

**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

Cr. R No. 140/2021

**Riaz
Vs
Mst. Raeela etc.**

Date of hearing 16.09.2021

Petitioner (by) Mr. Shabbir Hussain Gigyani, Advocate

Respondent (by) Mr. Samiullah Jan, AAG

JUDGMENT

MUSARRAT HILALI, J.- Through the instant criminal revision petition filed under Section 435/439 Cr.P.C read with Section 561-A Cr.P.C, petitioner, Riaz, has prayed for setting aside the orders dated 03.08.2021 & 08.04.2021 of learned Additional Sessions Judge-VI, Peshawar.

2. Briefly stated facts of the case are that the petitioner is an accused in case FIR No.594 dated 22.12.2015, registered under section 302/324/34 PPC, at Police Station East Cantt., District Peshawar and is behind the bars since his arrest and facing trial. During his trial, one official witness namely, Muhammad

Ishaque (PW-9) was declared as hostile witness during the cross examination without hearing the parties on legal aspect of the case and without going to the previous statement, hence, the instant revision petition.

Arguments heard and record gone through.

3. On perusal of the impugned order dated 03.08.2021, it appears that Additional Public Prosecutor made an oral request to declare the witness namely, Muhammad Ishaque as hostile on the ground that he, in his cross examination, stated certain things which are contrary to what he has deposed in his examination-in-chief.

4. Before proceeding further, it would be appropriate to first see whether the witness was hostile or unfavourable to the party who called him as there is a distinction between a hostile witness and an unfavourable witness.

A hostile witness is one who, from the manner in which he gives his evidence shows that he is not telling the truth and resiles from his earlier statement given

during investigation and damages the case of the calling party while an unfavourable witness is one who without any hostile intention gives evidence which is contrary to the interest of the prosecution.

5. Cross examination is a valuable right of an accused to test the veracity and accuracy of a prosecution witness's evidence given in the examination-in-chief and to elicit from the witness any fact which may be favourable to the accused. A witness can be allowed to be treated as hostile only during examination-in-chief and not after he was cross examined by the other party. If the opportunity of cross examination of his own witness in such like cases is given, it would destroy the very purpose of cross examination. No doubt, under Article 150 of the Qanun-e-Shahadat Order, 1984, the prosecution has the right to request the trial Court for declaring a witness as hostile if the witness resiles from his previous statement recorded during investigation or any other proceedings, however, the Court shall not exercise its discretion of declaring a witness hostile unless the Court is satisfied that the elements of hostility

are exhibited during examination-in-chief or the witness is not speaking truth for the party he is deposing and his design is obvious then the Court by using its judicial discretion can permit cross examination of the said witness. It may not be out of place to mention here that the testimony of a hostile witness is not totally washed out from the record of the case and that part of the statement of the witness which corroborates the prosecution version can still be taken into consideration.

6. In the instant case, the prosecution witness in an unguarded moment deposed something which is unfavourable to the prosecution, however, no such material exists on the record showing that the witness was deliberately suppressing the truth or has changed his loyalty and the intention was clear, in absence of all these circumstances, the discretion to allow the party to reexamine his own witness cannot be allowed.

7. As far as the specimen handwriting of PW-6 is concerned, it would be appropriate to reproduce Article 84 (1) (2) of the Qanun-e-Shahadat Order, 1984 which reads as under:-

84. Comparison of signature, writing or seal with others admitted or proved: (1) *In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made any signature writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.*

(2) *The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.*

(3)

8. The aforementioned quoted Article empowers the Court to obtain signature, writing or seal of the person by whom it purports to have been written or made any signature writing or seal for the satisfaction of the Court just to arrive at right conclusion because a fair trial includes a fair opportunity to produce any defence to prove his innocence.

9. In view of the above, this petition is allowed, the order of the learned trial Court dated 08.04.2021 is set aside.

JUDGE

Announced
16.09.2021

(S.B) Hon'ble Justice Musarrat Hilali