

JUDGMENT SHEET
PESHAWAR HIGH COURT D.I.KHAN BENCH
JUDICIAL DEPARTMENT

CR No. 8-D of 2015

JUDGMENT

Date of hearing 08.02.2016

Appellant / petitioner Haji Arshad Mehmood by

Mr. Saifur Rehman Khan Advocate

Respondent Azmat Hayat etc by Mr. Kamran Hayat

Miankhel, AAG for State and Mr. Burhan Latif Khaisori

Advocate for accused respondent

MOHAMMAD GHAZANFAR KHAN J.- Through instant criminal revision petition filed by petitioner Haji Arshad Mahsood seeks cancellation of order dated 21.9.2015 passed by learned Additional Sessions Judge, Paharpur District D.I.Khan vide which application filed by respondents-accused for their exemption from personal appearance has been allowed.

2. Short facts of the instant case are that on the report of petitioner case FIR No.324/337-A(2)/337-F(i)/148/149 PPC was registered against the respondents-accused at police station, Band Korai District D.I.Khan. After completion of investigation, complete challan was submitted before the learned trial Court, where the

respondents-accused appeared and filed an application for their exemption from personal, which was accepted by the learned trial Court on 21.9.2015, hence the instant criminal revision petition.

3. Learned counsel for petitioner argued that no reason whatsoever has been advanced in the impugned order for exempting the respondents-accused from their personal appearance. He further argued that the order passed by trial Court is illegal as it is held in the impugned order that exempted respondents-accused are allowed to appear through co-accused Sher Baz and their counsel. He maintained that an accused cannot be permitted to appear through co-accused, so in this way the order is perverse and deserves reversal.

4. On the contrary, learned counsel for respondents-accused argued that the order passed by trial Court, is within four corners of law and there is no wrong with the exemption order, so he solicited for dismissal of instant revision petition.

5. Arguments heard and record perused.

6. Section 540-A Cr.P.C deals with the exemption of accused from personal appearance, which is reproduced as under:

“540-A. Provision of inquires and trial being held in the absence of accused in certain cases---(1) At any stage of inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied for reason to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused. (2) If the accused in any such case is not represented by pleader or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reason to be recorded by him either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.”

7. Bare perusal of above section reveals that where more than two accused are before the Court, the Court on its own discretion can exempt anyone or more of the accused from personal appearance till further order. It is held by their lordships in Haji Aurangzeb’s case reported in **PLD 2004 Supreme Court 160** that provisions of section 540-A Cr.P.C are to be interpreted

with benevolence. The main ingredients of this section are that the Court before the grant of exemption to an accused must see that there are two or more accused facing trial; that accused seeking exemption was before the Court and were represented by a counsel.

8. In the instant case the respondents-accused have been exempted through impugned order, were before the Court and were represented by their counsel, so there is no wrong with the impugned order.

9. For the foregoing reasons, I do not find any merit in the instant criminal revision petition and consequently, the same is dismissed.

ANNOUNCED

08.02.2015

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JUDGE