JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.24 of 2026

Muhammad Feroz

Versus

The State and another

Appellant by:	Mr. Danish Akbar, Advocate for the appellant.
Respondent by:	Rana Zulfiqar Ali, SPP along with Mr. Mudassir, SI-ANF.
Research Assistance by:	Muhammad Fahad.
Date of hearing:	**29.01.2026**

INAAM AMEEN MINHAS, J.- Through the captioned appeal u/s 48 of the Control of Narcotic Substances Act, 1997 **("CNSA 1997"),** appellant, namely Muhammad Feroz, has assailed the order dated 20.01.2026 **("Impugned Order")**, passed by the learned Judge, Special Court (CNS)-II, Islamabad, whereby the application filed by the prosecution u/s 540 of the Code of Criminal Procedure, 1898 **("Cr.P.C."),** to re-examine prosecution witness Bilal Shair, ASI/Moharrar, and summon representative of ANF to produce record, was allowed.

2. Brief facts as per memo of the appeal are that the appellant was being tried in case FIR No.118 of 2023, dated 23.09.2023, u/s 9(1)(3)(e) and 15 of CNSA 1997, in which after recording of evidence, hearing the arguments of the parties, the case was fixed for announcement of final judgment, when on 08.12.2025, an application u/s 540, Cr.P.C. was filed by the prosecution to re-examine PW Bilal Shair ASI/Moharrar and summon

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representative of ANF to produce record. The learned Trial Court, after hearing the arguments allowed the said application vide the Impugned Order.

3. The learned counsel for the appellant contended that after recording of evidence, hearing the arguments of the parties, the case was fixed for announcement of final judgment, the prosecution filed the application u/s 540, Cr.P.C. for re-examination of PW Bilal Shair ASI/Moharrar and to summon representative of ANF to produce record, to fill the lacunas, which is against the dictas laid down by superior courts.

4. The learned SPP, ANF vehemently resisted the instant appeal and contended that the Impugned Order has been passed in accordance with law; that production of Register No.19 and Register No.2 is not an attempt to fill any lacuna, rather the same is to prove official record to clarify the presence of the Moharrar on the relevant date and that no prejudice would be caused to the appellant as full opportunity of cross-examination would be available to him.

5. I have heard the contentions of the learned counsel for the parties and gone through the record.

6. The prosecution filed application u/s 540 of Cr.P.C. for re-examination of PW Bilal Shair ASI/Moharrar and to summon representative of ANF to produce record i.e. Register No.19 and Register No.2 of the police station, which were not exhibited during examination-in-chief of PW Bilal Shair ASI/Moharrar to substantiate the factum of his presence on 23.09.2023 in the police station. It is pertinent to mention that before filing of application by the prosecution, the same application was filed by the defense regarding presence of PW Bilal Shair ASI/Moharrar, which was subsequently withdrawn. It is this application of

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prosecution, which raised profound question about the sanctity of the trial and rights of the appellant/accused.

7. The moot question before this Court is to determine the extent and limitations of section 540 of Cr.P.C., which vests powers in a court to examine anyone as a witness, whose evidence is essential for a just decision of the case. Section 540 of Cr.P.C. is reproduced as under :-

> *"**540. Power to summon material witness or examine persons 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. The afore-mentioned provision empowers and enables a court to ascertain the truth of the matter in order to arrive at a just and proper conclusion. It gives wide powers to a court to examine any witness as a court witness at any stage of the case. In certain situations, it imposes a duty upon a court to summon witnesses, who could not otherwise be brought before it. This section is divided into two components, one with the word 'may' conferring discretionary and permissive authority upon a court, and the other with the word 'shall' imposing an obligatory and mandatory duty upon it.[1] While exercising discretion, a court must be vigilant against any attempt by any of the party to misuse this authority and should adhere to the guiding principle of serving the interests of criminal justice, and this discretion

[1] Nawabzada Shah Zain Bugti and others v. The State (PLD 2013 SC 160), Jamatraj Kewalfi Govani v. State of Maharashtra (AIR 1968 SC 178), Khuda Bux v. The State (2024 PCr.LJ 2014)

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must be wielded judiciously since with great power comes a greater need for careful judicial reasoning.[2]

