

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Muhammad Hashim Khan Kakar
Mr. Justice Salahuddin Panhwar
Mr. Justice Ishtiaq Ibrahim

Criminal Petition No.569-L of 2026

*(Against the order dated 15.04.2026 passed by the Lahore High Court,
Lahore in Criminal Revision No. 71628 of 2025)*

Shahzad Ahmad ...Petitioner

Versus

The State ...Respondent

For the Petitioner: Mr. Arshad Mehmood Sheikh, ASC

For the State: Mr. Hamayun Aslam, DPG, Punjab

Assistance: Mr. Muhammad Subhan Malik, JLC, SCP

Date of Hearing: 12.08.2026

JUDGMENT

Salahuddin Panhwar, J.— The instant petition for leave to appeal is directed against the order of the Lahore High Court, Lahore dated 15.04.2026, passed in Criminal Revision No. 71628 of 2025, whereby the revision petition preferred by the petitioner against the order dated 29.10.2025 of the learned Additional Sessions Judge, Pattoki, was dismissed. The controversy arose when two persons, namely Muhammad Imran and Yasmeen Bibi, were summoned during trial under Section 540 of the Code of Criminal Procedure, 1898 (“Cr.P.C.”), and the petitioner thereafter sought supply of the material relating to them and recommencement of the trial. The immediate dispute concerns Sections 265-C and 540 Cr.P.C. It also raises a question of some importance regarding the role of a criminal Court in an adversarial process, and the relationship between Sections 94 and 540 Cr.P.C., Article 161 of the Qanun-e-Shahadat Order, 1984 (“QSO”), and the constitutional guarantee of a fair trial.

2. The prosecution case, as set out in FIR No. 794 of 2024 registered on 22.05.2024 at Police Station Sarai Mughal, District Kasur, is for offences under Sections 302, 324, 337-F(v), 201 and 34 of the Pakistan

Penal Code. The petitioner was arrested on 04.06.2024. Upon submission of the challan, copies contemplated by Section 265-C Cr.P.C. were supplied to him on 07.10.2024 and charge was framed on 21.10.2024. Subsequently, co-accused Waseem Abbas was arrested on 02.01.2025; a supplementary challan was submitted, the requisite copies were supplied, and the charge was amended on 01.03.2025. The prosecution thereafter examined Zahoor Ahmad, Manzoor Ahmad and Mian Khan as PW-1, PW-2 and PW-3 respectively.

3. On 13.09.2025, the prosecution moved an application under Section 540 Cr.P.C. for summoning Muhammad Imran and Yasmeen Bibi. The trial Court allowed the application on 20.09.2025. The petitioner thereafter sought supply of the statements and other material pertaining to the newly summoned witnesses and prayed that the trial be recommenced after such supply. The trial Court dismissed that application on 29.10.2025. The petitioner invoked the revisional jurisdiction of the High Court, which maintained the order.

4. Learned counsel for the petitioner contends that Muhammad Imran was neither included in the calendar of witnesses nor was any statement of his under Section 161 Cr.P.C. available on the record; and that Yasmeen Bibi was neither named in the FIR nor included in the original list of witnesses and, according to the petitioner, did not figure in the initial investigative material. It is argued that their subsequent introduction during trial deprived the petitioner of the protection afforded by Section 265-C Cr.P.C. and impaired his right to a fair trial under Article 10-A of the Constitution. On that premise, a *de novo* or recommenced trial is sought.

5. Learned Deputy Prosecutor General, Punjab, on the other hand, submits that the petitioner had already been supplied the material contemplated by Section 265-C Cr.P.C. at the commencement of the trial; that Section 540 confers an independent power upon the Court to summon a material witness at any stage; that absence of a prior statement under Section 161 Cr.P.C. does not create an absolute bar against examination of such a person; and that no irremediable prejudice has been demonstrated. It is further pointed out that the High Court noticed subsequent supply, on 26.03.2026, of the available material relating to the witnesses and found no legal basis for setting the entire trial at naught.

6. Two questions arise for determination. First, whether the adversarial character of a criminal trial disables the Court from taking an active role in obtaining evidence necessary for a just decision. Second, how the power under Section 540 operates alongside the disclosure requirements of Section 265-C when a witness is summoned during trial, particularly where no statement under Section 161 Cr.P.C. had been recorded, and whether such summoning necessarily requires a *de novo* trial.

7. The ordinary structure of a criminal trial in Pakistan is adversarial. Article 129(g) of the Qanun-e-Shahadat Order, 1984 is one indicator of that evidentiary structure: evidence is principally brought before the Court by the contesting parties; the Judge evaluates it; and the law permits legally recognised presumptions where a party fails to produce evidence which could have been produced. In our criminal justice system the prosecution brings the charge and bears throughout the legal burden of proving it according to law. The accused is entitled to know and meet the case against him. He has the right to cross-examine the witnesses produced by the prosecution and the right to lead defence evidence. As the favourite child of the law, he remains protected by the presumption of innocence. The description of the process as adversarial does not, however, displace any power which the legislature has expressly vested in the Court for discovery of relevant facts and for a just decision.

