

JUDGMENT SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Criminal Revision No.144 of 2026

Muhammad Hanif

versus

The State and others

JUDGMENT

Date of hearing	23.06.2026
Petitioner by:	Mr. Muhammad Mansoor Alam, learned Advocate.
State by:	Mr. Shahid Aleem, learned Additional Prosecutor General.
Complainant:	In person.
<i>Amicus Curiae:</i>	Mr. Bashir Ahmad Buzdar, learned Assistant Advocate General.

Sultan Tanvir Ahmad, J:—The petitioner has challenged order dated 27.02.2026 passed by the learned trial Court, whereby, an application dated 22.10.2025 to recall a witness, namely, Muhammad Naveed Anjum-Manager Teller Service of the concerned bank (the ‘*witness*’) has been allowed.

2. Background facts, required to be noted in brief, are that respondent No. 2 filed a complaint alleging that he deposited Rs.31,46,587/- vide deposit slips No. 36186547 and 36186565, in account No. 1402-79000679-03 being maintained in Habib Bank Limited, however, it has been revealed that the petitioner-Branch Manager of Habib Bank Limited in connivance with another has

misappropriated the aforesaid amount. After enquiry the competent authority of Federal Investigation Agency (FIA) granted permission to register a case against the petitioner and at present he is facing the trial.

3. The examination-in-chief of the *witness* was recorded on 20.05.2025. Opportunity to cross-examination was granted but the defense opted not to cross-examine the witness. The prosecution submitted application dated 22.10.2025 (the ‘**application**’) for recalling the *witness* and for the purposes narrated therein, which is allowed vide order dated 27.02.2026. The operative part of this order under challenge is as follows:

“...Admittedly, the name of the above cited witness was mentioned in the list of calendar of witnesses and his examination in chief has already been recorded on 20.05.2025. It is the prime duty of the Court to arrive at the truth and to decide the case after recording of material evidence. The above named witness is the important witness of the case. Therefore, he be summoned to record his evidence. However, there is no bar on the defence for the making cross examination on the said witnesses. The witness be summoned through summons for next date of hearing.”

4. Mr. Muhammad Mansoor Alam, learned Advocate for the petitioner has relied on various judgments including *Muhammad Usman*¹, *Muhammad Ramzan*², *Dildar*,³ and *Faisal Rafique*⁴ cases. He stated that provisions of section 540 of the Code of Criminal Procedure-1898 (the “**Code**”) cannot be used for filling

¹“*Chairman, NAB versus Muhammad Usman and others*” (PLD 2018 Supreme Court 28)

²“*Muhammad Ramzan versus The State and another*” (2024 P Cr. L J1401)

³“*Dildar versus The State through Pakistan Narcotics Control Board, Quetta*” (PLD 2001 Supreme Court 384)

⁴“*Faisal Rafique versus Saeed Mumtaz Durrani and 2 others*” (2021 P Cr. L J 1558)

the gaps or lacunas left by the prosecution, which will give an illegal advantage to them and will defeat the interest of justice. He also drew distinction between ‘inherent weakness’ or ‘patent wedge’ in the prosecution case from mere omission. He added that the prosecution does not merely want to recall the *witness* rather they want to achieve a collateral purpose, which is not permitted on account of delay, utter disregard of law, neglect and as matter of fact recklessness of the prosecution, benefit of which must now go to the petitioner / accused person.

5. Mr. Shahid Aleem, learned Additional Prosecutor General has stated that no progress, after examination of the *witness*, has taken place. Thus, no prejudice to defense is likely to be caused. He stated that the *witness* during his statement produced part of record / memorandum as Exh. PS, however, the documents / receipts required to be separately exhibited escaped his sight and the learned trial Court has primarily permitted to produce the said documents by partly allowing the *application*. Respondent No. 2 / the complainant has also appeared and supported the submission of learned Additional Prosecutor General. Additionally, on the instruction of respondent No. 2 and on court’s call Mr. Muhammad Suleman Bhatti, learned advocate has also made helpful submissions.

