

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

Raja Saeed Akram Khan, C.J.  
Raza Ali Khan, J.

Cri. Revision No.6 of 2019  
(PLA Filed on 8.5.2019)

Muhammad Shoaib s/o Zaman, caste Salharia  
r/o Lundi Rajvian, Tehsil and District  
Muzaffarabad.

.... APPELLANTS

**VERSUS**

1. Additional District Court of Criminal  
Jurisdiction, Muzaffarabad, Block "A"  
District Complex, Muzaffarabad.
2. State through Advocate General of Azad  
Jammu & Kashmir.

..... RESPONDENTS

(On appeal from the order of the Shariat Appellate  
Bench of the High Court dated 18.4.2019 in Cri.  
Revision No. 92 of 2019)

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FOR THE APPELLANT: Kh. Arshad Mehmood,  
Advocate.

FOR THE RESPONDENTS: Raja Ayaz Ahmed, Assistant  
Advocate-General.

*Date of hearing:* 1.7.2021.

**JUDGMENT:**

***Raza Ali Khan, J.***— The captioned revision petition has been directed against the order dated 18.4.2019 passed by the Shariat Appellate Bench of the High Court of Azad Jammu & Kashmir in criminal revision No. 92 of 2019.

2. The brief facts forming the background of the captioned revision petition are that an F.I.R. No. 330 of 2018 in the offences under sections 320, 279 and 427, APC was registered against the petitioner-accused at City Police Station Muzaffarabad on 30.7.2018. The challan was submitted before the Additional District Court of Criminal Jurisdiction, Muzaffarabad on 27.10.2018. On completion of the statement of the petitioner-accused, the prosecution was directed to produce evidence. The statement of the P.W. 2 was recorded and he was being cross-examined when the counsel for the prosecution stated that as PW.2 was the witness of recovery of both the Motorcycles, whereas, inadvertently

only one recovery memo was exhibited during examination-in-chief, therefore, the prosecution may be allowed to get exhibited the other recovery memo. The Additional District Court of Criminal Jurisdiction Muzaffarabad vide order dated 3.4.2019 allowed the prosecution to exhibit the other recovery memo vide order dated 3.4.2019, which was assailed by the petitioner-accused before the Shariat Appellate Bench of the High Court on 17.4.2019 through a revision petition, which stood dismissed by the learned Shariat Appellate Bench of the High Court through the impugned order dated 18.4.2019.

4. Arguments heard. Record perused.

5. The case before the trial Court was that after the cross-examination of PW.2, the counsel for the prosecution prayed that as P.W.2 was the witness of recovery of two Motorcycles, whereas inadvertently only one recovery memo was exhibited in examination-in-chief, therefore, the other recovery memo may be allowed to be exhibited. The learned trial Court allowed the

prosecution to exhibit the other recovery memo vide order dated 3.4.2019. On revision, the learned Shariat Appellate Bench of the High Court upheld the findings recorded by the trial Court.

6. It is settled principle of criminal jurisprudence that criminal justice system is inquisitorial in nature and not adversarial and the paramount consideration of the criminal Court is to ensure the ends of justice and for that purpose any piece of evidence which aids for the administration of justice, has to be brought on record, irrespective of the fact that it favours any party. So far, the arguments of the learned counsel for the appellant that re-examination of witness amounts to filling of lacuna, which adversely affects the rights of the accused is concerned, is not convincing one. If trial Court is satisfied that re-examination or recalling of a witness is essential for just decision of the case, a witness should be recalled or re-examined, as the case may be. So, the

contention of the learned counsel that a right in favour of the accused accrued, has no substance. Such approach may be adopted in civil cases but not in criminal justice system, where approach is always inquisitorial in nature because the prime object of the Court in such cases is to reach the truth and fair decision. Fair trial entails the interests of the accused, prosecution and also the society at large. It also includes the grant of appropriate opportunities to the party concerned and the same must be ensured which is the fundamental right of every State Subject guaranteed by the Constitution.

7. The argument of the counsel for the petitioner-accused that as per Article 133 of *Qanun-e-Shahadat Order*, re-examination can be allowed only where there is any ambiguity in examination in chief, whereas, the case in hand does not involve any such ambiguity. As per Black's Law dictionary the word 'ambiguity' is used in the following meanings: -

“1. Doubtfulness or uncertainty of meaning or intention, as in a

contractual term or statutory provision; indistinctness of signification. esp. by reason of doubleness of interpretation.”

As per Marriam Webster Dictionary, ‘ambiguity’ means “something that does not have a single clear meaning”. “Something that is ambiguous”. In our considered view a witness can be recalled or re-examined about the matter referred to in cross-examination, however, new matter in re-examination can only be introduced by the leave of the Court. Our this view finds support from the case reported as *Watir Ullah and others vs. The State* (PLD 1966 Dacca 422) wherein the identical proposition was involved. The relevant portion of which is reproduced as under:-

“...Our attention has been drawn in this connection to the provisions of section 137 and 138 of the Evidence Act and more particularly, to latter section. Section 138 provides inter alia that after examination-in-chief and cross-examination of a witness he may be re-examined by the party calling him and “the re-examination shall be directed to the explanation of matters referred to in cross-examination and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.” Thus ordinarily re-examination should relate to explanation and

clarification of the matters brought out in cross-examination but new matters can be introduced in re-examination with the leave of the Court.”

In the case in hand, the PW.2 in examination-in-chief admitted the recovery of both the motorcycles and this portion of statement supports the version of the prosecution, whereas, in the cross-examination he refused to admit the other recovery, which goes in favour of the petitioner-accused. As such the statement of PW.2 becomes ambiguous, hence, to remove this ambiguity he was rightly recalled and re-examined by the trial Court. Therefore, we are of the view that the learned trial Court has reasonably exercised its discretion while passing the order. According to law on the subject, a Court at any stage of trial or proceedings can recall and re-examine any person already examined, if evidence of such person appears necessary to the just decision of the case. The learned Shariat Appellate Bench of the High Court has also rightly upheld the order passed by the trial Court, which is unexceptional,

hence, warrants no interference by this Court. The petitioner-accused has failed to point out any illegality or legal infirmity in the impugned judgment, resultantly, the same is upheld.

The upshot of the above discussion is that finding no force in this revision petition, it is hereby dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE.

Muzaffarabad.  
6.7.2021.



Muhammad Shoaib vs. Additional District Court  
& another

**ORDER:**

Order has been signed. It shall be announced by the Registrar after notice to the learned counsel for the parties.

CHIEF JUSTICE  
Muzaffarabad  
6.7.2021

JUDGE