JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CRIMINAL REVISION NO. 134 of 2024

ZEESHAN TAHIR, ETC.

Vs

RAFAQAT ALI, ETC.

Petitioner by	**:**	Raja Rizwan Abbasi, Advocate.
Respondents by	**:**	Muhammad Iqbal Kakar and Zahid Asif Chaudhry, Advocates. (For Respondent No. 1) Rana Hassan Abbas, ADPP. Mr. Aftab S.I, P.S. Sihala, Islamabad.
Date of Hearing	**:**	**27.1.2025**

MUHAMMAD AZAM KHAN, J.:-

Through this Criminal Revision Petition, the Petitioners namely Zeeshan Tahir and Muhammad Ramzan, facing trial in case F.I.R No. 358 dated 17.09.2019 under Section 376(2) of the Pakistan Penal Code, 1860 **("P.P.C.")** of Police Station Sihala, Islamabad has called in question the order dated 27.09.2024 (**"Impugned Order"**) passed by the learned Additional Sessions Judge Islamabad-East/Special Anti-Rape Court **("Trial Court")** vide which the application under Section 540 of the Code of Criminal Procedure, 1898 **("Cr.P.C.")** for summoning the witness i.e. Sikandar Sadiq, A.S.I. (PW-5) filed by the Respondent No. 1/Complainant's counsel, was allowed.

2. The chronicle of this case is that the Respondent No. 1/Complainant namely Rafaqat Ali submitted written application to the local police of P.S. Sihala wherein it is alleged that on 14.8.2019 at about 4/5 PM at Sihala Camp petitioners forcibly took Mst. Haya Ali, aged about 16 years from street to a under construction house and both the petitioners committed rape with her.

3. The learned counsel for the Petitioners *inter-alia* argued that the impugned order passed by the learned Trial Court is illegal, against the law, facts, without lawful justification and not tenable in the eye of law; that the learned trial Court by allowing the application of the complainant has erred in law and has granted leave

to the prosecution to fill up the lacunas in the prosecution case; that after lapse of considerable period i.e. about 1 year and 8 months the complainant has requested for summoning of PW-5 namely Sikandar Sadiq, ASI; that according to Article 133 of the Qanun-e-Shahadat Order, 1984 **("Qanun-e-Shahadat Order")** re-examination of the witnesses shall be directed to the explanation of the matters referred to in cross examination and there is no provision to re-examine a witness and record his examination in chief again and specially when the said witness has been cross examined by the defence side, hence finally prayed for acceptance of the instant criminal revision petition.

4. While on the other hand, contradicting the contention of the learned counsel for the petitioners, the learned ADPP for the State assisted by the Respondent No. 1/Complainant's counsel vehemently resisted this petition on the ground that the impugned order is detailed and quite in accordance with the law; that the trial of the case is ongoing and there is no bar on the re-examination of Sikandar Sadiq, A.S.I (PW-5). (PW-5), as Section 540, Cr.P.C. empowers the court to summon the witnesses at any stage of trial in order to reach the just decision of the case; so, it cannot be said that re-examination of PW-5 would amount to fulfill the lacuna in the prosecution case as the said prosecution witness would obviously be available to the defence for the purpose of cross examination; that it is a case of vital importance wherein the petitioners are accused of commission of rape with the minor victim; that it is in the fitness of the things to allow the prosecution to re-examine PW-5 who has conducted investigation on the first two days and as such the learned Trial Court has not committed any illegality or irregularity while passing the Impugned Order, therefore, the instant Criminal Revision Petition merits dismissal.

5. Arguments heard, record perused.

6. From the matrix of the instant *lis* following important situations require to be addressed.

> *"Whether re-summoning and re-examining of Sikandar Sadiq, A.S.I. (PW-5) does or does not amount to fill up the lacuna of prosecution case.*
>
> *Whether re-summoning and re-examining of Sikandar Sadiq, A.S.I. (PW-5) is essential for meeting the ends of justice and just decision of case."*

7. Before this court proceeds to comment on the above said propositions, it would be appropriate to have precise discussion on Article 133 of the Qanun-e-Shahadat Order and Section 540, Cr.P.C. and for convince the same are hereby reproduced:-

> ***Article 133 of the Qanun-e-Shahadat Order. Order of examinations.****—(1) Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. (2) The examination and cross-examination must relate to relevant facts but the cross examination need not be confined to the facts to which the witness testified on his examination-in chief. (3) The re-examination shall be directed to the explanation of matters referred to in cross examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine that matter.*
>
> ***"Section 540, Cr.P.C. Power to summon material witness or examine person present.*** *Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case."*

