

ORDER SHEET

in the islamabad high Court,
Islamabad

CASE NO.: CRIMINAL REVISION No.21 of 2014

RAJA SOHAIL

VERSUS

SIKANDAR KHAN ASJ AND 2 OTHERS

SERIAL NO. OF ORDER OF PROCEED INGS	DATE OR ORDER OF PROCEEDIN GS	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

24.03.2014 Syed Pervaiz Zahoor, Advocate for the petitioner.

Through the instant criminal revision, the petitioner has challenged the order dated 08.02.2014 passed by Mr. Sikandar Khan, learned Additional Sessions Judge-III (West), Islamabad.

2. The petitioner is complainant in case FIR No.301, registered on 28.12.2010, under Section 302/34 PPC at Police Station Industrial Area, Islamabad.

3. During trial, the Investigating Officer when appeared for evidence, the defence counsel during cross-examination argued to refresh his memory from the record. The complainant raised objection that in view of Article 155 of

Qanoon-e-Shahadat Order, 1984, the witness may refresh his memory by perusing the case diary and the defence counsel has no right to compel the witness to do so. Reason thereof has disclosed that after refreshing his memory by perusing case diary under Article 157 of Qanoon-e-Shahadat Order, 1984, it will be a right of defence counsel to look this part of documents. Otherwise, the defence counsel has precluded to inspect the case diary by virtue of Section 157 of Qanoon-e-Shahadat Order, 1984. It is also case of petitioner that case diary ordinarily be submitted under the guidelines provided by Rules 25.54(1) of Punjab Police Rules, 1934. The case diaries are meant for progress of the investigation not to be used as piece of evidence. Article 155 of the Qanoon-e-Shahadat Order is not a mandatory requirement, but using words “may” it is left upon the Court, therefore, the witness cannot be compelled by the defence counsel to go through the case diary and then to seek such access under Article 155 of the Qanoon-e-Shahadat Order as a right. Learned counsel for the petitioner by detailed arguments emphasized that with such view the Court may provide such an opportunity to the defence counsel, therefore, during cross-examination of the PW when such question was raised before the learned Trial Court, such a legal issue when not properly

considered by the Court, he moved the instant criminal revision.

4. Arguments heard. Record perused.

5. Section 172 Cr.P.C. provides a procedure for keeping investigation notes, which shall be entered day by day in the case diary specifying as to which information reached to the Investigating Officer from time to time. When investigation began and closed, the places visited during investigation, statement of the circumstances ascertained throughout the investigation shall be recorded. Therefore affordable clause provided by Section 172 (2) of Cr.P.C. that criminal Court may send for the said police diaries, same may be used not as an evidence in the case, but to aid it in such inquiry or trial. Such a forbidden clause leading towards an aspect that it is the prerogative of the Court to remove any ambiguity by referring to case diary to get confirmation about the circumstances, investigation conducted, information received and the proceeding conducted during the course of investigation. Further it is provided by the corresponding section that neither the accused nor any agent on his behalf shall be entitled to call for such diaries or to see them merely because the same are referred by the Court. However, the same are used by the police officer for refreshing his memory if the court uses it for the

purposes of contradiction. With such limited scope, case diary can be used not otherwise. The scheme of law as envisaged by Articles 155 or 157 of Qanoon-e-Shahadat Order referred during course of arguments as altogether different. In the context of evidence, if some material placed on record or referred by the Investigating Officer taking aid of Article 155 of Qanoon-e-Shahadat, then access can be claimed by the defence counsel to cross-examine the witness on that particular point, but it does not include the case diary when referred by the Court to the witness for particular purpose as referred above. The scheme of law is quite clear in this regard and merely the petitioner apprehends onward advantages expected to be taken by the adverse party on refreshing memory from the case diary, which otherwise not permissible by law. The legal preposition is explicitly clear in this regard and the Trial Court may proceed in accordance with law in view of the above referred Articles of Qanoon-e-Shahadat Order, 1984 and relevant sections of Cr.P.C.

6. Similarly forbidden clause is also provided by subsection 2 of Section 162 of Cr.P.C. with regard to limited scope of case Diary and its use during the proceedings.

7. In view of above discussion, the instant

petition stands disposed of.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

***AR.ANSARI/**

APPROVED FOR REPORTING

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