9. It is the duty of a court to discover the truth and deliver a fair decision, wherein section 540 Cr.P.C. authorises courts to exercise such discretionary powers to summon any material witness, examine any person in attendance regardless of whether he has been included in the calendar of witnesses or not, and recall or re-examine any witness, who has previously been examined to avoid defeating ends of justice. Such application is legally permissible at any stage even at the stage of final arguments, provided that the evidence sought is genuinely essential for just conclusion of the case and its submission respects the fundamental right of fair trial guaranteed under the Constitution of Pakistan 1973.[3] It must not be for the purpose to create anomalies in the trial or to fill lacunas in the evidence. The extent and limitations of section 540, Cr.P.C. are well settled, and the object of the provision, as a whole, is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of society. The court examines evidence under this section neither to help the prosecution nor to help the accused; it is done neither to fill up any gaps in the prosecution evidence nor to give it any unfair advantage against the accused. The fundamental thing to be seen is whether the court considers this evidence necessary in the facts and circumstances of the particular case before it. If such evidence results in only the filling of lacunas, the same remains purely a subsidiary factor and cannot be taken into consideration.[4]

10. In the present case, the learned Trial Court while exercising powers u/s 540, Cr.P.C. allowed the application

[2] Ansar Mehmood v. Abdul Khaliq (2011 SCMR 713)
[3] Dr. Raheem Ullah and others v. The State and others (Crl.P.L.A. 721-L/2025) [citation awaited]
[4] Sajjid Mehmood v. The State (2022 SCMR 1882), Painda Gul and another v. The State and another (1987 SCMR 886), Sh. Muhammad Amjad v. The State (PLD 2003 SC 704)

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primarily on the contention of the prosecution that the defense had attempted to dent the prosecution evidence during cross-examination and that re-examination of the witness is essential for a just decision. Such reasoning reflects a misapplication of the settled scope, extent, and limitations of section 540, Cr.P.C. The statement of PW Bilal Shair ASI/Moharrar had already been recorded and there was ample opportunity with prosecution to exhibit the record, which was with it and under its control from the very initiation of the trial, and when the defense had merely tested the veracity of presence of the PW on the date of occurrence, which is a lawful and legitimate exercise of the right of defense. The prosecution, having failed to clarify or substantiate this aspect at the appropriate stage, sought to recall the witness and summon additional record solely to fill the gaps. This, in fact, amounts to filling up lacunas left in the prosecution case.

11. The withdrawal of the defense application for summoning the said record cannot be construed as a justification for granting the prosecution another opportunity to improve its case. The powers u/s 540, Cr.P.C. are not meant to enable a party to repair dents exposed during trial, nor to allow the prosecution to reinforce its case once its evidence has been tested. There is a rider clause to the exercise of powers u/s 540 Cr.P.C. and it is not to be utilized to cure the inherent infirmities or fill up a lacuna in the prosecution case. It is well-settled by now that such powers are to be exercised only where there is a material witness, whose name is not in column of witnesses in the challan, or where the additional evidence was either not available at the time of trial or the party concerned was prevented from producing it either by circumstances beyond its control or by reason of

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misunderstanding or mistake.[5] In the present case, none of the aforesaid contingencies is attracted. Register No. 19 and Register No. 2 sought to be exhibited were official records admittedly within the custody, control, and knowledge of the prosecution at all relevant times. The prosecution was neither prevented from producing the said record during examination-in-chief of PW Bilal Shair ASI/Moharrar nor has any explanation been furnished demonstrating circumstances beyond its control and no new piece of evidence has surfaced subsequently which would render such evidence indispensable for a just decision of the case. The necessity to produce the said registers arose only after the defense questioned the presence of the said witness at the relevant time. The application u/s 540, Cr.P.C., therefore, appears to be a direct consequence of the dent created and allowing the application in such circumstances effectively provides the prosecution with an opportunity to fill lacunas, which it failed to address during the trial. The invocation of section 540, Cr.P.C. does not serve the cause of justice rather facilitates the curing of a deficiency in the prosecution case, which is impermissible under the law. The learned Trial Court, therefore, erred in holding that the proposed evidence was essential for the just decision of the case. Consequently, the Impugned Order suffers from material illegality and warrants interference.

12. This court further observes that CNSA, 1997 is stringent law and accused as at the receiving end of long and stringent punishments, in such cases the prosecution must present clear, cogent and reliable evidence and, thus the safeguards from accused's point of view ought not to be allowed to sacrifice at

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[5] Dildar v. The State through Pakistan Narcotics Control Board, Quetta (PLD 2001 SC 384), Zehsan v. Manzoor Aman and another (2017 PCr.LJ 294)

the mere comfort or convenience of the prosecution for filling the gaps.[6]

13. Sequel to the discourse above, the present appeal is **allowed**. Impugned Order is ***set aside*** and the application u/s 540 of Cr.P.C filed by the prosecution is **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 19.02.2026.

JUDGE **JUDGE**

APPROVED FOR REPORTING.

Basit Ali.

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[6] Ameer Zeb v. The State (PLD 2012 SC 380)