8. Section 94 Cr.P.C. enables the Court, whenever it considers the production of a document or other thing necessary or desirable for the purposes of an inquiry or trial, to compel its production. Section 540 authorises the Court, at any stage, to summon any person as a witness, examine a person present, or recall and re-examine a person already examined; and its latter part commands the Court to do so where the evidence appears essential to the just decision of the case. Article 161 of the QSO separately empowers the Judge, in order to discover or obtain proper proof of relevant facts, to ask questions and to order production of documents or things, subject to the limitations contained in its provisos. These provisions are not decorative. They not only empower but also impose a duty upon the Judge to seek the truth.

9. Section 540 itself contains the controlling distinction. Its first part is permissive and discretionary; its second part is mandatory. The words “may” and “shall” are not interchangeable. The legislature

differentiated the two parts by using different expressions so as to produce different effects. The discretion under the first part must be exercised judicially. The duty under the second arises only after the Court, upon application of a judicial mind, reaches the conclusion that the proposed evidence is essential to the just decision of the case. The expressions “essential” and “just decision” are themselves safeguards against indiscriminate use of the power.

10. This construction was authoritatively adopted in *Muhammad Azam v. Muhammad Iqbal and others* (**PLD 1984 SC 95**). The Court held that once evidence appears essential for a just decision, the mandatory part of Section 540 is attracted and technical objections about filling omissions or gaps cannot override the will of the legislature. The judgment also treated the power under Section 540 and the corresponding judicial power under the law of evidence as complementary, emphasising that procedural law exists to aid justice rather than to trap parties through technicalities. The same principle was followed in *The State v. Muhammad Yaqoob and others* (**2001 SCMR 308**), where this Court distinguished the discretionary and obligatory limbs of Section 540 and recognised that additional evidence is not necessarily dependent upon an application by either side. Carelessness, omission or delay on the part of a party does not, by itself, prevent the Court from acting where the evidence is essential. What remains indispensable is the Court’s own judicial satisfaction that the statutory threshold has been met.

11. In *Ansar Mehmood v. Abdul Khaliq and another* (**2011 SCMR 713**), the prosecution evidence had been closed, the accused had been examined under Section 342 Cr.P.C., and the matter had reached final arguments. This Court, even at that advanced stage, observed that delay did not exhaust the power under Section 540 and that the only controlling question remained whether the evidence was essential to a just decision. After *Ansar Mehmood* it is settled that the expression “at any stage” is to be given its ordinary statutory meaning. That judgment rested on a long line of authority, including *Muhammad Aslam alias Accha v. The State* (**1984 SCMR 353**); *Shakir Muhammad v. The State* (**PLD 1985 SC 357**); *Mehrzaad Khan v. The State* (**PLD 1991 SC 430**); *Miss Benazir Bhutto v. President of Pakistan* (**1992 SCMR 140**); *Abdul Hamid Mian v. Muhammad Nawaz Kasuri* (**2002 SCMR 468**); *Pervaiz Ahmad v. Munir Ahmad* (**1998 SCMR 326**); *Abdul Salam v. The State* (**2000 SCMR 102**); *Muhammad Murad Abro v. The State* (**2004 SCMR**

966); *Painda Gul v. The State* (**1987 SCMR 886**); *Dildar v. The State* (**PLD 2001 SC 384**); and *Karam Din v. Abdul Aziz* (**PLJ 2004 SC 642**).

12. A *lacuna* is an inherent weakness in a party's case. It is not synonymous with every oversight or every failure to place relevant material on the record. Evidence essential to a just decision cannot be excluded merely because calling it will repair an omission. That distinction was applied in *Sher Baz alias Shahbaz v. The State and another* (**2022 P.Cr.L.J. 1214**), where an oversight in conducting the case was distinguished from an inherent lacuna in the prosecution case. The proposition does not, however, authorise a Court to become a second prosecutor or a defence counsel. The power exists for the Court, not for the improvement of a party's case. In *Qazi Laique Ahmad and others v. Chairman NAB and others* (**2021 P.Cr.L.J. 567**) it was aptly emphasised that the legislature deliberately used the expressions "essential" and "just decision"; the power must therefore be exercised cautiously and upon judicial satisfaction. The wider the power, the greater the need for principled restraint. The same statutory relationship was recognised in *Zaheer Ahmed v. Judge, Special Court and others* (**PLD 2023 Lahore 528**). Reading Article 161 of the QSO with Sections 94 and 540 Cr.P.C. and Rule 2, Chapter 1-E, Volume III of the Lahore High Court Rules and Orders, that Court held that evidence necessary for a just decision may be obtained notwithstanding an omission by a party, reinforcing that the Judge's truth-seeking function is bounded by relevancy, necessity, fairness and judicial neutrality.

