


JUDGMENT

Justice Agha Rafiq Ahmed Khan, Chief Justice.— This Revision Petition has been filed Under Article 203-DD of the Constitution of Islamic Republic of Pakistan 1973, against the order dated 20.04.2009 passed by the learned Additional Sessions Judge Chiniot, whereby he has refused to summon DSP Saeed Ahmed, the last Investigating Officer of the case, as court witness.

2. The brief facts are that a case was registered under section 12 of the Offence of Zina (Enforcement of Hūdood) Ordinance, 1979 read with section 377 of the Pakistan Penal Code on 7.5.2005 at Police Station Barrana District Jhang, on the basis of complaint lodged by complainant Muhammad Khan alleging that the petitioner/accused who was a school teacher, committed sodomy with his son Shaukat aged about 12 years, a student of 5th class. It is said that the petitioner absconded and did not join the investigation and the challan was submitted in court under section 512 of the Code of Criminal Procedure. Thereafter the petitioner got bail before arrest and further

report under section 173 of the Code of Criminal Procedure was submitted on 14.12.2005, showing the name of the petitioner in column No.2, as the second Investigating Officer DSP Saeed Ahmed found him not guilty.

3. During trial, the petitioner/accused moved an application under section 540 of the Code of Criminal Procedure for calling the said DSP as court witness. The learned trial judge, vide his order dated 20.04.2009, dismissed the same with following observations:-



“Saeed Ahmed DSP is neither a witness in the calendar given in report u/s 173 Cr.P.C nor his name has been mentioned in the list of witnesses annexed with private complaint even according to requirement u/s 540 Cr.P.C the present of such witness is not necessary for just decision of case, therefore, the petition filed by the petitioner/accused Sher Muhammad is hereby dismissed, the remaining prosecution witnesses Allah Ditt S.I P.S. Langrana be summoned through NBW of arrest. Proceeding is adjourned on 25.4.2009”

4. Mr.Khalid Mian, Advocate, learned counsel for the petitioner/accused has argued that the DSP is a material witness who had conducted re-investigation and found the petitioner not guilty, therefore, his evidence is necessary for the purpose of just decision of

the case. He has relied on (i) 2007 P.Cr.L.J 905 Lahore (Muhammad Ashraf---Applicant...Vs...The State & 4 others, Respondents), (ii) PLD 1979 Lahore 691 (Mahboob Khan---Petitioner...Vs...The State, Respondent) and (iii) P L D 1997 Supreme Court 408 (State through A.G, Sindh---Appellant... Vs...Bashir and others, Respondents).

5. Rai Muhammad Zaffar Bhatti, Advocate, learned counsel for respondent No.3/complainant Muhammad Khan, has submitted that the DSP has neither recorded evidence of any fresh witnesses nor his name is mentioned in the calendar of witnesses. The petitioner can call him as his defence witness if so advised. According to him, the learned trial judge had passed a legal and proper order and there is no ground to question the same in the revision petition. He relied on (i) 1992 S C M R 2055 (Farman Ali & two others---appellants...Vs...The State---Respondent), (ii) 1998 P.Cr.L.J 2059 Lahore (Haji Rasheed Ahmad and 2 others---Petitioners...Vs...The State---Respondent) and (iii) 1995 S C M R (Haji Muhammad Abdullah---Petitioner...Vs...The State, Respondent). Mr.Imran Sherazi, the

learned Deputy Prosecutor General Punjab for the State has supported the arguments of respondent's counsel.

6. I have considered the arguments advanced by the learned counsel for the parties and have gone through the above case law.

7. The allegation against the petitioner/accused is that he was a school teacher and the complainant's son namely Shaukat aged about 12 years was student of his class. On 29.4.2005 he took the petitioner to his 'Dhari' (دھری) and committed sodomy with him, which was seen by the complainant and witnesses. After registration of the case


the accused absconded. The Investigating Officer of the case recorded statements of the eye witnesses and referred the victim for medical examination. After completing the investigation he submitted the challan in court under section 512 of the Code of Criminal Procedure showing the petitioner as absconder. The petitioner then obtained bail before arrest from Session Court and during that period Saeed Ahmad DSP re-investigated the matter and second challan was submitted showing the name of petitioner/accused in column No.2 of the

challan. DSP Saeed Ahmed was never shown as witness in the challan. All the other witnesses were the same who were in the previous challan.

8. No doubt, under section 540 of the Code of Criminal Procedure, the court can call any person at any stage as court witness, but in the present case the trial judge had declined to summon the DSP as in its view he was not necessary for just decision of the case. The DSP, who is said to have re-investigated the case, is one of the Investigating Officer and not himself a witness in the case. He has no personal knowledge about the facts of the case. The original Investigating Officer had examined the eye witnesses, visited the place of occurrence, sent the victim for medical examination and had completed the investigation, therefore, summoning the DSP Saeed Ahmed, whose name is not even shown as witness in the calendar, is not necessary for just decision of the case.

9. In view of the above position, I am fully satisfied that the learned trial court, under the circumstances, has rightly dismissed the

application of the petitioner for summoning DSP Saeed Ahmed as court witness. This revision petition, therefore, having no force, is accordingly dismissed. The learned trial court is directed to complete the trial of the case within three months.

 *Saeed*
04/10/2010

JUSTICE AGHA RAEQ AHMED KHAN
Chief Justice

Announced on 04-10-2010.
At Lahore.
F.Taj/*



Approved for reporting.