

PESHAWAR HIGH COURT, BANNU BENCH

FORM OF ORDER SHEET

Date of order or proceedings	Order or other proceedings with signatures of Judge (s).
(1)	(2)
20.05.2019	<p><u>Cr.Misc: No.182-B of 2019</u> <u>Cr. R No. 12-B of 2019</u></p> <p><u>Present:-</u> Basir Gulbaz advocate for petitioner. *****</p> <p><u>MUHAMMAD NASIR MAHFOOZ, J.-</u></p> <p><u>CM No.182-B of 20189</u></p> <p>In view of arguments advanced at the bar the instant Cr. Misc: Application for early fixation is allowed and main Cr. R is fixed for hearing to today.</p> <p><u>Cr.R No.12-B of 2019</u></p> <p>1. Complainant /petitioner has implored this Court for transposition of the statement of Mir Daraz, recorded as PW-2, on 08.07.2013 before the Anti Terrorism Court, Kohat, as his statement in the proceedings of subject mentioned F.I.R No. 178 dated 01.06.2013 PPC and section 7 of the ATA.</p> <p>2. I have heard arguments of learned counsel</p>

	<p>for petitioner and perused the available record.</p> <p>3. Learned counsel for petitioner stated that learned trial Court, Additional Sessions Judge, Karak at Takht-e-Nasrati was legally bound to accept his application for transposition in the light of judgment titled <u>“Arbab Tasleem Vs the State”</u> reported as <u>PLD 2010 SC 642</u>. It was argued that statement of Mir Daraz eye-witness in the subject mentioned F.I.R was recorded as PW-2, at the time of proceedings under section 512 Cr.PC against the absconding accused and the same may be considered statement recorded in the instant proceedings after transposition, in light of Article 47 of the Qanun-e-Shahadat Order, 1984.</p> <p>4. In the instant case Mir Daraz alleged eye-witness is stated to be abroad in United States of America and therefore, his presence before the Court would result in prolonging trial. Under Article 46 of the Qanun-e-Shahadat Order, 1984, statement made in some earlier proceedings is relevant, in case the witness is no more alive/ available. Article 47 of the</p>
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	<p>Qanun-e-Shahadat Order 1984, envisages different situation for considering relevancy of the statement recorded in earlier proceedings subject to condition as mentioned in proviso to the main Article i.e. proceedings must be between the same parties or their representative in interest and adverse party in first proceedings had right and opportunity of cross-examination and finally question in issue are substantially the same in the first and in second proceedings. It appears from the impugned order that the PW Mir Daraz real brother of the complainant had attended the Court on 08.07.2013 and his statement was recorded and son of PW assured the Court that his father Mir Daraz will be back from United States of America in the end of March, 2019. So the case was adjourned to 04.03.2019. On 05.03.2019 this petition was filed and the fate of the witness having attended the Court or not, in the month of March is still unknown. The law as it is, has to take its own course and no one could be allowed to twist it for his own</p>
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benefit. The judgment cited at the bar has considered such statement having evidentiary value, but such like statement of PW -2, Mir Daraz could not be equated with the statement that has been subject to cross-examination. In order to give weight to the statement of such witness the court is legally bound to consider its intrinsic value.

5. The judgment cited at the bar has got distinguishing features from the aspect that thrice right of cross-examination was afforded to the other side, but ultimately the PW was murdered. So his statement was considered for the purpose of conviction, but in the present case situation is different, as that statement of PW is being required to be transposed, which was recorded during proceedings under section 512 Cr.PC and was not a regular trial.

6. In view of above, the instant criminal revision petition is disposed of with the direction that the petitioner may procure attendance of PW Mir Daraz within shortest possible time, to avoid any more

delay as considerable delay has occurred after lodging
F.I.R in the year 2013 and specify a particular date for
recording statement of PW Mir Daraz.

Announced.
20.05.2019

J U D G E

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