JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

CRIMINAL REVISION NO. 52 OF 2024

SAEED MUHAMMAD

VS

THE STATE AND OTHERS

Petitioner by	**:**	**Mr. Mukhtar Ahmed Tarar, Advocate.**
Respondents by	**:**	**Mr. Sajjad Haider Malik, Advocate for the Respondent No.2.** **Mr. Yasir Shakeel, Advocate for the Respondent No.3.** **Ms. Huma Tariq Sheikh, SPP.** **Rana Hassan Abbas, ADPP.** **Syed Muhammad Ali Shah, S.I, P.S Shalimar.**
Date of hearing	**:**	**07.10.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Criminal Revision Petition filed under Section 439 of the Code of Criminal Procedure, 1898 **("Cr.P.C")**, the Petitioner has assailed the Order dated 27.02.2024 **("Impugned Order")** passed by learned Additional Sessions Judge, West-Islamabad.

2. This petition challenges a Trial Court's dated 27.02.2024 **("Impugned Order)** about the order of witnesses in a criminal case. The case involves a murder charge (FIR No.97/2020) and is currently at the evidence stage. The Petitioner/Complainant wanted to cross-examine the Investigating Officer first, but the defense wanted the Complainant's own witnesses to testify first. The Court agreed with the defense. The Petitioner/Complainant, unhappy with this decision, has now filed this petition to have it reversed.

3. The learned counsel for the Petitioner contended that the Impugned Order is arbitrary, illegal, and a result of misreading the record, passed solely to shield the non-compliant Investigating Officer (I.O). He argued that after the examination-in-

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chief of the I.O. was completed on 22.01.2024, the matter was inexplicably adjourned without any request. The I.O. subsequently failed to appear on two consecutive dates, necessitating the issuance of non-bailable warrants. Counsel emphasized that when the I.O. finally appeared on 15.02.2024, his mere request for an adjournment was granted, and the Court then passed the Impugned Order on 27.02.2024 to bypass his cross-examination. He asserted that this sequence reveals a pattern of undue accommodation for the I.O., prejudicing the petitioner's right to a fair trial and rendering the order a product of surmises rather than a justified legal conclusion.

4. On the other hand, learned counsel appearing on behalf of Respondents/Accused resisted the arguments advanced by learned counsel for the Petitioner and contended that the learned Trial Court has passed a well-reasoned order as there is no illegality or irregularity in the impugned order.

5. I have heard the learned counsels for the parties, and have also perused the record with their able assistance.

6. The core legal question revolves around the sequence of witness examination. This Court finds that there is no statutory mandate or hard-and-fast rule embedded in the Code of Criminal Procedure, 1898, that dictates whether the cross-examination of a private witness must precede the cross-examination of an official witness, such as the Investigating Officer (I.O.). The sequence of procuring evidence is a matter largely within the discretion of the Trial Court, to be exercised judiciously to subserve the ends of justice and ensure a fair trial. The learned counsel for the Respondent's contention that the Impugned Order is "well-reasoned" is examined in this very context.

7. However, judicial discretion must be exercised in a manner that is rational, procedurally sound, and not arbitrary. A perusal of the case record reveals a troubling chronology: the Examination-in-Chief of the I.O. was completed on 22.01.2024, yet his cross-examination was inexplicably deferred. The subsequent conduct of the I.O., marked by repeated non-appearance culminating in the issuance of non-bailable warrants, demonstrates a blatant disregard for the Court's process. The learned Trial

Court's decision on 27.02.2024 to then indefinitely postpone his cross-examination and compel the Complainant to first present private witnesses appears, in this specific context, to be an accommodation for the delinquent official. This sequence of events lends credence to the Petitioner's apprehension that the Impugned Order was passed to save the skin of the I.O., thereby vitiating the exercise of discretion.

8. The argument of the Petitioner's counsel that the Impugned Order is arbitrary and based on a misreading of the record is not without merit. The learned Trial Court, while having the authority to regulate the order of witnesses, failed to provide any compelling reason for suddenly altering the sequence, especially when the I.O. was finally present and available for cross-examination. This failure to record a reasoned justification, particularly in the face of the I.O.'s previous conduct, renders the order susceptible to the charge of being based on surmises rather than a balanced consideration of the circumstances.

9. Furthermore, the Petitioner's right to a fair trial, which includes the right to effectively challenge the prosecution's evidence in a logical sequence, is paramount. The investigation forms the foundation of the prosecution's case, and the cross-examination of the I.O. is often crucial to test the integrity of that foundation. To delay this critical cross-examination indefinitely, while private witnesses are examined, could potentially prejudice the Petitioner's strategy and defense. The Impugned Order, by creating this procedural anomaly, tilts the balance unfairly.

10. This Court finds that a more judicious and expeditious course of action would be for the learned Trial Court to proceed with the cross-examination of the I.O. immediately, as he is the witness whose examination-in-chief is already complete and whose availability has been demonstrably unreliable. There is no legal impediment to the Court conducting the cross-examination of the I.O. and then, on the same day or in a subsequent hearing immediately thereafter, proceeding with the examination of the private witnesses. Such a course would not only secure the Petitioner's valuable right to cross-examine a material witness but would also serve the interests of justice by preventing further delays caused by the I.O.'s non-cooperation.

11. Consequently, for the reasons stated above, the Impugned Order cannot be sustained and is hereby **set aside**. The learned Trial Court is directed to fix the case for the cross-examination of the Investigating Officer as the first witness, and thereafter proceed with the recording of evidence of the private witnesses in accordance with the law.

12. In view of the fact that the proceedings relate to a case registered in 2020, and to ensure that the ends of justice are met without undue delay, the learned Trial Court is further directed to conclude the trial as expeditiously as possible, preferably within a period of four (4) months from the receipt of a certified copy of this order and submit a compliance report through Additional Registrar (Judicial) of this Court.

13. The Revision Petition is **allowed** in the aforesaid terms.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of October, 2025.

JUDGE

Sajid/--

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