

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Revision Appln. No. S- 75/2025

Applicant : Muhammad Nawaz s/o Khair Muhammad, Bhutto
Through Mr. Ubedullah Ghoto, Advocate

Resp. Nos. 4 to 7 : Through Mr. Shabir Ali Bozdar, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 10.11.2025

Date of order : 10.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J. — This Court undertakes adjudication in revision under Sections 435 and 439 of the Criminal Procedure Code (Cr.P.C), upon challenge by the applicant/complainant to the exhibition and reliance upon the statement of defense witness Khair Muhammad Shar dated 06.10.2021 (Ex.17-C), produced by the investigating officer and exhibited before the trial court in Sessions Case No.32 of 2022 Re-(The State vs. Kashif Niazi and others) emanating from FIR No.47/2021, for offences under Sections 302, 324, 114, 148, 149 PPC, registered at Police Station Reti, District Ghotki.

2. The factual background is that the applicant, Muhammad Nawaz, lodged FIR for the murder of his brother. It is asserted that during the investigation, a statement purportedly of defense witness Khair Muhammad Shar was produced by the IO; subsequently, the same Khair Muhammad Shar appeared before the court of Civil judge & Judicial Magistrate, Ubauro on 21.10.2021, denied making any such statement or having knowledge of the case, and prayed for suitable orders.

3. The learned counsel for applicant/complainant argued at length that a statement under section 161 Cr.P.C. made to the police/investigation officer is not substantive evidence, cannot be treated as documentary evidence, and is only to be used for contradiction in accordance with Article 140 of the *Qanun-e-Shahadat* Order, 1984. Counsel relied upon precedents laid down by the Superior Courts, including (PLD 2007 Karachi 489) *Moazzam v. The State* (2022 P.Cr.L.J

Note 109 SHC), (2005 YLR 805) and further cited the principle elucidated by the August Supreme Court of Pakistan that statements under section 161 Cr.P.C are neither to be exhibited nor proved in evidence except to contradict the maker of the statement during trial. It was contended that the exhibition and reliance by the trial court on such a statement, especially when the witness himself has repudiated it, occasioned a grave miscarriage of justice and undermined the right to fair trial as envisaged under Article 10-A of the Constitution.

4. The learned Deputy Prosecutor General for the State endorsed the submissions to the extent that the evidentiary scope of statements recorded during investigation is circumscribed by law and stressed that belated, unverified, or retracted statements recorded under Section 161 Cr.P.C have no probative or substantive value.

5. Upon giving anxious consideration, it emerges that settled law, as enunciated by the Superior Courts, states unequivocally that statements recorded under section 161 Cr.P.C, being the record of police investigation, cannot be admitted as substantive evidence nor exhibited in evidence as such and may be used only as an aid to test the veracity or to contradict the witness under the prescribed procedure. Reliance is placed on the cases of *Asadullah Vs. The State* (2021 MLD 408), *Hayatullah Vs. The State* (2018 SCMR 2092) and *Ghulam Abbas alias Agha Vs. The State* (2024 YLR 2222). The Augusts Courts have consistently held that exhibition of statements under section 161 Cr.P.C as evidence amounts to material irregularity, and such statements cannot be accorded the status of substantive or documentary evidence. The instant record reflects the defense witness, purported author of the statement, has retracted and categorically denied making such statement, which casts further doubt on its validity and legal sustainability. The use of such disowned and unsubstantiated statement, especially where the maker objects and refutes its contents in judicial proceedings, only multiplies the prejudice caused and necessitates judicial correction to ensure a fair administration of justice.

6. Insofar as the scope of revisional jurisdiction under Sections 435 and 439 Cr.P.C is concerned, case law is settled that an order which inflicts injustice due to misapplication of settled legal principles, occasioning failure of justice, is amenable to scrutiny by the revisional court [2024 LHC 4588, 2005 YLR 805, PLD 2007 Kar 489]. The courts exercising such jurisdiction must ensure both legality and propriety are maintained and that procedures of due process and fair trial are strictly observed.

7. The judicial consensus stands clear that, as a matter of law, a statement under section 161 Cr.P.C can only be availed for contradiction of the maker by confronting him in the manner provided by law, but cannot be admitted as substantive or documentary evidence in the record of trial. The gross irregularity committed by the trial court in marking and relying on the impugned statement has tainted the process. It is a cardinal maxim of law, *Quot facit per alium facit per se*, that whatever is done by another is done by oneself, in this context, the improper act of marking inadmissible evidence as exhibit must be expunged in order to secure the ends of justice.

8. For the foregoing reasons, the impugned statement to the extent of accepting, marking, and relying upon of defense witness Khair Muhammad Shar dated 06.10.2021 (Ex.17-C) is set aside, and the said statement is hereby ordered to be expunged from the record of the trial court. The trial court is directed henceforth to adhere strictly to the settled law regarding statements under section 161 Cr.P.C and to diligently assess evidence in accordance with statutory and judicial requirements. It is further directed that all subordinate courts must refrain from exhibiting or relying upon any statement under section 161 Cr.P.C as evidence except for the limited purpose of contradiction by due process.

J U D G E