

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

MR. JUSTICE SYED AFZAL HAIDER

CRIMINAL REVISION NO. 17/L OF 2009

Muhammad Ashraf son of Bahadar Ali
r/o Chak No.13/W.B, Tehsil and District
Vehari.

... Appellant

Versus

1. The State ... Respondents
2. Mst. Azra Bibi W/o Muhammad Ashraf, resident of Chak No.13/WB,
Tehsil and District Vehari.
3. Muhammad Ali son of Sakindar, resident of Chak No.18/WB, Tehsil
and District Vehari.
4. Bashir Ahmed son of Noor Muhammad, resident of Chak No.18/WB,
Tehsil and District Vehari.
5. Mst. Mumtaz Bibi wife of Muhammad Ali, resident of Chak
No.18/WB, Tehsil and District Vehari.

Counsel for petitioner	...	Mr. Azmatullah Chaudhry, Advocate
Counsel for respondent	...	Rai Moin-ud-Din and Mehr Liaqat Ali Sanpal. Advocates
Counsel for the State	...	Ch. Abdul Razaq, Deputy Prosecutor General
FIR No. Date & Police Station	...	690/2005, 27.11.2005 P.S. Saddar Vehari
Date of Order of trial court	...	30.05.2009
Dates of Institution	...	19.06.2009
Date of hearing	...	07.08.2009
Date of decision	...	07.08.2009

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JUDGMENT

SYED AFZAL HAIDER, Judge.- Muhammad Ashraf has, through this Revision Petition challenged order dated 30.05.2009 passed by learned Additional Sessions Judge, Vehari in Hudood Case No. 62/HC of 2006 and Hudood Trial No. 51 of 2006 whereby his application filed under section 540 of Code of Criminal Procedure was dismissed.

2. Brief facts of the matter are that the petitioner Muhammad Ashraf got registered a crime report No.690/2005 dated 27.11.2005 under section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and 380 of the Pakistan Penal Code with Police Station Saddar Vehari alleging that on 16.11.2005 when he had gone to the city, his wife Mst.Azra Bibi was taken away by accused Muhammad Ali, Bashir, Mst.Mumtaz Bibi and an unknown person in a Rickshaw on the pretext that the petitioner was admitted in Vehari hospital. On search it was found that an amount of Rs.1,80,000/- the sale proceeds of the plot of land of petitioner was missing. The petitioner moved an application for transfer of investigation which was entrusted to Mr.Muhammad Rab Nawaz Tariq, Deputy Superintendent of Police Investigation, Vehari who found the

accused guilty but his name was not placed as a witness in the calender of witnesses in the report under section 173 of the Code of Criminal Procedure. Feeling aggrieved, the petitioner moved an application in the Court of learned Additional Sessions Judge, Vehari seeking inclusion of the name of said Deputy Superintendent of Police as a witness but the learned Additional Sessions Judge, Vehari dismissed the application vide order dated 30.05.2009 impugned herein.

3. The object of section 540 of the Code of Criminal Procedure is to enable the Court to arrive at the truth. Technicalities should not stand in the way of a Judge because the basic duty of the Court is to ascertain real facts and for this purpose evidence through witnesses is the time honoured technique in the administration of justice.

4. Clause 2 of section 265-F of the Code of Criminal Procedure visualizes that the Court shall summon a person likely to be acquainted with the facts of the case and who is able to give evidence for the prosecution. Of course care in this respect has to be taken that there is no vexatious delay or that the application has not been moved to defeat the ends of justice or it does not amount of abuse of the process of Court.

5. In this case the police officer may be summoned as prayed for by the petitioner and the question whether he was competent to investigate or not should be left for the other party to establish through cross-examination whether he had the warrant to undertake investigation. The trial Court can then consider the matter if the issue is raised before it. The name of the witness, who is sought to be summoned, appears in the report submitted by the police under section 173 of the Code of Criminal Procedure. It is also worth noticing that the party did not object when Rab Nawaz Tariq, Deputy Superintendent of Police was conducting the investigation. The parties appeared before him and no objection was raised before the Investigating Officer regarding his authority to make a probe into the crime report.

6. Section 265-F is part of Chapter XXII-A. This Chapter was incorporated by the Law Reforms Ordinance, 1972. Section 265-F was added notwithstanding the already existing section 540 in the Code of Criminal Procedure. The purpose of adding this chapter in the Code was to ensure that a fair trial is conducted. In order to achieve this purpose equal opportunities have been provided both for the accused as well as the

prosecution party to summon witnesses. It has therefore been made certain that accused alone does not enjoy protection and rights. The prosecution or the complainant, as the case may be, should also be provided opportunity to adduce evidence in support of his claim because he is the person who sets the machinery of law into motion. It is he who knocks at the door of justice. Section 265-F is quite comprehensive. The seventh clause of section 265-F, the accused has also been granted the right to apply for summoning of witnesses or even production of documents. It is, therefore, imperative that a balance is struck between the parties. Summoning of a witness should not stand in the way of administration of justice.

7. In this view of the matter the Revision Petition is accepted and the case is remanded to the learned trial court. The party will appear there. The witness shall be summoned and the case will proceed and decided in accordance with law.


JUSTICE SYED AFZAL HAIDER

Lahore the 07th August, 2009.

Amjad /*

Fit for reporting


Justice Syed Afzal Haider