

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
(JUDICIAL DEPARTMENT)

Crl. Revision No. 191 of 2017

Asad Nawaz

.....*Petitioner*

versus

Zulfiqar Afzal Khan etc.

.....*Respondents*

JUDGMENT

Date of Hearing:	21.12.2017.
Petitioner by:	Malik Waheed Anjum, Advocate.
State by:	Sh. Istajabat Ali, D.P.P. with Dil Pazeer ASI.
Respondent No. 1 by:	Mr. Tanvir Iqbal Khan, Advocate.

Muhammad Tariq Abbasi, J:- This revision petition calls in question, the order dated 09.09.2017, passed by the learned Additional Sessions Judge, Hassan Abdal, District Attock, whereby while accepting application under Section 540 Cr.PC, moved by the prosecution, re-examination of Dr. Ishtiaq Hussain (PW-6) has been allowed.

2. The learned counsel for the petitioner has argued that act of the learned trial court, for allowing re-examination of the above named witness, prior to cross-examination by the defence i.e. petitioner's party, being against the procedure and law, could not be appreciated, hence may be set aside.

3. The learned counsel appearing on behalf of respondent No. 1 has contended that Section 540 Cr.PC fully empowers a court to

re-examine a witness, hence the impugned order, whereby re-examination of the above named PW-6 has been directed, is quite in accordance with law. The learned Prosecutor has supported the contentions made by the learned counsel for respondent No. 1.

4. Arguments of all the sides have been heard and the record has been perused.

5. During the trial, in case FIR No. 76, dated 14.03.2015, registered under Sections 302/34 PPC, at Police Station Saddar Hassan Abdal, District Attock, examination-in-chief of Dr. Ishtiaq Hussain as PW-6, was recorded on 10.04.2017 and cross-examination was reserved for 17.04.2017. Thereafter, on 02.05.2017, the prosecution, through an application under Section 540 Cr.PC, had sought re-examination of the above named witness, on the grounds that a statement, allegedly made by the deceased Irfan Afzal Khan (then injured), before the Police, in the hospital was signed by the said doctor, hence to bring the said fact and the statement on the record, his re-examination was necessary. The learned trial court, through the impugned order, had allowed the above said application and granted the requisite permission.

6. In Criminal Procedure Code, 1898 (**hereinafter referred to as the Code**), Section 540 deals with a procedure, under which a person can be called and recorded as a witness. The said provision reads as under:-

"540. Power to summon material witness or examine persons present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case."

7. In Qanun-e-Shahadat Order, 1984 (**hereinafter referred to as the Order**), there are Articles 132 and 133, which prescribe order and mode of examination of a witness. For guidance, the above mentioned Articles are reproduced herein below:-

"132. Examination-in-chief, etc. (1) *The examination of a witness by the party who calls him shall be called his examination-in-chief.*

(2) *The examination of a witness by the adverse party shall be called his cross-examination.*

(3) *The examination of a witness subsequent to the cross-examination by the party who called him, shall be called his re-examination."*

"133. Order of examination. (1) *Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined then (if the party calling him so desires) re-examined.*

(2) *The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.*

(3) *The re-examination shall be directed to the explanation of matters referred to in cross-examinations and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine that matter."*

8. Bare reading of the above mentioned three provisions clearly suggest that procedure, prescribed through Section 540 of the Code and Articles 132 and 133 of the Order, is quite different. Section 540 of the Code, empowers a court that it, while realizing appropriate and necessary, can call and examine a person or re-examine a witness, who has already been examined. The said provision does not provide the mode and order, under which examination of a witness should be carried on. Whereas, Article 132 of the Order defines classes of examination and Article 133 prescribes the modes by which examination-in-chief, cross-examination, re-examination and re-cross examination should be recorded.

9. In the matter in hand, the examination in-chief of the above named doctor has been recorded as PW-6. Thereafter, the learned trial court has felt that he should be re-examined, so that certain

proceedings and documents relating to him may come on the record. The order of the learned trial court, for allowing re-examination of the above said witness is quite justified, but its intention to re-examine the witness, prior to cross-examination by the defence is not as per the requirement and order, prescribed, through the above mentioned articles. Therefore, it is directed that firstly, cross-examination of the witness be got conducted and thereafter he should be re-examined and if the defence wants to re-cross examine him, it be allowed.

10. **Disposed of in the above mentioned terms.**

**(Muhammad Tariq Abbasi)
Judge**

Approved for reporting

*Abid/**