

ORDER-SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Revision Appln. No. S- 62 of 2013.

Date of hearing	Order with signature of Judge
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05.05.2015.

For Katcha Peshi.

Mr. Sobhraj L.P. Advocate for applicant/ complainant.

Mr. Noorullah Rind, Advocate, filed Vakalatnama on behalf of accused Sajjad.

Mr. Khadim Hussain Khooharo, D.P.G.

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**Nazar Akbar, J:** Through this criminal revision application learned counsel for applicant, Ali Gul, has challenged the order of Additional Sessions Judge, Kamber, in Sessions case No.274/2012, whereby his application under Section 540 Cr.P.C has been dismissed by order dated 22.10.2013. The applicant before trial Court had made an application for calling two witnesses whose names were not even mentioned in the F.I.R or charge sheet submitted in Crime No.127/2012 P.S Kamber. Such application had been filed on the ground that these two witnesses are in-fact witnesses of confession of guilt by the accused party.

I have heard learned counsel for the applicant, and learned D.P.G assisted by counsel for accused.

Learned counsel has relied on the case law reported in 2007 SCMR 1631 (*Shahbaz Masih v. The State*) to assert that any witness can be examined by the Court. There is no cavil to this proposition that Court has power to examine any witness. However, this is a case in which the complainant wants to set up evidence which was not available with him at the time of lodging the F.I.R or even subsequent to it.

Learned counsel for the accused has relied on the case law reported in 2006 Y.L.R 3106 (*Abdul Khaliq v. Abdul Malik and 7 others*). In this reported case, the order of allowing an application under Section 540 Cr.P.C was set aside by the High Court in its constitutional jurisdiction on the ground that the trial Court is not suppose to assume the role of investigator by accepting an application under Section 540 Cr.P.C to improve the case of complainant. In the case relied upon by the counsel for complainant/ applicant (2007 SCMR 1631), the facts were that the Court had examined the injured himself and accused party had shown grievance against inclusion of such evidence on the ground that injured name was not shown in the calendar of witnesses; and in the case in hand the complainant wants to examine stranger to the incident, whose full particulars have not been given, nor said witnesses have filed their own affidavits in support of application for calling them as witness at the instance of complainant.

In my humble view the witnesses who were not named in the challan cannot be introduced by the complainant unless their “evidence appears to it (the Court) essential to the just decision of the case”. The complainant’s counsel can only assist the prosecution and while producing their own witnesses independently they step out of the position of assisting the prosecution. It was not direct criminal complaint. The learned counsel for respondent has rightly pointed out that in the impugned order the Court has followed the provisions of Section 265-F (3) of Cr.P.C. which reads as under:

*"The Court may refuse to summon any such witness, if it is of opinion that such witness is being called for the purpose of vexation or delay or defeating the ends of justice. Such ground shall be recorded by the Court in writing."*

I have gone through the order which perfectly covers the provisions of Section 265-F (3) of Cr.P.C. Even otherwise, without a gist of evidence of the prosecution witnesses recorded by I.O under Section 161 Cr.P.C is provided to the opposite side, the examination of such witnesses by the Court at the instance of complainant would be violation of Article 10-A of the Constitution.

In view of the above, I do not find any merit in this criminal revision application, which is dismissed.

Judge