ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRL.MISC. NO: 52/2013

MUHAMMAD HANIF VERSUS ADDITIONAL SESSIONS JUDGE-WEST, ISLAMABAD ETC

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

28.2.2014 Raja Aamir Shahzad, Advocate for petitioner,
Mr. Kazim Jan & Rana Abid Advocates for respondents 2 to 4,
Malik Zahoor Akhtar Awan, learned Standing Counsel,
Muhammad Akram, SI, Investigation Officer,
Mr.Yasin Ali Khan, SI, P.S Aabpara.

ORDER
MUHAMMAD ANWAR KHAN KASI, CJ:

Petitioner [Muhammad Hanif] complainant of the main murder case assails order dated 18.11.2013 passed by learned Trial Court/ASJ-West, Islamabad whereby his application Under Section 540 Cr.PC for summoning of two witnesses [Zafar Iqbal HC & Abdul Rasheed SI] was dismissed by observing that petitioner failed to show as to how the examination of said persons would have material bearing on the case.

2. Learned counsel, inter alia, submits that the learned Trial court failed to consider the fact that statement of both the witnesses are material and is not an attempt to fill in the lacuna. He pleaded that statements of these two witnesses are essential for just decision of case.

3. The learned counsel relied on following case laws titled as ñAbdur Razzaq Vs. The State etc, [2012 YLR 1192], ñ Abdul Salam . Versus The State: [2000 SCMR 102], ñShah Zain Bugti. Vs. The State [PLD 2013 SC 160] ñ Ansar Mehmood. Vs. Abdul Khaliq [2011 SCMR 713 . The authorities are on the point that complainant should not suffer from fault of prosecution who was negligent in discharging duties and functions. It is further held that when evidence seems to be essential for just decision of case, it is obligatory upon the Court to allow its production & examination.

4. Learned Standing counsel, assisted by learned counsel for respondents 2 to 4 resisted the petition by stating that the challan was submitted on 12.3.2011 and now when the Trial is about to conclude, complainant preferred these applications to linger on the case while the accused are anguishing in Jail. He added that the learned ASJ, seized with the trial has passed the impugned order while taking into account the comprehensive circumstances of the case.

5. The learned counsel, in support of his arguments, referred the following reported cases titled as ñZafar Hussain .vs. Umar Drazò [2005 YLR 212] & ñGhulam Murtaza vs. Baber Akbarò [1991 P Cr.LJ 720]. The authorities are on the point that scope of revisional jurisdiction is very limited and Hon'ble High Court is not competent to re-open a question of fact, unless the same suffered from any illegality to make the order perverse or manifestly unjust.

6. It was further held that after examining all the Pws, as well the complainant , there is no reason to allow the calling of other Pws who were not mentioned in the challan of the case.

7. Heard & record perused.

8. The sole purpose of judicial proceedings in criminal cases is to find out truth and to arrive at a correct conclusion and to check that no innocent person be punished. If it appears to the Court that evidence is necessary for just decision of the case, the Trial Court is vested with the jurisdiction to summon any witness for examination or re-examination.

9. In the present case, Zafar Iqbal 4739/HC deposited the parcel of 30-bore pistol at FSL Lahore on 28.11.2011 and Abdul Rasheed ASI (Moharrar) kept the case property in his custody and handed over the same to Zafar Iqbal who deposited the parcel in FSL Lahore. The statements Under Section 161 Cr.P.C of Abdul Rasheed Muharrar were also recorded on 1.12.2011, therefore, it would be essential to call them for just decision of the case. The case laws mentioned in para 03 lay down the dictum that the material witnesses can be called at any stage for proper & just decision of the case, while the authorities cited by the respondent's counsel do not lend

any support to his point of view as they are distinguishable because in the present case, prosecution evidence has not yet been closed.

10. In view of above, the Revision petition is accepted, impugned order dated 18.11.2013 passed by learned ASJ/Trial Court is set aside and application Under Section 540 Cr.PC, filed by the petitioner, is allowed.

11. It is an old case, therefore, the learned Trial Court shall keep it on fast track and the learned counsels are expected to cooperate with the Court for early conclusion of the case.

(CHIEF JUSTICE)

Saeed Akhtar
28.2.2014