

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Crl. Revision No.51/2019.

Shafique Ahmed etc.

Versus

Zumurd Hussain 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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01. **28.05.2019** **Sardar Arshad Mehmood Khan, Advocate for the petitioners.**

Through the instant criminal revision petition, the petitioner has assailed the order dated 13.05.2019, passed by learned Additional Sessions Judge, East-Islamabad, whereby application for summoning of the witnesses moved by the petitioners has been dismissed.

2. Learned counsel for the petitioners inter-alia contends that the petitioners are accused/respondents in complaint U/S 3, 4, 5 & 8 of Illegal Dispossession Act, 2005, which is fixed for recording statements of the petitioners U/S 342, Cr.P.C; that the petitioners filed application U/S 540 Cr.P.C for summoning of Fawad Khalid, ASI, previous I.O of the complaint and Jamshed Patwari, who submitted the report before Trial Court as Court witnesses; that learned Trial Court dismissed the application without any valid reason.

3. Arguments heard, record perused.

4. Perusal of the record reveals that the petitioners being accused/respondents in complaint filed by respondents No.1 & 2 U/S 3, 4, 5 & 8 of Illegal Dispossession Act, 2005 are facing trial and the case was fixed for recording statements U/S 342, Cr.P.C, when the petitioners filed application for summoning of Fawad Khalid, ASI, previous I.O of the complaint and Jamshed Patwari,

who submitted the report before Trial Court as Court witnesses but the said application was dismissed through impugned order.

5. I have gone through the impugned order as well as record, whereby it reveals that learned Trial Court while passing the impugned order observed that the report submitted by ASI was not accepted by Trial Court and second report was called whereafter Azkar Hussain ASI appeared as C.W.1, who stated before the Court that he incorporated earlier report of Fawad Khalid ASI in his report. Similarly, Trial Court also observed that there is no need to summon the Patwari as his report has already been exhibited as Exh.D.A, which shows that the report is on record as part of evidence and will be considered at the time of final judgment. Learned Trial Court has rightly observed that under Illegal Dispossession Act, 2005, ownership of the property cannot be decided and provisions of section 540, Cr.P.C can only be used to defend the interest of justice while relying upon 2008 P Cr. L J 1764 (Bushra Bibi vs. Muhammad Riaz), 2013 P Cr. L J 1043 (Zahida Perveen vs. State) and 2014 P Cr. L J 108 (Abraiz Babu vs. State). There is no cavil to the proposition that powers U/S 540 Cr.P.C are wide enough to call any witness or evidence, which is essential for just decision of case and application U/S 540 Cr.P.C can be filed at any stage. Reliance is placed upon 1997 P Cr. L J 628 (Muhammad Boota vs. The State) & 2011 SCMR 713 (Ansar Mehmood vs. Abdul Khaliq and another). The main purpose behind summoning of witnesses U/S 540 Cr.P.C is to find out truth and to arrive at correct decision and not to fill in the gaps and lacuna of the prosecution case. Reliance is placed upon PLJ 2003 Cr. C. (Lahore) 645 (DB) (Mian Manzoor Ahmed Wattoo vs. State) & PLJ 2004 SC 642 (Karam Din vs. Abdul Aziz and 11 others).

6. While considering the above background, this Court is of the view that when reports of ASI and the Patwari have been placed upon on record, then there is no need to summon them as Court witnesses. Even otherwise, accused persons have right to summon the witnesses in their defence as both the witnesses are public officials. No illegality has been observed in the impugned order.

7. In view of the above reasons, the instant criminal revision petition bears no merits, therefore, the same is hereby **dismissed in limine.**

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam