

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT,**  
**RAWALPINDI BENCH**  
**RAWALPINDI**  
(JUDICIAL DEPARTMENT)

**Crl.Rev.No.265 of 2023**

**Raja Asad Kiani**

Versus

**Addl.Sessions Judge etc.**

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge and that of Parties or counsel, where necessary.
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**08.11.2023** Raja Faisal Ghani Janjua, Advocate for the petitioner.

Petitioner being an accused in case FIR No.32 Dated 08.02.2023 offences u/ss 302/109/34 PPC P.S. Sohawa, District Jhelum has challenged order dated 23.10.2023 passed by learned Addl.Sessions Judge, Sohawa/trial Court, whereby his application for summoning the record/Rapt with Audio recording from the office of Rescue-15 has been dismissed.

2. Before going to the merits of the case, it would be significant to examine the objective, import and powers of the court within meaning of section 540, Cr.P.C. which is hereby reproduced:-

**“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.”

3. Sub-section (1) to section 94 Cr.P.C. for reference is also hereby reproduced:-

**“Summons to produce document or other thing.** (1) Whenever any Court, or any officer in charge 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.....”

4. In view of above, any party may at any stage of the inquiry or trial apply to the Court, u/s 94 Cr.P.C., for the production of any document or other thing and is entitled to its production, if it satisfies the court that the production of that document is necessary or desirable for the purposes of such inquiry or trial but in present case contents of the application of the petitioner do not show that production of audio recording under question at this stage, when prosecution is leading its evidence, is necessary for the purpose of trial.

5. Legislature has provided a mechanism for both prosecution and defence (accused) to bring their respective evidence including exhibiting of document (s). Suffice it to say that the moment Court takes cognizance on a criminal charge, it becomes obligatory upon the prosecution to prove the charge against the accused (**denied by the accused**) well within the meaning of Article 117 of the Qanun-e-Shahadat Order, 1984, which is hereby reproduced:-

**“Burden of proof. (1)** Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

**(2)** When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

6. In view of above, an accused enjoys the status of “innocence” till found guilty by the Court on the basis of discharge of such burden by the prosecution, nevertheless, if the accused takes a particular plea, including plea of alibi the burden is upon the accused to prove such plea well within

the meaning of Article 119 of Qanun-e-Shahadat Order 1984 which is hereby reproduced:-

**“Burden of proof as to particular fact.** The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

7. The question arises that how and in what manner the prosecution has to prove the charge and when accused has to step forward to discharge his respective burden or cause the dent in prosecution case by leading evidence, answer thereof is mentioned in sub-sections (1), (2) & (4) to section 265-F Cr.P.C. which are hereby reproduced:-

**“Evidence of Prosecution (1).** if the accused does not plead guilty or the Court in its discretion does not convict him on his plea, the Court shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution. Provided that the Court shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

**(2).** The Court shall ascertain from the public prosecutor or, as the case may be, 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 prosecution, and shall summon such persons to give evidence before it.

**(4).** When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.”

8. These provisions make it clear that it is the prosecution which has to lead its side first and this is so because the burden is upon the prosecution to prove its case, only after conclusion of prosecution evidence, accused is to be asked whether he wants to adduce evidence or not.

9. The sub-section (7) to Section 265-F Cr.P.C. guarantees that the accused shall also have the same right to examine defence witnesses and production of document(s) which is hereby reproduced for reference:

“(7)If the accused or any one or several accused, after entering on his defence, applies to the Court to issue any process for compelling the attendance of any witness for examination or the production of any document or other thing, the Court shall issue such process unless it considers that the application is made for the purpose of vexation or delay or defeating the ends of justice such ground shall be recorded by the Court in writing”.

10. The provisions of section 265-F Cr.P.C. have provided a complete procedure for both; prosecution and the accused to examine the witnesses and to produce document(s), since the procedure has made it clear that accused shall be asked to adduce his evidence after conclusion of the prosecution evidence. If accused wants the court to summon any person to give evidence or to produce any document, he shall have to wait till conclusion of the prosecution evidence.

11. In present case, the trial is at the stage of prosecution evidence, six prosecution witnesses have been recorded but petitioner being an accused has not cross-examined any of the PWs and moved an application on 10.07.2023 for summoning the record/Rapt with Audio recording from the office of Rescue-15 stating therein that on 08.02.2023 at 8.05 a.m. Sharjeel Kiyani (**complainant**) made a call through his mobile phone number i.e. 0310-9555555) to Rescue-15 informing the murder of his father. Photocopy of the report prepared by Muhammad Afzaal S.I., placed at page-13 of this petition shows that on 08.02.2023 at 8.10 a.m. operator Rescue-15 had informed police station that through mobile number 0310-9555555 a call was received at Rescue-15 with information that dead body of his father smeared with blood is lying on the passage leading to village Ghorra, police officials be

directed to reach the place of occurrence. Whereupon he along with other police officials mentioned in the report of Rescue-15 reached the place of occurrence. In response, final feedback was received at Rescue-15. Office Report in this respect has also been placed at page-14 of this petition.

12. All this shows that audio call statedly made by the complainant in the office of Rescue 15 has been documented, record of which statedly obtained by the petitioner being an accused placed at pages 13 & 14 of this petition can be confronted to relevant witnesses during cross-examination, if so desired. There is no ambiguity that in view of provisions of sub-section 7 to section 265-F Cr.P.C. (**reproduced above**), petitioner has the right to summon record/relevant witness regarding matter in issue but only on his turn i.e. entering on his defence and not before this stage.

13. Learned trial court while dismissing the application of the petitioner through impugned order has rightly observed that application of the petitioner is pre-mature, rather same has been moved to cause delay in conclusion of trial instead of cross-examining the witnesses of the prosecution already recorded discussed above which order is neither perverse nor illegal. This petition having no merits is **dismissed.**

**(SADAQAT ALI KHAN)**  
**JUDGE**

**Approved for reporting**

**JUDGE**