8. Article 133 of the Qanun-e-Shahadat Order is regarding the manner in which the statement of witnesses is to be recorded during the trial, while the purpose of Section 540, Cr.P.C. which empower the court to summon, examine, recall and re-examine any person, if his evidence appears to the court essential for the just decision of the case. The court can summon any witness at any stage subject to its satisfaction that the evidence would be stepping stone for just decision. The first part of the said section confers discretion, the second makes obligatory that recalling of witness if it is essential for the just decision of the case. Now there are some factors which restrain the court from summoning, recalling or re-examining the witnesses as it should not be meant to fill any lacuna left by any party. In the present case Sikandar Sadiq, A.S.I. was examined as PW-5 on 28.01.2023 who deposed regarding chalking of FIR but he failed to mention the proceedings and outcome of the two days of investigation in his examination in chief. The said PW also remained investigating officer **("I.O.")** during the initial two days of investigation. Admittedly Sikandar Sadiq, A.S.I. (PW-5) was initial I.O. of the case, who registered the FIR and also conducted initial investigation including spot inspection, got examined the victim through Medico Legal Officer, arrested one

accused and got conducted his medical etc. The documents prepared by him during investigation are part of investigation and were already annexed with the report filed under Section 173, Cr.P.C. therefore, re-summoning of Sikandar Sadiq, A.S.I. (PW-5) will bring nothing new on record on the part of the prosecution and documents prepared by him are not newly introduced documents and it does not amount to fulfill any lacuna on behalf of the prosecution to summon PW-5 for exhibiting the documents prepared by him. Re-summoning of PW-5 will also not cause any prejudice to the accused, rather it will be essential to meet the ends of justice.

9. The learned Trial Court is fully empowered under Section 540, Cr.P.C. to summon any witness at any stage of trial or examine any person in attendance if his evidence appears essential for the just decision of the case. The purpose of Section 540, Cr.P.C. is to enable the court to go at the truth of the matter to come to a proper conclusion in the case under trial and in the peculiar circumstances, imposes a duty on the court to summon a person in the witness box whose evidence is essential. It is discretionary power which should be liberally used in a case in which the examination of a person is material and for meeting the ends of justice to come to a right conclusion.

10. Reliance in this regard is placed upon the case of *Nawabzada Shah Zain Bugti and others v. The State* **(PLD 2013 SC 160)** wherein it has been held that:-

> *"Section 540, Cr.P.C gave wide powers to the court to examine any witness as a court witness at any stage of the case and in certain cases imposed a duty on the court to summon witnesses who could not otherwise be brought before the court---where court found that investigation was defective, it could not sit idle and had to exercise all enabling provisions under the law including S. 540, Cr.P.C to discern the truth--- purposes of S. 540, Cr.P.C, the Court even without any formal application from prosecution or accused, could summon any person as witness or examine any person in attendance as a witness or recall and re-examine any person already examined."*

11. Further reliance is placed upon the case laws reported as *Muhammad Falak Sher v. The State and others* **(PLD 2018 Lahore 13)**, *Shereen Gul alias Fatima v. Special Judge, ATC-I, Islamabad and others* **(2015 PCr. LJ 724)**, *Tamraiz Javaid Masih v. The State* **(2013 MLD 888)**, *Ansar Mehmood v. Abdul Khaliq and another* **(2011 SCMR 713),** *Muhammad Murad Abro v. The State through A.G.*

Balochistan **(2004 SCMR 966)** and *Shaukat v. The State and another* **(1997 PCr.LJ 2089).**

12. The learned counsel on behalf of the petitioners relied on a ruling of the Lahore High Court, Multan Bench 2024 PCr.LJ 1401 in which the learned Bench dismissed the application under section 540 Cr.P.C. filed by the prosecution, the facts in that case are distinguishable from the facts in the instant case as in that case the prosecution has made an attempt to fill any lacuna pointed out by the learned defence counsel during the course of cross examination, as the forensic report which was prepared and issued in response to fresh analysis requested by the agency bearing letter No. 2672/D-legal dated 21.06.2023. The relevant portion of the judgment is reproduced as under:-

> *"The above reproduced portion of the subsequent report makes it crystal clear that the same was prepared and issued in response to fresh analysis request by the submitting agency bearing letter No. 2672/D-Legal (dated 21.06.2023). While analyzing the dates of examination of PW.8, earlier issued report of Punjab Forensic Science Agency and of subsequent report, this Court has reached at an unambiguous conclusion that the prosecution has recoursed to the Punjab Forensic Science Agency for issuance of report in respect of question asked by the learned defence counsel during the cross-examination of P.W.8. By doing so, it is crystal clear that the prosecution has made an attempt to fill in the lacuna pointed out by the learned defence counsel during the course of cross-examination."*

13. While in the instant case the documents prepared by Sikandar Sadiq, A.S.I. (PW-5) during the investigation are part of the investigation and already annexed with the report under Section 173, Cr.P.C., hence it is held that re-examination of Sikandar Sadiq, A.S.I. (PW-5) will not amount to fill up the lacunas of the prosecution case and re-summoning of said witness is essential for meeting the ends of justice and just decision of case, as duty of the court is to do complete justice.

14. In view of above discussion by placing reliance on case laws discussed above, I am of the view that the Impugned Order passed by the learned Trial Court is well reasoned and no exceptions can be taken thereto, hence instant Criminal Revision Petition is **dismissed**.

15. It may be mentioned here that the F.I.R. was lodged on 17.9.2019 and the case is lingering on for about more than 5 years and it appears from the record that

almost all the prosecution witnesses have been examined, hence the learned Trial Court is directed to conclude the trial within 30 days positively from the receipt of this order, under intimation to this Court.

(MUHAMMAD AZAM KHAN)
JUDGE

ISLAMABAD │ 01.2025
APPROVED FOR REPORTING

//Kamran//*