IN THE FEDERAL SHARIAT COURT

(Appellate Revisional Jurisdiction)

Present.

JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE

Criminal Revision No.34/L of 2009.

Abdullah son of Muhammad Din
R/o Chak No.296-G.B, Tehsil Gojra.
District Toba Tek Sing.....   Petitioner

Versus

1. The State

2 The Addl: Sessions Judge,
   Lahore.   Respondents.

Counsel for the petitioner	....	Mr.M.Amir Latif Sehr Bhutta Advocate.
Counsel for the State	....	Rana Muhammad Iqbal D.P.P, Punjab.
Case FIR No, date & Police Station.	....	No.449, dated 21.05.2004, P.S Shafiq Abad, District Lahore.
Date of order of Trial Court	....	19.10.2009.
Date of institution..	....	19.12.2009.
Date of hearing.	....	15.10.2010. At Lahore.
Date of decision	....	27-10-2010

-,-,-,-,-,-,-,-,-,-,-,-,-

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 19.10..2009 passed by the learned Additional Sessions

Judge, Lahore, respondent No.2, whereby he dismissed application

under section 540 of the Code of Criminal Procedure moved by

petitioner Abdullah for summoning Sub-Inspector Abdullah Ali

Yousaf, DSP Asmatullah Khan Niazi, S.P Waseem Ahmad Khan

and Sub-Inspector Akram Bajwa as court witnesses.

2.   The brief facts leading to this revision petition are that a case

was registered at Police Station Shafiq Abad, Lahore under section

10/16 of the Offence of Zina (Enforcement of Hudood) Ordinance

IIV of 1979 read with sections 337-J/ 379 of the Pakistan Penal

Code on the basis of report lodged by complainant Mst.Rukhsana

against the present petitioner. After completing the investigation

the case was challaned and the same is pending trial before the

learned Additional Sessions Judge, Lahore,

3.   Learned counsel for the petitioner moved an application

under section 540 of the Code of Criminal Procedure for

summoning the above named police officers as court witnesses, as

according to him, the same were material witnesses. This

application was dismissed on merits by the learned trial judge on

19.10.2009, therefore, the present revision petition has been filed.

4.   Mr.M.Amir Latif Sehr Bhutta, Advocate for the petitioner

argued that all these witnesses are material for just decision of the

case and that Sub-Inspector Abdullah Ali Yousaf of Police Station

Shafiq Abad, Lahore, had conducted the investigation and was

present in the court when he was given up by the State counsel.

According to him, the other police officers were also linked with

the investigation, therefore, they should have also be summoned by

the trial court as court witnesses. He relied on (i) 1988 M L D page

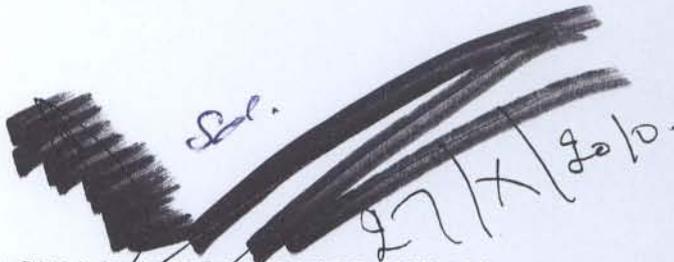2435   (Lahore)   titled   Bashir   Ahmad..Petitioner..Vs..The

State..Respondent and (ii) 2004 P.Cr.L.J page 385 (Lahore) titled

Muhammad Ashraf..Petitioner…Vs…The State Respondent.

5.   I have heard Mr.M.Amir Latif Sehr Bhutta, Advocate for

petitioner and Rana Muhammad Iqbal, DPP for the State and have

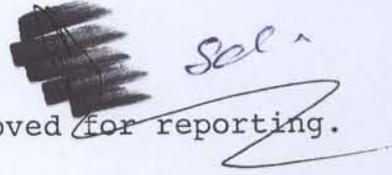also gone through the entire record available before me.

6.   As far as Sub-Inspector Abdullah Ali Yousaf is concerned,

he had admittedly conducted some investigation and was shown as

prosecution witness. He was also present for the purpose of

recording his evidence but he was given up by the State counsel,

therefore, in my humble view his evidence is material for the just

decision of the case. The trial court should have called him as court

witness. As far as the other three witnesses are concerned, there is

nothing on record to suggest that they had also conducted any

investigation and had recorded the statement of any witnesses, etc,

therefore, the trial court had rightly declined the request of the

petitioner to call them as court witnesses. The petitioner may call

them as his witnesses in his defence, if so advised, at proper stage.

7.   With the above observations, the revision petition is partly

allowed to the extent of calling Sub-Inspector Abdullah Ali Yousaf

as court witness.

Sd.

27/X/2010.

JUSTICE AGHA RAFIQ AHMED KHAN
Chief Justice

Announced on _27/10/2010_
at Islamabad
F.Taj/*

Sd.

Approved for reporting.