6. We have heard the learned advocates of the rival sides. The arguments of Mr. Bashir Ahmad Buzdar remained insightful. The record is perused with their able assistance.

7. The submissions made at bar essentially require extracting provisions of section 540 of the *Code*, which reads as under:-

“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.”

The above does not only bestow authority upon the Court and to record evidence of witness in the manners provided in law rather if such evidence is essential to the just decision of the case, makes it obligatory for the Court to summon and examine or recall and re-examine any such person, unless grant of sought permission can result into miscarriage of justice. As per article 161 of Qanun-e-Shahadat Order-1984 (**QSO**) the Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or the party, about any fact relevant or irrelevant; and may order production of any document or thing, subject to limitation provided in QSO. The trial Court cannot stay unconcerned, leaving it all to advocates for prosecution or defense; if not, possibility of destroying evidence which otherwise, is essential, cannot be ruled out. The principal object is to avoid failure of justice on account of error of either party in bringing the significant evidence on record.

8. The Court cannot summarily dismiss an application for additional evidence in terms of section 540 of *Code* by merely holding that either a witness was not mentioned in the challan or that it was belated application or that it may fill up lacunas in prosecution case, unless the totality of material placed before it is considered to

find out whether examination of the said witness is essential for a just decision of the case⁵. The Court examines evidence under this section neither to help the prosecution nor to help the accused. It is done neither to fill up any gaps in the prosecution evidence nor to give it any unfair advantage against the accused. Fundamental thing to be seen is whether the Court considers this evidence necessary in the facts and circumstances of the particular case before it⁶. It is noted that just decision of the case will depend upon the circumstances of each case. It is not the requirement of law that whenever such application is made, it shall, under all granted, perversity in the system of criminal administration of justice can be permitted to be introduced to defeat the known established process of justice. The object of section 540 of the *Code* is to defend the interest of justice and not to defeat it⁷.

9. Recently, the Honourable Supreme Court in *Ameenullah* case⁸, after survey of the entire relevant precedents on the subject, has concluded that if the Court finds that the investigation is defective then it cannot just sit idle as a 'timorous soul' and it has to proceed under section 540 of the *Code*, to discern the truth and for this purpose the Court can recall or re-examine any person already examined even without a formal application from the prosecution or against whom the case is made out. Underlying object is always to reach the truth for which the Courts have been empowered. This can even be exercised when a person is not even cited in challan or

⁵“*Nawabzada Shah Zain Bugti and others versus The State*” (PLD 2013 Supreme Court 160)

⁶“*Sajid Mehmood versus The State*” (2022 SCMR 1882)

⁷“*Sh. Muhammad Amjad versus The State*” (PLD 2003 Supreme Court 704)

⁸“*Ameenullah and another versus State and another*” (PLJ 2026 SC (Cr.C.) 89)

private complaint provided no miscarriage of justice is caused. We would like to reproduce the following passage from the said judgment of the Supreme Court:-

“.....The earlier judgment rendered in the case of Shahbaz Masih was reaffirmed where this Court has held that under Section 540 of the, Cr.P.C. a Court enjoys full powers to summon and examine any person as a witness at any stage of the trial, rather it becomes imperative for the Court to summon and examine a person when evidence of the latter appears to the Court essential to ensure a just decision of the case, because the underlying object is always to reach the truth. Section 540 of the, Cr.P.C. empowers the Court to summon or examine any person as a witness at any stage of an inquiry or trial and such power is not subject to any condition and can be exercised whether or not a person is cited as a witness in the challan case or the private complaint, as the case may be. The Court must liberally use the discretionary power in a case in which the examination of a person is material and is essential to come to a proper conclusion. The most important condition for exercising the mandatory duty under Section 540 of the, Cr.P.C. is the satisfaction of the Court that the evidence of the witness is essential for a just decision of the case. The discretionary power of the Court to summon any witness may be exercised suo moto or on application. The Court is also empowered to summon a person as a witness though the latter may not be cited as a witness or who does not appear in the calendar of witnesses.”