13. This Court in *Nawabzada Shah Zain Bugti and others v. The State* (**PLD 2013 SC 160**) recognised both dimensions of Section 540. The Court cannot remain idle where evidence necessary to discern the truth is apparent from the record; yet the decision to intervene must remain judicial and neutral. The provision is not a licence to shift the burden of proof or to rehabilitate a case which, even after all legally admissible material is considered, remains deficient. The same trajectory was followed in *Shahbaz Masih v. The State* (**2007 SCMR 1631**), where the wide amplitude of the power was again recognised, and later in *Chairman, NAB v. Muhammad Usman* (**PLD 2018 SC 28**), where its inquisitorial character was expressly reiterated.

14. We now turn specifically to Section 265-C Cr.P.C. The provision obliges the Court, within the prescribed time before commencement of

trial, to supply the accused with the police report, the FIR, statements recorded under Sections 161 and 164 Cr.P.C., inspection notes and the other material identified by the statute, subject to its express exception. Its purpose is disclosure: the accused must know the prosecution case and possess the material which the law requires to be furnished in order to prepare an effective defence. The Lahore High Court in *Muhammad Tanveer v. The State and others* (**2020 MLD 62**) correctly treated Section 265-C as part of the fair-trial architecture and emphasised the prosecution's obligation to disclose its case and the relevant statements and documents contemplated by the provision. Section 265-C requires supply of such statements and documents as are specified therein and which have been recorded or prepared in the course of the proceedings. It does not create a legal fiction that a statement under Section 161 must exist for every person who may later be found competent or necessary to testify. Fair trial under Article 10-A of the Constitution must be read in the same setting. A fair trial requires, above all, that an accused is not ambushed by undisclosed material, is given a meaningful opportunity to know and answer the case, and is afforded an effective right of cross-examination. The truth-seeking function of the Court discussed above cannot be pursued by sacrificing those guarantees. Equally, fair trial does not require a Court to suppress otherwise essential evidence merely because its necessity becomes apparent after the trial has commenced. The task is to preserve both truth and procedural fairness through appropriate safeguards.

15. In *Sajid Mehmood v. The State* (**2022 SCMR 1882**) this Court held that neither Section 265-F nor Section 540 restricts examination to witnesses whose statements under Section 161 Cr.P.C. were recorded during investigation. There is no absolute bar against examination under Section 540 of a person whose Section 161 statement was not recorded. The Court further held that the evidentiary value of such testimony, and any prejudice occasioned to the accused, must be assessed in the circumstances of the case. Absence of a Section 161 statement therefore goes to fairness, weight and prejudice; it does not, by itself, extinguish jurisdiction. The same proposition had been adopted in *Wasiullah v. Ali Mohseen and others* (**2016 P.Cr.L.J. 1124**), where it was held that a person may be examined even though his statement was not recorded under Section 161, and that Section 540 provides ample power where the statutory conditions are met. Sections

265-C, 265-F and 540 must therefore be read harmoniously. Section 265-C prevents unfair surprise by requiring supply of existing, legally disclosable prosecution material. Section 265-F regulates production of evidence by the parties. Section 540 equips the Court to obtain evidence necessary for a just decision at any stage. None can be interpreted so broadly as to destroy the operation of the others.

16. Applying these principles, the petitioner had received the material contemplated by Section 265-C at the commencement of trial and the original prosecution case was known to him. When Muhammad Imran and Yasmeen Bibi were summoned under Section 540, their identity and intended examination also became known to him. The petitioner's own application seeking material relating to them demonstrates that knowledge. The case is therefore not one in which a witness was secretly introduced and examined before the defence could know of his or her existence. The High Court also noticed that, on 26.03.2026, the available material relating to the newly summoned witnesses was supplied to the petitioner. The legal significance of that fact is not that a non-existent Section 161 statement is to be imagined into existence, but that whatever legally disclosable material was available had to be placed in the hands of the accused before the witnesses were examined, together with a meaningful opportunity to prepare for cross-examination. As far as Muhammad Imran is concerned, if no statement under Section 161 Cr.P.C. was ever recorded, Section 265-C cannot compel supply of a document which does not exist. That objection is answered by *Sajid Mehmood*: absence of such a statement is not an embargo upon examination. It may, however, be relevant when the trial Court ultimately assesses the evidentiary value of the testimony and any demonstrated prejudice arising from the circumstances in which the witness came to be examined.

