

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Taimoor Malik. *Vs.* The State and four others.

07.10.2025. Rana Muhammad Imtiaz Noon, Advocate for the petitioner.
Mr. Ghazanfar Ali Khan, Advocate for respondent No.3.
Mr. Zafar Iqbal Soomro, Deputy District Public Prosecutor.

Through this petition filed under sections 435 and 439-A Cr.P.C., the petitioner has assailed the orders dated 12.07.2025 and dated 15.07.2025 passed by the learned Additional Sessions Judge, Kehror Pacca, District Lodhran.

2. Brief facts of the case leading upto the filing of the instant petition are that the petitioner filed a private complaint titled “*Taimoor Malik Vs. Shaukat Hayat and two others*” in respect of offences under sections 302 and 34 P.P.C. related to the case F.I.R. No.134 of 2021 registered at the Police Station City Kehror Pacca, District Lodhran and after holding of the inquiry, the learned Additional Sessions Judge summoned the accused to face the trial of the case and after framing of charge, which was denied by the accused summoned, the learned Additional Sessions Judge proceeded to record the statements of the witnesses intended to be produced by the petitioner as being the complainant of the case and on 24.05.2025, examination-in-chief of Taimoor Malik as **PW-1**, Muhammad Sajjad as **PW-2** and Muhammad Riaz as **PW-3** were recorded. However, on the said date, cross-examination could not be conducted as learned counsel for the accused sought an adjournment in this regard,

however, subsequently, the three prosecutioin witnesses namely Taimoor Malik (**PW-1**), Muhammad Sajjad (**PW-2**) and Muhammad Riaz (**PW-3**) did not appear before the learned trial court on 28.06.2025 and on 07.07.2025, which led to the issuance of non-bailable warrants of arrest of the said three witnesses by the learned trial court. However, on 12.07.2025, the petitioner appeared before the learned trial court in the morning but thereafter did not and neither did the other two witnesses, which then led to the passing of the impugned order dated 12.07.2025, whereby the learned trial court observed that the right of the petitioner to produce the witnesses was being closed. Subsequently, on 15.07.2025, the right of the petitioner to produce the documentary evidence was also closed by the learned Additional Sessions Judge; hence, the instant petition.

3. Learned counsel for the petitioner contended that the order dated 12.07.2025, whereby the right of the petitioner to produce his witnesses was closed and the order dated 15.07.2025, whereby the right of the petitioner to produce the documentary evidence was closed, both are liable to be set-aside being against the facts and the law; that the law does not recognize any such procedure whereby the learned trial court holding the trial of the case could order closure of the right of the complainant of the case to produce his witnesses, whose examination-in-chief have already been recorded as was ordered in this case; hence, both the orders dated 12.07.2025 and 15.07.2025 passed by the learned trial court were untenable.

4. Learned counsel appearing on behalf of respondents No.3 to 5 has submitted that the learned Additional Sessions Judge was left with no option but to pass the impugned orders due to the conduct of the petitioner himself and, therefore, the impugned orders do not suffer from any illegality and could not be interfered with.

5. Learned Deputy District Public Prosecutor has submitted that as the matter relates to a private complaint, therefore, the State has no concern with the same.

6. I have heard the learned counsel for the petitioner, learned counsel for respondents No.3 to 5, learned Deputy District Public Prosecutor and perused the record with their able assistance.

7. Perusal of the record reveals that that the petitioner filed a private complaint titled “*Taimoor Malik Vs. Shaukat Hayat and two others*” in respect of offences under sections 302 and 34 P.P.C. related to the case F.I.R. No.134 of 2021 registered at the Police Station City Khehror Pacca, District Lodhran and after holding of the inquiry, the learned Additional Sessions Judge summoned the accused to face the trial of the case and after framing of charge, which was denied by the accused summoned, the learned Additional Sessions Judge proceeded to record the statements of the witnesses intended to be produced by the petitioner as being the complainant of the case and on 24.05.2025, examination-in-chief of Taimoor Malik as **PW-1**, Muhammad Sajjad as **PW-2** and Muhammad Riaz as **PW-3** were recorded. However, on the said date, cross-examination could not be conducted as learned counsel for the accused sought an adjournment in this regard, however, subsequently, the three prosecution witnesses namely Taimoor Malik (**PW-1**), Muhammad Sajjad (**PW-2**) and Muhammad Riaz (**PW-3**) did not appear before the learned trial court on 28.06.2025 and on 07.07.2025, which led to the issuance of non-bailable warrants of arrest of the said three witnesses by the learned trial court. However, on 12.07.2025, the petitioner appeared before the learned trial court in the morning but thereafter did not and neither did the other two witnesses, which then led to the passing of the impugned order dated 12.07.2025, whereby the learned trial court observed that the right of the petitioner to produce the witnesses was being closed. Subsequently, on 15.07.2025, the right of the petitioner to produce the documentary evidence was also closed by the learned Additional Sessions Judge. Though, it is a

