

## ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Crl. Rev. 57 - 2012 200

Titled Tamraiz Javaid Masih. vs. The State. Vs

(a) Judgment approved for reporting

☒ Yes / ~~No~~

(b) Judgment any comment upon the Conduct of the Judicial Officer for Quality of the impugned judgment is Desired to be made.

☐ Yes / ☐ No

(In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

Initial of the Judge.

### NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Crl. Revision No. 57 of 2012,**  
**Tamraiz Javaid Masih-Vs-The State:**

<b>S. No. of order proceedings</b>	<b>Date of order/ proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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04-02-2013: Mr. Muhammad Zafar Khokhar, Advocate for  
petitioner,  
Mr. Shabbir Ahmad Abbasi, learned Standing  
Counsel,  
M/s. Mukhtar Ahamd Tarar & Syed Tanvir Suhail  
Shah, Advocates for private respondents.

**O R D E R**

The petitioner has challenged the order dated 27.11.2012, passed by learned Sessions Judge Islamabad, whereby petitioner-complainant's application U/s 540-Cr. PC for recalling the Prosecution-Witness No.1 [Dr. Muhammad Farrukh Kamal] was **dismissed on the ground that the application after 3 ½ year for recalling of the said witness lacked merits as the lacunas in prosecution case cannot be filled.**

2- It is inter alia contended that PW-1, at the time of recording of his evidence, failed/omitted to get exhibit the MLR regarding the injury received by the complainant, therefore, his recalling and re-examination would be in the interest of justice. Learned counsel relied upon case laws cited as 2002 P Cr L J 78, 1995 P Cr L J 730, PLJ 2009 FSC 200, 1992 P Cr L J 729 and 2006 P Cr L J 110 which are on the point that the Court may at any stage of an inquiry, trial or other proceedings under the Cr. PC may summon any person as a witness or examine any person in attendance though not summoned as a witness or recalled and re-examine any person already examined. The purpose to exercise such power is the safe administration of justice and its purpose is neither to advance the case of defence nor upheld the cause of the prosecution.

3- On the other hand, learned Standing Counsel resisted the petition by stating that re-



calling & re-examination of a witness at this stage cannot be allowed as it would delay the trial of the case.

4- Both the learned counsel<sub>g</sub> for private respondents, in-rebuttal, strongly opposed the petition. Their main ground was that the purpose of S. 540 Cr. PC is not to fill the lacuna in the prosecution case nor any error can be rectified only on the basis that there was an omission in the previous statement of PW. It is next submitted that even otherwise the application after more than three & a half year is not maintainable when the case has already concluded.

5- I have considered the arguments advanced by both the sides and also gone through the case law<sub>g</sub> besides the law on the subject.

6- According to the prosecution version, the complainant had allegedly received injuries and was medically examined, but PW-1 [Dr. Muhammad Farrukh Kamal] in his statement failed/omitted to get exhibit MLR of the complainant [petitioner herein] and also failed to give his statement to this effect. This omission, in my view, cannot be considered as an improvement in the case of prosecution while U/s 540 Cr. PC, the Trial Court at any stage can summon any person as a witness or recall or re-examine any person already examined, if his evidence appears to be essential to the just decision of the case.

7- The circumstances of the present case warrant re-calling of the said witness for recording of his evidence to the extent of MLR of the complainant & his examination. On the other hand, the respondents shall, of course, have a right of cross-examination.

8- While forming the view [supra] I am fortified by the case of **"Ansar Mehmood-Vs- Abdul Khaliq and another [2011` SCMR 713]"** wherein the Hon'ble Apex Court in a case which was at the stage of final arguments, held as under:-

"Powers of Court under S. 540 Cr.  
PC—Scope—Material witness,  
summoning of—Limitation—Close of  
prosecution evidence—Complainant filed



application to produce two doctors and report of medical board **at the stage of final arguments**—Trial Court dismissed the application on the ground of its being filed at belated stage—Order passed by Trial Court was maintained by lower Appellate Court in exercise of revisional jurisdiction and also by High Court exercising constitutional jurisdiction—Validity—powers of Court u/s 540 Cr. PC were the widest in its amplitude—Court was obliged to summon evidence of material witness, whose evidence was essential for just decision—Court while exercising power under section 540 Cr. PC had to guard itself from exploitation and should keep guiding principle, what the ends of justice demanded and to avoid filling gaps in negation of justice—when Court had arrived at the conclusion that evidence was essential for just decision, then delay in moving application was not relevant—Court itself empowered even without application from any of the parties to summon witness deem essential for just decision by applying its judicial mind—Medico-Legal Certificate was issued by Medical Officer & Radiologist opined fracture on the person of injured—Authenticity of Medico-Legal Certificate was questioned and Medical Board was constituted at the instance of accused and Medical Board rendered its opinion—Both the documents were authored by Medical Officers in discharge of their functions, genuine-ness of which could not be doubted—**accused would have ample opportunity to discredit the evidence on the touchstone of cross examination** — Supreme Court set-aside the orders passed by all the Courts below and allowed the summoning of doctors.”



9- In view of above, if the application for re-examination of PW-1 is allowed, no prejudice shall be caused to the prosecution.

10- Resultantly, criminal revision petition is allowed and in consequence thereof, order of the learned Trial Court dated 27-11-2012, is set-aside with direction to re-summon & re-examine PW-1 qua the MLR of complainant by extending opportunity of cross-examination to the respondents-accused. Since the case is at final stage, it is expected that learned counsel for the parties would extend full co-operation to the learned Trial-Court for completing the task. It is also expected that the learned Trial Court shall decide the case within a period of one month from the receipt of this order under intimation to this Court through the Registrar.

11- Revision Allowed. Impugned-Order set-aside.

~~MUHAMMAD ANWAR KHAN KASI~~  
JUDGE

M. Suhail  
04.02.2013

[APPROVED FOR REPORTING]

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Police 58/10  
added,