remarks divert attention from the legal question and cast unwarranted aspersions on the victim company. The only issue before the Court was whether PARCO's counsel could be permitted to assist the prosecution. On that narrow question, the trial Court misdirected itself. Those

Shameem

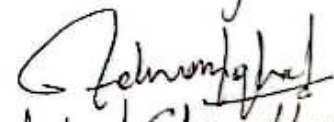
remarks are accordingly expunged. The law requires sober, precise adjudication, not rhetorical criticism of parties. This Court therefore disapproves such observations as unnecessary.

16. For the foregoing reasons, the trial Court's dismissal order cannot be sustained. Consequently, this Revision Application is allowed. The impugned order dated 09.05.2025 is set aside. The trial Court shall decide PARCO's application under section 493 Cr.P.C. afresh after notice to the Public Prosecutor.


JUDGE


JUDGE 16-9-2025

Announced by:


Adnan Iqbal Chaudhry J.
16-9-2025


Muhammad Jaffer Raza J.
16.9.2025