

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 801 OF 2021**

(On appeal against the judgment dated 11.06.2021  
passed by the Peshawar High Court, Peshawar in  
Criminal Revision No. 49-P/2021)

Shah Jehan and another

... Petitioners

**VERSUS**

Raheem Shah and others

... Respondents

For the Petitioners: Mr. Ghulam Mohy-ud-din Malik, ASC

For the State: Mr. Shumyl Aziz, Addl. A.G. KPK

Date of Hearing: 20.10.2021

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have called in question the judgment dated 11.06.2021 of the Peshawar High Court, Peshawar passed in Criminal Revision No.49-P/2021 with the prayer to set aside the same in the interest of safe administration of criminal justice.

2. The facts of the case are that a case bearing FIR No.1706 dated 30.11.2019 under Sections 302/324/148/149 PPC was registered at Police Station Faqirabad, District Peshawar at the instance of Zewar Khan son of Gul Roz Khan. After the registration of the aforesaid crime report, the matter was investigated by the Investigating Officer and the report in terms of Section 173 Cr.P.C. was submitted before the Trial Court. During the pendency of the proceedings, an application under Section 540 Cr.P.C. was filed to summon Raheem Shah, father of the deceased and Sadiq Khan, who was one of the eye-witnesses of the occurrence and re-examination of Zewar Khan (PW-6) and Uzair Khan (PW-8) as they were turned hostile during trial. The Trial Court vide order dated 15.02.2021 allowed the application to the extent of summoning of Raheem Shah, father of the deceased and Sadiq Khan, who

*happens to be one of the eye-witnesses of the crime report, whereas the application to the extent of re-summoning and re-examining of Zewar Khan (PW-6) and Uzair Khan (PW-8) was dismissed as their examination-in-chief and cross-examination has already been completed, thus, there is no occasion for re-calling them for re-examination. The order of the Trial Court was challenged before the High Court in Criminal Revision No.49-P/2021 which was allowed vide judgment dated 11.06.2021. Hence this petition.*

3. *The main crux of the arguments advanced by the learned counsel for the petitioners is that the Trial Court as well as the High Court while adjudicating the matter with respect to the application which was filed under Section 540 Cr.P.C. have gone beyond the scope of the law. Contends that it is an established principle of law that in criminal matter, new witnesses cannot be brought on the record unless and until they are necessary for the just decision of the case and those can be brought if they join investigation from the initiation of the proceedings. Contends that Raheem Shah, father of the deceased was neither cited as witness nor mentioned in calendar of witnesses in report under Section 173 Cr.P.C. The application for summoning of Raheem Shah, father of the deceased along with Sadiq Khan was moved for the first time on 26.01.2021 after the lapse of about 14 months and that too when the statement of the ocular account was recorded and cross-examination was completed by the learned defence counsel. Contends that the statement of Sadiq Khan was not recorded and that the observations given by the High Court are unwarranted and as such it would squarely prejudice the case of the petitioners, therefore, the observation passed by the learned High Court while exercising revisional jurisdiction is uncalled for.*

4. *On the other hand, the learned Law Officer supported the order of the Trial Court as well as the revisional judgment passed by the High Court. It is mainly contended that the witnesses of ocular account, namely, Zewar Khan (PW-6) and Uzair Khan (PW-8) have given their statements according to their conscious and the fate of the same is yet to be decided, therefore, the order of the Trial Court permitting to introduce new witnesses (father of the deceased, who is not mentioned in the crime report and Sadiq Khan, already*

*mentioned in the crime report) is fully justified whereas the judgment of the High Court in revisional jurisdiction is unexceptionable. Lastly, it is argued by the learned Law Officer that the judgment impugned before us would not prejudice the case of the petitioners in any manner whatsoever, therefore, the same is passed squarely in accordance with law.*

5. *We have heard the learned counsel for the parties and gone through the record.*

*There is no second cavil to this proposition that the aforesaid crime report was registered at the instance of one Zewar Khan who narrated the definite story relating to the prosecution case which is spelt out from the record from the bare reading of the same. Undeniably, Sadiq Khan is one of the eye-witnesses, whereas Raheem Shah, father of the deceased stands nowhere in the crime report as a witness. The filing of the application after the lapse of about 14 months wherein a new witness has been introduced to substantiate the accusations leveled in the crime report does not make sense as considerable time has already elapsed and it will certainly imprint that the said application has been filed after due deliberation and consultation. No doubt the introduction of new witness cannot be denied stricto sensu but certainly the scheme of law would be bypassed if at this stage the statement of Raheem Shah, father of the deceased is permitted to be recorded during the proceedings before the Trial Court although it was well within the knowledge of the said Raheem Shah about the murder of his son and he never opted to appear as a witness and in this regard the statement under Section 161 Cr.P.C. was not recorded by the Investigating Officer. It is nowhere mentioned that Raheem Shah ever appeared before the Investigation Officer to substantiate the accusation leveled against the accused persons. As far as the case of Sadiq Khan is concerned, he is one of the eye-witnesses of the crime report and as such his statement, if earlier not given up by the prosecution and the prosecution's case is still not closed, the same can be re-agitated and adduced to strengthen the prosecution version on the basis of contents of the crime report, therefore, he can be produced and recorded by the Trial Court as per dictates of law, whereas so far as re-summoning and re-examination of two*

*prosecution witnesses, who have already been recorded by the Trial Court, is concerned, as their cross-examination has already been conducted by the defence counsel and any application at a belated stage just on the ground that the prosecution witnesses have made statements contrary to the earlier statements under Section 161 Cr.P.C. is no ground at all to issue direction for re-summoning and re-examining the said witnesses for further cross-examination which is against the essence of law. No one can be permitted to fill in the lacunas at the belated stage according to his own whims. Therefore, the order of the Trial Court to the extent of declining re-summoning and re-examination of Zewar Khan (PW-6) and Uzair Khan (PW-8) is upheld. Further, the finding of Trial Court to summon father of deceased is also set aside, however, Sadiq Khan, PW can be summoned to substantiate the prosecution version, if so desired, whereas the finding of the High Court is set aside. The learned Trial Court shall proceed with the trial in the light of this judgment. This petition stands disposed of accordingly.*

JUDGE

JUDGE

Islamabad, the  
20<sup>th</sup> of October, 2021  
Approved For Reporting  
Waqas Naseer/\*