

IN THE FEDERAL SHARIAT COURT
(ORIGINAL JURISDICTION)

PRESENT

JUSTICE IQBAL HAMEEDUR RAHMAN, CHIEF JUSTICE
JUSTICE KHADIM HUSSAIN M. SHAIKH, JUDGE
JUSTICE DR. SYED MUHAMMAD ANWER, JUDGE

SHARIAT MISC. APP.NO.NO.01-LOF2023

1. Ch. Nadir Khan, Managing Director/Chief Executive Warrantor,
M/s PharmaWise Labs (Pvt) Limited 25-M.Q.A. Industrial Estate, Lahore.
2. Mst. Saba Adnan, Production Incharge,
M/s Pharma Wise Labs (Pvt) Limited 25-M.Q.A. Industrial Estate Lahore.

Petitioners

VERSUS

1. The State, (Secretary Primary & Secondary Healthcare Department
Lahore).
2. Chairman Drug Court, Gujarnwala.
3. Mr. Imran Khalid, Provincial Drug Inspector, Tehsil Wazirabad District,
Gujaranwala.
4. Mr. AbidSaeedbaig, Secretary (Rtrd), Provincial Quality Control Board,
Punjab

Respondents

Counsel for Petitioners	:	Haji Mushtaq Ahmed Attari, Qadri, Rizvi, Ziyai, Advocate
Date of Institution	:	07.03.2023
Date of Hearing	:	23.01.2024
Date of Judgment	:	24.01.2024

JUDGMENT

IQBAL HAMEEDUR RAHMAN-CJ.The Petitioners seek acceptance of instant Shariat Miscellaneous Application with prayer to allow them to make submissions for hearing of three Shariat Miscellaneous Applications filed before this Court on 09.01.2023. The Petitioners in the said three miscellaneous applications dated 09.01.2023 have prayed for setting-aside the impugned orders dated 12.12.2022 passed in Cr. Revision

No.78614/2022, 78872/2022 and 78880/2022 by the Division Bench of learned Lahore High Court, Lahore and order dated 29.03.2022 passed by the learned Chairman Drug Court Gujranwala with direction to learned Chairman Drug Court to summon Mr. AbidSaeedBaig as prosecution witness as his name already existed in the calendar of witnesses, in view of the judgment of this Court passed in Criminal Appeal No. 17/L of 2005 in case titled MUHAMMAD WASEEM alias KALU vs. THE STATE, which was decided on 19th day of November, 2005 reported as 2006 PCr.LJ 364, wherein this Court while deciding the aforesaid regular criminal appeal against conviction, has held as under:-

“13. Under the Islamic system of dispensation of justice, the Public Prosecutor has no right to withhold any prosecution evidence from the Court. He is rather enjoined by our faith to produce the entire evidence available with him before the Court to enable it to assess/adjudge its worth and then reach the conclusion as to whether or not the prosecution had succeeded in proving its case or not against an accused.

14. In fact, the present case is not solitary one in which this situation has arisen. The rule laid down by Honourable Federal Court is not being adhered to. Even the Qura'nic Injunctions (supra) are not being followed. On the contrary, general practice has crept in the trial of criminal cases throughout the country to the effect that the prosecution either gives up some cited witnesses by alleging that they had been "won-over" or by contending that they were unnecessary and as such not being examined.

This undesirable rather illegal practice can be effectively dealt with by the trial Court by resort to its vast/unbridled powers under second part of section 540, Cr.P.C. by summoning cited/uncited witnesses whose testimony is considered necessary for just decision of the case. It goes without saying that ascertainment of truth is the primary duty of the Court and it cannot absolve itself from its due performance merely on account of technicalities. The accused cannot be left at the mercy of the prosecutor to be condemned to jail to suffer imprisonment on the basis of evidence led against him during the trial, at his sweet will.”

2. Apparently, the aforesaid three miscellaneous applications were not in conformity with the Article 203D of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, the petitioners were

informed accordingly through letter dated 28th February, 2023.

3. We have heard the learned counsel for the petitioners. He has argued his case at a considerable length, but he has not been able to establish as to how the aforesaid miscellaneous applications are maintainable in terms of Article 203D of the Constitution of the Islamic Republic of Pakistan, 1973, which for the sake of convenience is quoted below:-

203D. Powers, jurisdiction and functions of the Court- (1) The Court may, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question, whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.

In the backdrop of above referred Article, we find no law or any provision of law impugned by the petitioners to be repugnant on the touchstone of Holy Quran and Sunnah of the Holy Prophet (ﷺ).

4. Patently, the prayers of the petitioners for setting-aside impugned orders dated 12.12.2022 passed in Cr. Revision No.78614/2022, 78872/2022 and 78880/2022 by the Division Bench of learned Lahore High Court, Lahore and order dated 29.03.2022 passed by the learned Chairman Drug Court Gujranwala, being relief in personam, is beyond the jurisdiction conferred upon this Court under the Article 203 D of the Constitution of the Islamic Republic of Pakistan, 1973, which cannot be granted. In view of the above the aforesaid three Shariat Miscellaneous Applications dated 09.01.2023 being misconceived and not maintainable, are hereby dismissed *in limine*. The Shariat Miscellaneous

Application No.01-L of 2023, having served its purpose is disposed of.
These are the reasons of our short order dated 23.01.2024.

5. The office is directed to allot number to all the aforesaid Shariat
Miscellaneous Applications dated 09.01.2023 accordingly.

IQBAL HAMEEDUR RAHMAN
CHIEF JUSTICE

KHADIM HUSSAIN M. SHAIKH
JUDGE

DR. SYED MUHAMMAD ANWER
JUDGE

Dated:24.01.2024
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APPROVED FOR REPORTING.