fact that after getting the examination-in-chief recorded on 24.05.2025, the witnesses namely Taimoor Malik (**PW-1**), Muhammad Sajjad (**PW-2**) and Muhammad Riaz (**PW-3**) did not appear before the Court on 28.06.2025 and on 07.07.2025, due to which conduct, non-bailable warrants of arrest were issued with regard to the said witnesses and it is also correct that on 12.07.2025, only the petitioner appeared before the learned trial court and that too, only in the morning and did not appear in the later part of the day, which constrained the learned trial court to pass the impugned order dated 12.07.2025 but the order which was passed by the learned Additional Sessions Judge and which has been assailed is that the right of the petitioner to produce himself, Muhammad Sajjad (**PW-2**) and Muhammad Riaz (**PW-3**) as witnesses was “closed”, which order of the learned trial court has no foundation under the law itself. The procedure provided for holding of a trial with regard to the offence made punishable under section 302 P.P.C. does not recognize any authority of the learned trial court to pass an order whereby the right of the complainant to produce his witnesses is closed, especially in the circumstances where the examination-in-chief of the said witnesses had been recorded. The law itself provides the procedure for compelling the appearance of the witnesses before the Court and procedure to be followed in case of their failure to appear. However, that procedure also does not allow the learned trial court to close any such right of a complainant to produce his witnesses for the purpose of cross-examination. The error with the order dated 12.07.2025 passed by the learned Additional Sessions is that the learned Additional Sessions Judge has ordered the closure of the right of the petitioner to produce his witnesses despite the fact that he already had recorded the examination-in-chief of the said three witnesses and subsequent to that, there was no need for passing of an order that the petitioner cannot produce his witnesses for the simple reason that already the said witnesses *had been produced* and their examination-in-chief had been recorded, therefore, the only course which could have been adopted by the learned trial court was the procedure

provided under the law for compelling the presence of a witness therefore, the order dated 12.07.2025 passed by the learned Additional Sessions Judge is untenable.

8. With regard to the order dated 15.07.2025, whereby the right of the petitioner to produce the documentary evidence was closed, it is observed that it has been provided under section 265-F Cr.P.C. that the Court shall proceed to hear the complainant and take all such evidence as intended to be produced in support of the prosecution. The Court has been given discretion to refuse to summon any such witness, if it is of the opinion that such witness is being called for the purpose of *vexation or delay or defeating the ends of justice*. Such grounds are to be recorded in writing. Now while passing the order dated 15.07.2025, the learned trial court did not observe that it was closing the right of the complainant to produce the documentary evidence for the reason that the purpose of producing the said documentary evidence was to cause delay or defeat the ends of justice and for this fact that the learned trial court did not observe that production of the said documentary evidence would cause delay or defeat the ends of justice, therefore, the order dated 15.07.2025 passed by the learned Additional Sessions Judge also becomes untenable.

9. In view of the above discussion, this petition is ***allowed*** and the orders dated 12.07.2025, whereby the right of the petitioner to produce his witnesses namely Taimoor Malik (**PW-1**), Muhammad Sajjad (**PW-2**) and Muhammad Riaz (**PW-3**) was closed, is set-aside and the learned trial court is directed to summon the said three witnesses and record the cross-examination to be conducted upon the said three witnesses by the accused facing trial of the case and then proceed in accordance with the law. However, if the said three witnesses do not appear before the Court for the purpose of cross-examination, the learned trial court shall adopt the procedure under the law for compelling the appearance of the said witnesses and proceed in accordance with the same. Moreover, the order dated

15.07.2025 passed by the learned Additional Sessions Judge, whereby the right of the petitioner to produce documentary evidence was closed, is also set-aside. It is also directed that if the learned trial court feels that the purpose of producing the documentary evidence is to cause delay or defeat the ends of justice by the petitioner, then it shall record the said grounds in writing and refuse to allow of production of the said documentary evidence; otherwise, it shall proceed in accordance with the law.

(SADIQ MAHMUD KHURRAM)
JUDGE

Approved for Reporting

Judge

*Saleem Ahmad**