

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Hashim Khan Kakar
Mr. Justice Salahuddin Panhwar

Criminal Petition for Leave to Appeal No. 251-P of 2026

(Against the judgment dated 16.07.2026 passed by the Peshawar High Court, Peshawar in Cr.Misc. (Q) No. 23-P/2026)

The State through Special Prosecutor, Anti-Narcotics Force (ANF)

... Petitioner

Versus

Kamil Shah & another

... Respondents

For the Petitioner: Syed Bilal Jan, Spl. PG, ANF.

For the Respondents: N.R

Assistance: Mr. Muhammad Subhan Malik, JLC, SCP.

Date of Hearing: 23.10.2026

JUDGMENT

Salahuddin Panhwar, J. - Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner/State (Anti-Narcotics Force) seeks leave to appeal against the judgment dated 16.07.2026 passed by a learned Single Bench of the Peshawar High Court, Peshawar in Criminal Miscellaneous (Q) No. 23-P of 2026. By virtue of the impugned judgment, the learned High Court accepted the petition under Section 561-A of the Code of Criminal Procedure, 1898 (Cr.P.C.) filed by the respondents/accused, set aside the order dated 20.06.2026 passed by the learned Judge, Special Court (CNS-II), Peshawar, and dismissed the prosecution's application under Section 540 Cr.P.C. seeking the recall and re-examination of prosecution witness Muhammad Ashraf (PW-03).

2. The relevant facts giving rise to the instant petition are that respondents Kamil Shah and another are facing trial before the learned

Judge, Special Court (CNS-II), Peshawar in case FIR No. 17 dated 08.03.2025, registered under Sections 9(1), 6(f), and 15 of the Control of Narcotic Substances Act, 1997 (CNSA) at Police Station ANF, Peshawar. In support of its case, the prosecution produced Muhammad Ashraf as PW-03. His examination-in-chief was duly conducted and recorded on 04.09.2025, whereas his cross-examination was deferred. After approximately nine months, the witness reappeared in the witness-box on 10.06.2026 and was subjected to an extensive, lengthy cross-examination by the defence counsel.

3. Upon the conclusion of the cross-examination on 10.06.2026, the learned Special Prosecutor neither sought leave of the trial Court to re-examine the witness under Article 133 of the Qanun-e-Shahadat Order, 1984 (QSO) nor made any request to retain the witness in attendance for that purpose. Instead, on the very same day, a distinct written application under Section 540 Cr.P.C. was submitted by the prosecution praying that PW-03 be recalled for re-examination. The learned trial Court, vide its order dated 20.06.2026, allowed the application without assigning cogent reasons or articulating why the proposed re-examination was essential for the just decision of the case. Aggrieved thereby, the respondents invoked the inherent jurisdiction of the High Court under Section 561-A Cr.P.C., which culminated in the impugned judgment dated 16.07.2026, setting aside the trial Court's order.

4. Learned Special Prosecutor ANF vehemently contended that the High Court erred in interfering with an interlocutory discretionary order passed by the trial Court under Section 540 Cr.P.C., which confers plenary and unfettered powers on a criminal Court to summon or recall any witness at any stage of the proceedings; that the re-examination of PW-03 was necessary to clarify ambiguities arising out of the prolonged cross-examination and to bring the complete truth before the trial Court.

5. Arguments heard and record perused. The principal question requiring determination is whether a prosecution witness, whose examination-in-chief and cross-examination have been completed, may subsequently be recalled in re-examination through an application under Section 540 of the Code of Criminal Procedure, 1898, and whether such is a proper course? The controversy presents an occasion to examine an important, though frequently neglected, feature of our adversarial system of criminal justice: the scope and purpose of re-examination. While considerable judicial attention is ordinarily devoted to examination-in-chief and cross-examination, the third stage of witness examination is often treated as a dispensable formality. Such an approach overlooks its statutory purpose and its contribution to the fair evaluation of oral testimony. Ambiguities, incomplete answers and apparent inconsistencies are left unexplained, so that the Court is compelled to assess testimony in a curtailed form. While the accused is the favorite child of law, the benefit of doubt cannot be extended on the basis of ambiguities or incomplete answers that arise solely from the failure to utilize re-examination, such an approach runs counter to the object of criminal law.

