

FOR THE STATE: Sardar Javaid Naz,
Additional Advocate-
General.

Date of hearing: 11.01.2017

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— The captioned appeal has been addressed against the judgment of the learned Shariat Court dated 21.10.2016, whereby the criminal revision filed by the appellant herein has been dismissed.

2. According to the stated facts in the criminal case registered under section 302, APC titled *State vs. Zubaida Younas* the Public Prosecutor on 14.06.2012 got his statement recorded that PW.5 being unnecessary is given up. Later on, an application was moved by the complainant on 06.06.2013 for summoning the said prosecution witness for just decision of the case. The application was accepted vide order dated 19.08.2015. Against the order dated 19.08.2015 a revision petition was filed before the Shariat Court which has been dismissed through the impugned order.

3. Both the parties have filed the written arguments. It appears that a very simple proposition

has been made complicated and the parties have opted for unnecessary litigation which caused unnecessary delay in disposal of a criminal case pending before the trial Court. The proposition involved is summoning of a witness relating to which the Public Prosecutor conducting the case on behalf of the State requested the Court to give it up being unnecessary. The Court ordered accordingly. Thus, the complainant party filed application for summoning of witness who according to the facts of the case is a necessary witness. The trial Court vide order dated 19.8.2015 observed that it is a murder case falling in the category of "*Huddod-o-Qisas*" and legal heirs of the deceased have been given preferential right to prosecute the accused. The evidence of the witness is important and necessary. While exercising powers under section 540, Cr.P.C, the witness has been summoned by the trial Court. The learned Shariat Court has upheld the order of the trial Court. The impugned order of the trial Court according to its spirit is speaking one. The written arguments of the counsel for the appellant appears to be misconceived.

Only focus is made on the point that due to being given up on the request of the Public Prosecutor, summoning of the said witness on the application of complainant, amounts to fill up the lacuna or put undue preference to the prosecution etc.

4. The arguments raised appear to be result of superficial approach. The case before the trial Court is at the stage of prosecution evidence. The trial Court is vested with the powers to ascertain the name of any person likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution under the provision of section 265(F) of the Code. Same like under the provision of section 540, Cr.P.C, the trial Court is vested with the vast powers to summon any witness for just decision of the case. It will be useful to reproduce here section 540,Cr.P.C. as under:-

"540. Power to summon material witness or examine person 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 of his evidence appears to it essential to the just decision of the case.”

A bare reading of this statutory provision clearly reveals that for just decision of the case the trial Court is vested with the vast powers to determine whether summoning of any person as witness or examining any person in attendance who had not been summoned as witness, recall and re-examine any person already examined whether the evidence of such person is essential or not..

5. As in this case the Court after application of judicial mind deemed the recording of evidence of a witness essential for just decision of the case. Even these powers can be exercised by the Court without application of any party. The observation of the learned Shariat Court in the impugned judgment to the extent that under the provision of section 540, Cr.P.C, the powers only relate to re-summoning of witness does not appear to be consistent with the

scope of the statutory provision. The re-summoning of witness is one of the vested powers whereas this provision also includes summoning of any person as witness even who is not in the list of witnesses or without summoning of the person in attendance to record his evidence if essential for just decision of the case. Therefore, the powers of the trial Court under section 540 Cr.P.C cannot be confined only to the extent of re-summoning.

6. We may also like to observe here that the Courts are not hostage of any party or procedural rules for administration of justice. According to the statutory provision of law basically it is the Court's inherent power to ascertain as to recording of which evidence appears to be essential for just decision of the case. These powers cannot be made subject to the act and conduct of the Public Prosecutor. The conduct of the Public Prosecutor may, sometimes, due to lack of experience, interest or for the interest of any party, result into defeating the cause of just decision of the case. Therefore, the Courts are not

bound to justify the act and conduct of the Public Prosecutor if it is against the interest of justice.

7. For the above stated reasons, the order passed by the trial Court is legal one which has been passed for just decision of the case, hence, rightly upheld by the Shariat Court. The appellant has failed to make out any valid ground for interference by this Court in the impugned judgment, therefore, the appeal being without any substance is hereby dismissed.

Mirpur,
23.01.2017

JUDGE

CHIEF JUSTICE

Mst. Zubaida Younas VS The State

ORDER:

The judgment has been signed. It shall be announced by the Registrar, after notifying the learned counsel for the parties.

Mirpur,
23.01.2017

CHIEF JUSTICE

JUDGE