(Underlining is added)

10. Utmost care is also expected, in above judgment, to be exercised by the Courts so that the prosecution is not afforded with an opportunity to fill in lacunas and also to shield exploitation of this power by the parties who had ample opportunities to produce evidence within their knowledge as well as to avoid putting a party at a disadvantage. The powers are to be used with caution, in accordance with the provisions of the *Code* and other principles of criminal law.

11. Mr. Bashir Ahmad Buzdar, learned *Amicus Curiae*, has submitted that apparently the objective of the prosecution is to properly exhibit the documents, already well within the knowledge of the petitioner. He stated that the documents were taken into possession by the investigation authority, which actually due to inadvertence the *witness* has not separately and properly produced or made part of the court record, therefore, the permission by the learned trial court to recall the *witness* for aforesaid purpose cannot be set aside by equating it with filling up lacuna in the prosecution case. Mr. Bashir Ahmad Buzdar has referred to *Rajendra Prasad* case⁹, wherein, while interpreting the provisions, which are *in peri materia* with the provisions under consideration, following has been observed:-

“6. It is a common experience in criminal Courts that defence counsel would raise objections whenever Courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act by saying that the Court could not ‘fill the lacuna in the prosecution case.’ A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage ‘to err is human’ is the recognition of the possibility of making mistakes to which humans are proved. A corollary of any such lapses or mistakes during the conducting of a case cannot be understood as the lacuna which a Court cannot fill up.”

(Emphases supplied)

12. The question for consideration is if error is probable and expected from even a careful person then human error or inadvertence cannot be a fair reason to straightaway deprive a party to exhibit document(s) or to

⁹“*Rajendra Prasad versus Narcotic Cell Through Its Officer-in-charge, Dehli*” (AIR 1999 Supreme Court 2292)

bring evidence on record and more importantly when the particular evidence is considered essential by the Court for the just decision of the case. The word ‘shall’ has been used by the legislature in the second part of section 540 of the *Code* making the intention clear that the Court must summon, examine or recall and re-examine a person provided evidence appears to the Court essential to the just decision of the case. It is imperative that the invocation of this provision and its application in a case can be ordered, taking into account the object and purport of the said provision, which is for achieving a just decision of the case. The Court arrives at the conclusion that evidence is necessary, not because it would be to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered¹⁰.

13. In the present case the relief sought in the *application* is of two fold. One to cross-examine the *witness*. The other is to recall the witness to produce documents. Only the latter has been allowed by the learned trial Court that too subject to right of the petitioner to cross-examine. This is the admitted position by all in attendance, which even otherwise, is clear from a perusal of the order under challenge.

14. Mr. Muhammad Mansoor Alam took us to various judgments. Much focus is made to *Faisal Rafique* case (*supra*). However, in the said case request for further cross-examination was turned down. A review of the relied cases reflects that *ratio* therein does not support the petitioner’s case rather the same advances the view point of the prosecution. Mr. Mansoor then stated that the

¹⁰ “*Rajaram Parsad Yadav vs State of Bihar & Anr*” (AIR 2013 SC (Criminal) 1746

application is instituted with delay and to prolong the trial. We have noticed that no progress in the trial, after the examination of the witness, has taken place, therefore, no prejudice will be caused.

15. We are in agreement with the learned *Amicus Curiae* who stated that the prosecution cannot be deprived to produce evidence or document, which is not coming as a surprise to the defense and left due to inadvertent oversight in management by the prosecution or human error, on the general ground of filling in lacuna, when it is not resulting into miscarriage of justice and the learned trial Court has also permitted the defense to cross-examine the *witness* who has been recalled. Consequently, the revision-petition is dismissed.

(**Muhammad Jawad Zafar**) (**Sultan Tanvir Ahmad**)
Judge **Judge**

Approved for reporting

Judge

Judge

*Iqbal**