JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr.R No: 37-A of 2015

JUDGMENT

Date of hearing……..

Appellant(s)/Petitioner (s)……

Respondent (s)…….

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QALANDAR ALI KHAN,J:- This revision petition by accused/petitioner, Najab Nawaz Khan, has arisen out of order of the learned trial Court/Additional Sessions Judge-II, Haripur, dated 21.11.2015, whereby application of the accused/petitioner for summoning Inspector Muhammad Ashiq and Muharrir of Police Station 1-9 Industrial Area, Islamabad, along with record of case FIR No.323 dated 02.09.2015 was dismissed. The application was moved after statement of the accused/petitioner was recorded under Section 342 Cr.PC wherein he

declined to be examined as his own witness under Section 340 (2) Cr.PC but expressed the desire to produce defence evidence. The accused/petitioner, then, moved application for production of defence evidence comprising the aforementioned two government/police officials through Court. The application was moved in case vide FIR No.868 dated 18.12.2009 under Section 302/120-B and 109 PPC Police Station City Haripur, which was lodged on the report of the accused/petitioner as complainant wherein unknown accused were charged for the *Qatl-i-Amd* of his father Akhtar Nawaz Khan, mother Mst. Sardar Akhtar Bibi and servant Khan Afsar.

2. Arguments of the learned counsel for the accused/petitioner, learned Additional Advocate General and learned counsel for respondent No.2 heard, and record perused.

3. The relevant provision of law governing compelling the attendance of any witness for examination or production of any document is 265-F (7) Cr.PC, which lays down as under:

> "If the accused or any one or several accused, after entering on his defence, applies to the Court to issue any process for compelling the attendance of any witness for examination or the production of any document or other thing, the Court shall issue such process unless it considers that the application is made for the purpose of vexation or delay or defeating the ends of justice such ground shall be recorded by the Court in writing."
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> (Emphasis provided)

4. The above clear provision of law leaves no doubt about powers of the Court to decline issuance of process for attendance of a witness if it is of the opinion that the application is made for the purpose of **vexation** or **delay** or **defeating the ends of justice.** The only

condition attached to the exercise of such powers is that the Court shall record reasons in writing for declining the request.

5. In the instant case, the learned trial Court has recorded elaborate reasons for declining request of the accused/petitioner, including, that the accused/petitioner failed to show or explain relevance of the proposed evidence in the case and further that the apex Court had conveyed directions on 20.11.2015, whereby not only displeasure regarding Pace and progress of the proceedings was conveyed but a last chance was afforded to the trial Court for conclusion of the case within two weeks, failing which to face contempt of Court proceedings as well as departmental inquiry. The learned trial Court also pointed out that certified copies of record of case FIR No.323 dated 02.09.2015 registered at P.S 1-9 Islamabad under Section 13 of the Arms

Ordinance, 1965 would show that the case was decided by the Court of learned Judicial Magistrate on 16.09.2015 as a result of plead guilty by accused in the case namely Aqeel Khan. The learned trial Court held that no investigation of the said case was pending nor such proceedings had any relevance to the case.

6. In his drive to persuade the Court to summon defence witnesses, the learned counsel for the accused/petitioner referred to judgments reported as 2007 P.Cr.LJ 24 (Lahore), PLD 2011 Federal Shariat Court 114, 2015 YLR 782 (Lahore), and 2015 YLR 1776 (Sindh); but perusal of the cited judgments would reveal that the testimony of the witnesses whose attendance was sought in the cases for recording their statements was, indeed, relevant to the cases, which is not the case here, as no relevancy of statement under Section 161 Cr.PC of an accused in another case under Section 13/20/65-AO

has been shown to warrant summoning of the Inspector and Muharrir of the Police Station where the case was registered. The accused/petitioner did not offer himself to be examined as his own witness under Section 340(2) Cr.PC and establish his defence, neither he could produce his witnesses in support of plea raised by him in his defence.

7. No doubt, the law empowers the Court to issue process on the request of the defence for attendance and examination of defence evidence, but the powers in this regard have been made subject to the discretion of the Court to seek whether the application was aimed at advancing the ends of justice or moved only for vexation or delay or defeating the ends of justice. In this case, the design of delaying conclusion of trial, despite clear direction for trial of the case on daily basis, is evident from the successive order sheets in the case by the trial Court, showing

delay in the conclusion of trial mostly due to the conduct of the accused/petitioner. Had there been no such attempt on the part of the accused/petitioner in the past, his application could have evoked a positive response from the Court, but keeping in view his track record, the accused/petitioner disentitled him for indulgence of the Court, and his request in this regard was rightly turned down by the trial Court. In short, the learned trial Court correctly exercised the authority/powers vested in it by the law; and the impugned order, therefore, does not call for interference by this Court in its revisional jurisdiction.

8. The revision petition is without substance, hence dismissed.

Announced:
01.12.2015

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