17. Likewise, the fact that Muhammad Imran was not included in the calendar of witnesses and that Yasmeen Bibi was not named in the FIR or the original witness list are circumstances calling for careful scrutiny, not jurisdictional bars. They bear upon the Court's satisfaction as to necessity, bona fides and fairness. If the evidence is not essential, Section 540 should not be employed merely to improve the prosecution case. If it is essential, omission from the calendar cannot by itself defeat the statutory power, provided the accused is protected against unfair surprise. It is also relevant that the order dated 20.09.2025, by which the trial Court allowed the prosecution

application under Section 540 and summoned Muhammad Imran and Yasmeen Bibi, was not itself challenged by the petitioner before a competent forum. The petitioner instead sought consequential relief concerning supply of material and recommencement of the trial. That circumstance is not conclusive, but it reinforces that the real controversy before us concerns the procedural consequence of the summoning order rather than the existence of jurisdiction under Section 540.

18. We are unable to accept the proposition that every exercise of Section 540 after some prosecution evidence has been recorded automatically requires a *de novo* trial. Such a rule would contradict the express words “at any stage” and would convert a remedial power intended to secure a just decision into a mechanism for routinely erasing proceedings already validly conducted. The remedy must correspond to the prejudice. The jurisprudence on retrial points in the same direction. In *Muhammad Jee v. Muhammad Ibrahim Shauq* (**1988 SCMR 1691**) this Court reiterated that a remand or retrial must be ordered according to the dictates of justice and not arbitrarily. Relevant considerations include the nature of the error, the magnitude of the apprehended miscarriage of justice, the possibility and extent of prejudice to the accused, and the consequences and expense of a retrial. A *de novo* trial is therefore an exceptional curative course, not the automatic consequence of every procedural defect. Here, the petitioner has not demonstrated that the evidence already recorded was rendered unlawful, that the trial Court lacked jurisdiction, that he was denied cross-examination of the witnesses already examined, or that any disadvantage flowing from the later summoning of Muhammad Imran and Yasmeen Bibi cannot be cured by disclosure of available material, reasonable preparation time and effective cross-examination. In view of the foregoing discussion, the application under section 540 Cr.P.C. was filed, due notice thereof was served upon the accused, and the application was allowed after hearing both parties; therefore, the circumstances of the current case do not warrant a *de novo* trial.

19. Before either newly summoned witness is examined, the trial Court shall satisfy itself that all existing material which the law requires to be disclosed has been supplied to the petitioner; shall afford a reasonable opportunity, if required, to prepare; and shall ensure full and effective cross-examination so as to independently determine the

intrinsic value of this evidence. If any specific prejudice is shown during the course of evidence, the trial Court shall address it by an appropriate order in accordance with law.

20. The principles that emerge may be summarised as follows. First, the ordinary structure of a Pakistani criminal trial is adversarial, but the Court possesses limited statutory powers of an inquisitorial character under Sections 94 and 540 Cr.P.C. and Article 161 QSO. Second, the first part of Section 540 is discretionary, while its second part becomes mandatory only when the evidence appears essential to the just decision of the case. Third, neither omission from the calendar of witnesses nor absence of a prior statement under Section 161 is, by itself, an absolute bar to examination under Section 540. Fourth, Section 265-C requires timely supply of existing material which the law makes disclosable; it does not require production of a statement never recorded. Fifth, the Court must not use Section 540 merely to strengthen a party's case or to cure an inherent evidentiary deficiency. Sixth, whenever additional evidence is received, the accused must be protected against unfair surprise through disclosure, preparation and cross-examination. Seventh, the remedy for any irregularity depends upon actual prejudice; a *de novo* trial is not the automatic consequence of every mid-trial exercise of Section 540.

21. Before parting with this order, we deem it necessary to reiterate that the criminal Court is neither a silent spectator nor a substitute prosecutor. Its duty is to 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. The contest belongs to the parties; the burden of proving guilt remains upon the prosecution; but the responsibility for a lawful and just adjudication remains with the Court.

22. For the foregoing reasons, leave is refused and the petition is dismissed. The judgment dated 15.04.2026 of the Lahore High Court, Lahore, and the order dated 29.10.2025 of the learned Additional Sessions Judge, Pattoki, are maintained. The trial Court shall proceed with the trial expeditiously and strictly in accordance with law.

23. Before parting with this judgment, this Court would like to place on record its appreciation for the valuable assistance rendered by Mr. Tariq Siddique, Additional Prosecutor General, Punjab. Through his well-prepared written submissions and able oral arguments, he has

greatly assisted this Court in appreciating the relevant legal aspects of the case.

Judge

Judge

Judge

Announced in Open Court on _____ Day of September, 2026

Judge

12.08.2026
Lahore
Muhammad Subhan Malik, JLC

APPROVED FOR REPORTING