6. It necessitates us to shed light on the object of re-examination. Examination-in-chief is the examination of a witness by the party who calls him, in order to establish the facts of that party's case. On the other hand, subject of cross-examination revolves around the adversarial scrutiny as well as examination for testing the accuracy, consistency, credibility and reliability of the witness. It is not limited to facts deposed in examination-in-chief but may include any facts relevant to the case. Re-examination provides the party who initially called a witness for examination-in-chief the chance to clarify any matter which arose during cross-examination that may be open to misunderstanding, ambiguity, or

incompleteness. Since the questions in cross-examination are asked to elicit brief answers to complex factual propositions, which creates difficulty in conveying the full meaning of the question, re-examination affords a legitimate chance to put such an answer in its correct context to allow the Court to evaluate the testimony of the witness as whole. Examination-in-chief, cross-examination and re-examination together form one statement for the purpose of eliciting the truth. The object of re-examination is not to undo cross-examination, erase admissions, or introduce new facts, but to ensure the Court understands the testimony fairly as observed in ***Sami and others v. Mst. Firdos Begum*** (2002 CLC 1989).

7. Coming to the scope of provisions dealing with it, first of all, Section 540 Cr.P.C exists in the Code, which empowers the Court to summon a person in the following words:

540. Power to summon material witness or examine person 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.**

Re-examination under Section 540 Cr.P.C. operates in a way that its first part confers discretion upon the Court to summon, examine, recall or re-examine a person at any stage of the proceedings. Its second part imposes an obligation where the evidence appears essential to the just decision of the case. This Court has recently laid down clear guidelines in reported judgment of ***Shahzad Ahmad vs the State*** (2026 SCP 280) that a criminal Court must neither remain a passive observer

nor become a substitute for the prosecution. This Court was of the view that the Court shall adjudicate impartially upon the charge brought by the State, while using the powers conferred by law where necessary to ensure that the decision is reached upon the material essential for justice. It is pertinent to reiterate that the ordinary structure of a criminal trial in Pakistan is adversarial, although Sections 94 and 540 Cr.P.C. and Article 161 of the Qanun-e-Shahadat Order confer limited inquisitorial powers. Section 540 must not be invoked merely to strengthen a party's case or cure an inherent evidentiary deficiency, rather re-examination shall only be permitted by the Court upon satisfaction that such re-examination is "essential to the just decision of the case". Relevance, convenience, or the advantage to the party of such proposed evidence is not the consideration under this provision. The Court shall identify why the existing record is inadequate for a just decision and how the proposed examination would address that inadequacy. Therefore, if the party fails to satisfy the Court, that re-examination is essential for the just decision of the case, such request of re-examination may be lawfully turned down by the Court.

8. Moving forward, Article 132 of the Qanun-e-Shahadat Order (QSO), 1984 recognizes three types of examination of a witness, whereas Article 133 prescribes their order and scope in the following words:

133. Order of examinations.

*(1) Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then **(if the party calling him so desires)** re-examined.*

(2) The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined

to the facts to which the witness testified on his examination-in-chief.

(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine that matter.

Under Article 133 of QSO, witnesses shall be first examined-in-chief, then, if desired by adverse party, be cross-examined, then if the party who called the witness desires to re-examine such witness, he may do so. This provision does not extend discretion to the trial Court, rather it is the discretion of the party to re-examine the witness called by it. However, it limits the re-examination only to the matters referred to in cross-examination. If the party desires to introduce a new matter in re-examination, the Court is again empowered with the discretion to decide it in view of principles of fair trial, and if re-examination regarding a new matter is permitted, the adverse party shall be at discretion to cross-examine such re-examined witness.

9. The principal distinction between re-examination under Article 133 QSO, and Section 540 Cr.P.C is that, the re-examination under Article 133 QSO can be regarded as the right of the party to re-examine the witness it called but it must only restrict the re-examination to the matters referred in cross-examination, unless permitted by the Court to introduce a new matter. However, the re-examination under Section 540 Cr.P.C cannot be agitated as a matter of right by the party who called it, the Court may refuse to allow it if it is satisfied that such re-examination is not needed for the “just decision of the case”.

10. The proper course ought to be followed by the petitioner was to request re-examination of a witness, either orally or through an application under Article 133(1) QSO as a matter of right. Although formal application is not mandatory, when the re-examination remains in regards to the scope of Article 133 QSO. Where something new is desired to be introduced, a permission of the Court must be sought under Article 133(3) QSO; in such eventuality the adverse party acquires the corresponding right of further cross-examination upon those matters.

