

Stereo. HC JD A 38.
Judgment Sheet
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Criminal Revision No. 217 of 2022
(Ch. Noman Haseeb Vs. The learned Special Judge Anti-Corruption Court,
Bahawalpur and four others)

J U D G M E N T

Date of hearing:	16.01.2023.
Appellant by:	Mr. Sheraz Muhammad Khan, Advocate.
Respondent No.3 by:	In person.
State by:	Rao Muhammad Riaz Khan, Deputy Prosecutor General .

SADIQ MAHMUD KHURRAM, J: Through the instant criminal revision petition, the petitioner has assailed the vires of the impugned order dated 01.10.2022, passed by the learned Special judge, Anti-Corruption Court, Bahawalpur, whereby the application submitted by the petitioner under sections 94 and 540 Cr.P.C. seeking to produce copies of certain documents, as part of prosecution evidence, was rejected.

2. The brief facts of the case are that the petitioner is the complainant of case FIR No.226 of 2003, dated 10.08.2003 registered at Police Station Cantt. Bahawalpur , District Bahawalpur in respect of offences under sections 409,420, 468 ,471 and 109 of P.P.C. and under section 5 of the Prevention of the Corruption Act (Act No.II) of 1947. During the course of the trial, after the accused had been examined by the learned trial court under section 342 Cr.P.C. on **20.01.2022**, the petitioner submitted an application under sections 94 and 540 Cr.P.C. seeking to produce copies of certain documents as part of prosecution evidence on **02.02.2022**, which application was dismissed by the

learned Special judge, Anti-Corruption Court, Bahawalpur, vide order dated 01.10.2022, hence, the instant petition.

3. The learned counsel for the petitioner and the learned Deputy Prosecutor General submitted that the order dated 01.10.2022, passed by the learned Special judge, Anti-Corruption Court, Bahawalpur, whereby the application submitted by the petitioner under sections 94 and 540 Cr.P.C. seeking to produce copies of certain documents as part of prosecution evidence was dismissed, is liable to be set aside being against the facts and law; that the learned Special judge, Anti-Corruption Court, Bahawalpur in its order had incorrectly held that the application was made for the purpose of vexation and delay in the conclusion of the trial.

4. The respondent No.3, in person, submitted that the order dated 01.10.2022, passed by the learned Special judge, Anti-Corruption Court, Bahawalpur was in accordance with the law and facts and merited no interference.

5. I have heard the learned counsel for the petitioner, the learned Deputy Prosecutor General, the respondent No.3 and perused the record with their able assistance.

6. It evinces from the record that during the course of the trial, after the accused had been examined by the learned trial court under section 342 Cr.P.C. on **20.01.2022**, the petitioner submitted an application under sections 94 and 540 Cr.P.C. seeking to produce copies of certain documents as part of prosecution evidence on **02.02.2022**, which application was dismissed by the learned Special judge, Anti-Corruption Court, Bahawalpur, vide order dated 01.10.2022. A perusal of the application submitted by the petitioner reveals that it was submitted under sections 94 and 540 of the Code of Criminal Procedure, 1898, however, the prayer made therein was to allow the production of the documents as mentioned in the application

as part of prosecution evidence and no person having the custody of the said documents was sought to be summoned nor any witness was sought to be examined who had prepared the said documents. The provisions of sections 94 and 540 of the Code of Criminal Procedure, 1898 are very much clear. Section 94 of the Code of Criminal Procedure, 1898 provides as under:-

“94. Summons to produce document or other thing: (1) Whenever any Court, or, any officer incharge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, **to the person in whose possession or power such document or thing is believed to be**, requiring him to attend and produce it or to produce it, at the time and place stated in the summons or order:---

Provided that no such officer shall issue any such order requiring the production of any document or other thing which is in the custody of a bank or banker as defined in the Banker's Books Evidence Act, 1891 (XVII of 1891), and relates, or might disclose any information which relates to the bank account of any person except,---

(a) for the purpose of investigating an offence under Sections 403, 406, 408 and 409 and Sections 421 to 424 (both inclusive) and Sections 465 to 477-A (both inclusive) of the Pakistan Penal Code, with prior permission in writing of a Sessions Judge; and

(b) in other cases, with the prior permission in writing of the High Court.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Evidence Act, 1872, Sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph Authorities.” (emphasis supplied)

Section 540 of the Code of Criminal Procedure, 1898 proves as under:-

“540. 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 re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine **any such person** if his evidence appears to it essential to the just decision of the case.” (emphasis supplied)

A perusal of sections 94 and 540 of the Code of Criminal Procedure, 1898 , makes it abundantly clear that the power of the court under sections 94 and 540 of the Code of Criminal Procedure, 1898 is to *summon a person* having the custody of the said documents or *summon any person as a witness* whose evidence appears to be essential to the just decision of the case. As mentioned above, the petitioner in the application submitted by him under sections 94 and 540 of the Code of Criminal Procedure, 1898 , had not sought the summoning of any person having the custody of the said documents nor sought that any person be examined as a witness who had prepared the said documents. The learned Special judge, Anti-Corruption Court, Bahawalpur was right to observe that the powers of the learned trial court provided under sections 94 and 540 of the Code of Criminal Procedure, 1898 did not allow for the production of any documents without the summoning of the person having the custody of the said documents or without the summoning of any witness who had prepared the said documents. No doubt that under article 88 of the Qanun-e-Shahadat, 1984, the certified copies of the public documents may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies, however, still they need to be produced in accordance with the procedure provided for their production. It is only section 510 of the Code of Criminal Procedure, 1898 which allows certain documents mentioned therein to be used as evidence in any

inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898 without calling the maker of the said documents as a witness. The documents sought to be used as evidence by the petitioner during the trial are not the documents which can be used as evidence without calling the maker of the same as a witness under the provisions of section 510 of the Code of Criminal Procedure, 1898. Then the stage at which the petitioner moved the application is also very relevant in this particular case. The application was submitted by the petitioner on **02.02.2022**, after the accused had been examined by the learned trial court under section 342 Cr.P.C. on **20.01.2022**. The case was registered on **10.08.2003**, the trial of which is yet to conclude. No one party can be allowed to lead evidence just to fill in the lacuna of any party by using the provisions of section 540 of the Code of Criminal Procedure, 1898. If this is allowed, trials will never come to an end. The learned trial court has certainly been vested with adequate powers under section 540, Cr.P.C. to summon and examine or re-summon and re-examine any witness in the trial before pronouncing the final verdict, but said provisions of the Code do not ingrain any such interpretation whereby it should be allowed to be used by a party to fill-in the lacunae of its case or to unnecessarily protract proceedings of the trial to defeat the ends of justice. This is what the learned trial Court has kept in view while dealing with the application of the petitioner. There was no occasion for the learned trial court to have thought in terms, otherwise. The impugned order has been passed strictly in accordance with the requirement of the law and it did not lack any virtue of a legal order. The rejection of the application submitted by the petitioner does not amount to miscarriage of justice in any way. The revisional jurisdiction of this Court can be exercised only when there are exceptional circumstances and the order impugned is perverse or suffering from any type of infirmity however, in the present case, the order dated 01.10.2022, passed by the learned Special judge, Anti-Corruption Court, Bahawalpur does not suffer from any illegality.

7. In view of the above discussion, this criminal revision petition, being devoid of any merit, is **dismissed** and the order dated 01.10.2022, passed by the learned Special judge, Anti-Corruption Court, Bahawalpur, is **upheld**.

(SADIQ MAHMUD KHURRAM)
JUDGE

APPROVED FOR REPORTING

JUDGE

Raheel