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Judgment Sheet

**IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.**

JUDICIAL DEPARTMENT

Criminal Revision No.336 of 2023.

(Mst. Haseena Mai Vs. The State and 04 others)

JUDGMENT

Date of hearing:	22.11.2023
Petitioner by:	Ms. Farah Sharif Khosa, Advocate.
State by:	Mr. Muhammad Sadiq Rehman, Additional Prosecutor General.
Respondents by:	Mr. Abdul Rehman Ahmad Rizwan Sadozai, Advocate.

SADIO MAHMUD KHURRAM, J. Through this petition filed under sections 435 and 439 Cr.P.C., the petitioner has assailed the order dated 26.09.2023 passed by the learned Additional Sessions Judge, Dera Ghazi Khan whereby the application submitted by the petitioner under section 540 Cr.P.C. seeking the summoning and examination of Allah Bachaya was dismissed by the learned trial court.

2. The brief facts of the case leading up to the filing of the instant petition are that the petitioner namely Mst. Haseena Mai initially got lodged the F.I.R. No.23 of 2019 dated 14.01.2019 registered in respect of offences under sections 302 and 34 PPC at the Police Station Drahma, District Dera Ghazi Khan, detailing the circumstances of the *Qatl-i-Amd* of her son namely Muhammad

Dilawar. Thereafter, being dissatisfied by the investigation conducted by the policing authorities, the petitioner filed a private complaint titled “*Haseena Mai Vs. Nadir and two others*” and after the preliminary inquiry of the said private complaint, the learned trial court summoned the respondents No.2 to 4 to face the trial of the case in respect of offences under sections 302 and 34 PPC. The learned trial court, during the trial of the case, framed the charge against the accused which they denied and claimed trial. Subsequently, the complainant of the case proceeded to get her witnesses examined and the learned trial court also recorded the statements of as many as nine witnesses as court witnesses. Subsequently, the complainant of the case got recorded her statement on 04.09.2023, closing the prosecution evidence. The learned trial court proceeded to examine the accused facing the trial under section 342 Cr.P.C. on 06.09.2023 and the accused claimed innocence however did not make any statement under section 340(2) Cr.P.C. nor produced any evidence in their defence. Subsequent to the recording of the statements of the accused during the course trial of trial under section 342 Cr.P.C., the petitioner moved the application in question on 19.09.2023 and the learned trial court proceeded to dismiss the said application *vide* order dated 26.09.2023, hence, the petition.

2. The learned counsel for the petitioner submitted that the order dated 26.09.2023 passed by the learned Additional Sessions Judge whereby he proceeded to dismiss the application of the petitioner seeking the summoning and examination of Allah Bachaya was liable to be set-aside being against the facts and law; that the

name of Allah Bachaya was duly mentioned in the private complainant as lodged by the petitioner and it was also mentioned by the complainant and her witnesses at the time of recording of their statements before the learned trial court; that Allah Bachaya was a witness whose examination was essential for the just decision of the case, therefore, he was sought to be summoned and examined.

3. The learned Additional Prosecutor General and the learned counsel appearing on behalf of the respondents No.2 to 4 submit that the order dated 26.09.2023 passed by the learned Additional Sessions Judge does not suffer from any illegality, meriting any interference of the same.

4. I have heard the learned counsel for the petitioner, the learned Additional Prosecutor General and the learned counsel for the respondents No.2 to 4 and perused the record with their able assistance.

5. A perusal of the record reveals that the petitioner namely Mst. Haseena Mai initially got lodged the F.I.R. No.23 of 2019 dated 14.01.2019 registered in respect of offences under sections 302 and 34 PPC at the Police Station Drahma, District Dera Ghazi Khan, detailing the circumstances of the *Qatl-i-Amd* of her son namely Muhammad Dilawar. Thereafter, being dissatisfied by the investigation conducted by the policing authorities, the petitioner filed a private complaint titled “*Haseena Mai Vs. Nadir and two others*” and after the preliminary inquiry of the said private complaint, the learned trial court summoned the respondents No.2 to 4 to face the trial of the case in respect of offences under sections 302 and 34 PPC. The learned

trial court, during the trial of the case, framed the charge against the accused which they denied and claimed trial. Subsequently, the complainant of the case proceeded to get her witnesses examined and the learned trial court also recorded the statements of as many as nine witnesses as court witnesses. Subsequently, the complainant of the case got recorded her statement on 04.09.2023, closing the prosecution evidence. The learned trial court proceeded to examine the accused facing the trial under section 342 Cr.P.C. on 06.09.2023 and the accused claimed innocence however did not make any statement under section 340(2) Cr.P.C. nor produced any evidence in their defence. Subsequent to the recording of the statements of the accused during the course trial of trial under section 342 Cr.P.C., the petitioner moved the application in question on 19.09.2023 and the learned trial court proceeded to dismiss the said application *vide* order dated 26.09.2023. A perusal of the application as submitted by the petitioner under section 540 Cr.P.C seeking the summoning of witness namely Allah Bachaya reveals that in the said application it had been mentioned that the said Allah Bachaya was the father of the deceased and was the one who had also arrived at the place where the deceased breathed his last, however, for the fact that soon after the occurrence which had taken place on 14.01.2019, as Allah Bachaya had to proceed abroad on 22.01.2019 and only returned to Pakistan on 05.10.2021, therefore, he could not be named a witness in the list of witnesses appended with the private complaint lodged by the petitioner and was sought to be summoned by the said application. Regardless of the fact as to whether Allah Bachaya had to proceed to