11. Additionally, this Court exercises its prerogative to address a common but erroneous impression that re-examination must be confined to the clarification of ambiguities alone. The Supreme Court of India, while interpreting Section 138 of the Evidence Act, which is *pari materia* to our Article 133 QSO, observed in **Rammi alias Rameshwar v. State of M.P.** ((1999) 8 SCC 649), while correcting this misconception in terms that repay careful attention:

“There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of

course to the control of the Court... The Court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination. Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the Court."

Therefore, re-examination under Article 133 is not strictly restricted to curing ambiguities, but extends to seeking an explanation or further elucidation on any matter touched upon during cross-examination. While the counsel calling the witness holds the right to formulate questions for this purpose under the Court's supervision, entirely new matters may also be introduced, provided the explicit leave of the Court is first obtained.

12. Therefore, the relationship between Article 133 and Section 540 must be understood harmoniously. Article 133 regulates the ordinary course of examining a witness and confers upon the party calling the witness the right (and, in practical terms, the duty) to re-examine for the purpose of explanation. Section 540 empowers the Court to re-examine only when required for the just decision of the case. The latter does not render the former redundant; nor does omission to exercise re-examination under Article 133 extinguish the Court's jurisdiction under Section 540. A distinction must therefore be maintained between the loss of an ordinary procedural opportunity and the continuing existence of an exceptional judicial power. A party who elects not to re-examine a witness cannot subsequently claim recall as a matter of right. Nevertheless, if the Court is satisfied that further evidence is essential to a just decision, the Court may entertain an application under Section 540 or recall the witness itself, in exercise of its power under the same

provision, subject to the safeguards of fairness and due process under Article 10A of the Constitution.

13. In the present case, PW-03 Muhammad Ashraf was examined-in-chief on 04.09.2025 and cross-examined on 10.06.2026. The petitioner did not seek the proper course i.e the re-examination under Article 133 upon completion of cross-examination, rather an application was moved under Section 540 Cr.P.C. invoking the discretionary power of the Court seeking recall of the witness. The learned trial Court allowed the application. However, the setting aside of such order of trial Court by the High Court is justified, since no satisfactory material is available on record to convince that the re-examination was essential for the just decision of the case.

14. Before parting with this judgment, it is appropriate to reiterate, for the guidance of trial Courts and prosecuting officers, that Examination-in-chief, cross-examination and re-examination under Articles 132 and 133 of the Qanun-e-Shahadat Order, 1984 are complementary components of that process. The existing underuse of these provisions seriously concerns us and we are of the view that each provision deserves its proper place in the administration of criminal justice. Where cross-examination produces an ambiguity, an incomplete answer or an apparent inconsistency capable of explanation, the proper course is to address it through Article 133 before the witness is discharged. A party must gather the answers falling from the witness during cross-examination and formulate the necessary questions for re-examination. If such ambiguity or incompleteness remains unaddressed, it gives birth to artificial doubts, and can thereby benefit the actual offender. At the same time, Section 540 Cr.P.C. must remain a judicial mechanism for securing a just decision and must not be converted into

a routine substitute for the proper conduct of re-examination under Article 133.

15. For the safe administration of justice, trial Courts and prosecuting officers are directed to accord due attention to the scheme of Articles 132 and 133 of the Qanun-e-Shahadat Order, 1984. Re-examination should be properly utilized to place testimony in its complete and fair context. Resort to Section 540 should be confined to cases where the Court is independently satisfied that the evidence is essential to a just decision, after ensuring that the safeguards of fairness and due process are observed.

16. A copy of this judgment shall be transmitted to the Registrars of all High Courts for circulation among all Judges of the District Judiciary and to the Prosecutor Generals of all Provinces and Islamabad Capital Territory for circulation among all Prosecutors.

17. For the reasons recorded above, we find no merit in this petition. Leave to appeal is accordingly refused, and the petition stands dismissed.

18. These are the reasons for our short order of even date, which is reproduced as under:

“For the reasons to be recorded later on, this petition is dismissed.”

Judge

Judge

Peshawar
Muhammad Subhan Malik /-
23.10.2026

Approved For Reporting