

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CRL. REV. NO.52/2014

SHEREEN GUL ALIAS FATIMA

APPELLANT
PETITIONER

VERSUS

SPECIAL JUDGE, ANTI TERRORISM COURT-I, ISLAMABAD, ETC.

RESPONDENTS
DEFENDANT

Appeal/revision against the decree or order (as the case may be) of _____

SERIAL NO. OF ORDER OF PROCEEDINGS	DATE OR ORDER OF PROCEEDINGS	Order with signatures of judge, and that of parties or counsel, where necessary.
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09.09.2014 Ch. Abdul Khaliq Thind, Advocate for
Petitioner/Appellant.

Instant Revision Petition u/s 439 Cr.PC, has been preferred against the order dated 10.06.2014 passed by learned Special Judge, Anti Terrorism Court, Islamabad whereby the application u/s 540 Cr.P.C moved by the complainant/respondent No.2, Azmat Khan in case FIR No.260, u/s 365-A Cr.P.C, registered with P.S Ramna, Islamabad for re-examination of witness/complainant. The application u/s 540 Cr.PC was moved by the witness/complainant who is the real son of the abductee namely Haji Rahim

with the assertion that his incomplete statement was recorded on 24.04.2014 and no chance was given to the complainant to narrate the complete story; therefore, he may be permitted to complete his statement recorded u/s 161 Cr.PC dated 15.07.2014 in Zimni No.6. Learned Judge, Special Court (ATC-I) allowed the said application for re-examination of witness/complainant.

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2. Learned counsel for Petitioner contended that Respondent No.2/complainant was called for evidence as PW-1 on 24.04.2014 who recorded his evidence and also cross-examined. That during the examination in chief PW-1 did not involve the Petitioner in the commission of crime and learned Judge at the completion of his evidence verbally reprimanded the said witness for not naming/involving the petitioner, thereafter, the respondent filed an afterthought application U/S 540 Cr.PC for re-examination of the PW-1 which the Respondent No.1 accepted vide impugned order dated 10.06.2014.

3. Learned counsel for Petitioner argued that impugned order is illegal against law and facts of the case and learned trial court fell in error while accepting the application u/s 540 Cr.PC. That the re-summoning of the complainant to make a better statement amount to improve his examination in chief and to fill up the lacunas which would adversely affect the defense version. That the scope of Re-examination is limited and placed under certain clogs, that too if certain ambiguity is sought to be removed, or certain explanation is need which is not subject of the impugned order.

Arguments heard. Record perused.

4. For convenience sake, operative part of the impugned order dated 10.06.2014 passed by learned Special Judge, ATC-I, Islamabad is reproduce as under:-

“I have given careful consideration the available record as well arguments advanced by both sides and to observe that basically the applicant/complainant filed a complaint regarding abduction of his father namely Haji Rahim and got recorded his statement before this Court. After filing of complaint, some progress was made

during investigation in the case for payment of the ransom amount and for that purposes, the applicant/complainant got recorded his statement vide Zimini No.6, by narrating the factual aspect regarding mode of payment to the abductor, to that extent his deposition was not recorded before this Court. The arguments advanced by the defense counsel that if permission is granted for re-examination of the complainant, it will prejudice the case of the accused. I do not agree with the contention of the learned defense counsel because the complainant has joined investigation after filing of the complaint and got recorded his statement as prosecution witness, therefore, such omission for not recording his statement does not in any way fill up the lacuna of the prosecution case but the same will be helpful for reaching to just conclusion, whether the ransom amount was demanded and aid according to the prosecution version, therefore, in the interest of justice, I allow the instant application for re-examination of witness/complainant namely Azmat Khan u/s 540 Cr.PC who be summoned for the adjourned date.”

For reaching to a just conclusion, Section 540 Cr.PC is reproduced hereunder:-

“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 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.”

5. Perusal of above provision makes it abundantly clear that in order to reach to a just conclusion, it is mandatory for the Court to summon a witness to recall and re-examine him if it appears just and essential for the decision of the case. In the present case, after filing of complaint, some progress was made during investigation in the case for payment of the ransom amount and for that purpose, the applicant/complainant got recorded his statement vide Zimini No.6 by narrating the factual aspect regarding mode of payment to the abductor, to that extent his deposition was not recorded before the Court, therefore, it does not amount to fill up any lacuna in the evidence rather essential and helpful for reaching to the just conclusion of the case. This material fact is also mentioned in the report u/s 173 Cr.P.C. The law favours adjudication of cases on merit rather than technicalities and should always be interpreted in aid of justice and fairplay. Article 161 of the Qanun-e-Shahadat Order 1984, also empowers a Judge to put questions or order

for production of a documents in order to obtain proper proof of the relevant facts, in any form, at any time from any witness or from the parties and also cross-

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examine any witness upon any answer given in reply to any such question except some exceptions provided in the order *ibid*. We are not persuaded with the argument of the learned Counsel for the appellant that impugned order resulted into filling up the lacunas left in the case.

6. In view of above, by placing our reliance on case law reported as PLD 1984 S.C 95, we are of the view, that order passed by the learned Special Judge, ATC-I, Islamabad is well reasoned and no exception can be taken thereto, hence the Revision Petition is dismissed.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

(ATHAR MINALLAH)
JUDGE

APPROVED FOR REPORTING.

"Waqar Ahmed"