the Kingdom of Saudi Arabia, soon after the occurrence on 22.01.2019 and returned to the Islamic Republic of Pakistan only on 05.10.2021, the fact remains that only fact which is sought to be proved by the production of Allah Bachaya is that on the asking of the deceased he was summoned by Mst. Haseena Bibi and when he arrived at the place where the deceased was present, the deceased had already died. This fact that Allah Bachaya was asked to be summoned by the deceased and it was on the asking of Mst. Haseena Mai that Allah Bachaya arrived at the place where the deceased was present however had already breathed his last, has already been given evidence of by Mst. Haseena Bibi, who has appeared before the learned trial court and has got her statement recorded as PW-1. Similar statement has been made by Mst. Fatima (PW-2) also. This fact that Allah Bachaya had arrived at the place where the deceased had breathed his last, has already been given evidence of by both the witnesses namely Mst. Haseena Mai (PW-1) and Mst. Fatima (PW-2). Even otherwise, the learned counsel for the petitioner has not mentioned in the application submitted before the learned trial court for the summoning of Allah Bachaya as to in what manner the arrival of Allah Bachaya at the place where the deceased had already breathed his last, was a fact in issue or even a relevant fact. The mere arrival of Allah Bachaya at the place where the dead body of the deceased was present has no bearing or relevancy for the just decision of the case. The evidence related to fact in issue and relevant facts has already been given by the prosecution witnesses as produced before the learned trial court. Furthermore, the learned trial court has already

recorded statements of as many as nine court witnesses, who it thought were essential for the just decision of the case. When in the estimation of the learned trial court the evidence of Allah Bachaya is not essential for the just decision of the case and when even otherwise the statement intended to be made by Allah Bachaya has no bearing upon the prosecution case and the facts in issue and the relevant facts, then his summoning cannot be justified under the provisions of section 540 of Cr.P.C. Then it is also a fact that the trial of the case has been instituted upon the private complaint as filed by the petitioner herself and it has not been explained at all as to why Allah Bachaya was not cited as a witness in the calendar of witnesses appended with the private complaint itself. If the witness namely Allah Bachaya was an essential witness then he must have been sought to be examined and his name must have been mentioned in the calendar of witnesses appended with the private complaint itself, which was not. It is also a fact that Allah Bachaya had already returned to Pakistan on **05.10.2021** whereas the complainant closed her evidence on **04.09.2023**. Till 04.09.2023, the complainant of the case never made an application for seeking permission to produce Allah Bachaya. The provisions of section 265-F Cr.P.C. provide the procedure for the production of the witnesses and under the provisions of section 265-F Cr.P.C., it has been provided that if the accused does not plead guilty, the court shall proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution and it shall ascertain from the complainant the names of any persons likely to be acquainted with the facts of the case and to be

able to give evidence for the complainant and shall summon such persons to give evidence before it. It is only after the examination of the witnesses that the examination of the accused is conducted. In this case despite having an opportunity to apprise the learned trial court with regard to the production of Allah Bachaya, as a witness of the prosecution, the complainant did not do so though Allah Bachaya was very much available and present in Pakistan. All these facts amply prove that the petition as filed by the petitioner seeking the summoning of Allah Bachaya was rightly rejected.

6. The learned counsel for the petitioner has also assailed the mode and manner of recording the statement of the respondent No.4 namely Riaz, whose statement under section 342 Cr.P.C. was recorded by use of video linking by the learned trial court. The learned counsel for the petitioner is not able to explain as to what prejudice has been caused to the prosecution case by such recording of the statement under section 342 Cr.P.C. of the respondent No.4 namely Riaz by way of video link. Riaz (respondent No.4) has been duly examined by the learned trial court under section 342 Cr.P.C. and Riaz (respondent No.4) himself, has not raised any objection to the manner in which he has been examined. When there is no complaint by Riaz (respondent No.4) himself of facing any prejudice by the manner of the recording of his statement under section 342 Cr.P..C., the complainant has hardly any reason to do so.

7. In view of the above discussion, this petition, being meritless is **dismissed**.

(SADIQ MAHMUD KHURRAM)
JUDGE

APPROVED FOR REPORTING

JUDGE

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