

considers that the application is made for the purpose of vexation or delay or defeating the ends of Justice such ground shall be recorded by the Court in writing.

COMMENTARY

Evidence for prosecution. Power to examine any witness. [PLJ 2015 Cr.C. 753] Prosecution or complainant should also be provided opportunity to adduce evidence in support of his claim because he is the person who sets the machinery of law into motion. It is he who knocks at the door of justice. [PLJ 2010 FSC 8]. Section 265-F(2) visualizes that the Court shall summon a person likely to be acquainted with the facts of the case and who is able to give evidence for the prosecution. Of course care in this respect has to be taken that there is no vexatious delay or that the application has not moved to defeat the ends of justice or it does not amount of abuse of the process of Court. [PLJ 2010 FSC 8].

Delay in producing documentary evidence. Prosecution is entitled to place before Court all the evidence and mere delay in producing documentary evidence per se would not make documents as inadmissible. [1998 PCr.LJ 271].

Calling of witness. Complaint not mentioning persons intended to be summoned as eye-witnesses of the occurrence but conduct of the complainant proving that said persons were material as according to him they were eye-witnesses of the occurrence and they could not appear during investigation due to political influence. Complainant can call the witnesses through Court even not named in the FIR nor in supplementary statement. [2003 MLD 1296].

Court may refuse to call a defence witness. Court considering that application for summoning of witnesses made for the purpose of vexation or delay or to defeat the ends of justice, it may refuse to call a defence witness. [2000 PCr.LJ 299]. Court is obliged to record reasons in writing for declining to issue process for production of defence witness or for production of any documents or other things as could be considered necessary for defence. Process to compel attendance can be issued even on oral motion. [2000 MLD 671]. Under sub-section (3) of Section 265-F, Court empowered to refuse summoning of any such witness if of the opinion that such witness being called for the purpose of vexation are delaying or defeating the ends of justice. [PLJ 2003 Cr.C. (Lah.) 184].

Under provisions of Section 265-F(7), Cr.P.C., it was mandatory for the Court to issue process for compelling the attendance of said police-officer as a witness for examination. If application for summoning a witness was made for the purpose of vexation or delay or to defeat the ends of justice, the Court could refuse to recall defence witness, but the Court was obliged to record reasons for declining to issue process for production of defence witness. Whether evidence of intended police-officer was helpful to the accused persons and could be relied upon, was a question which could be decided at the time of disposal of main case. Opinion of the police was neither binding on the Court nor had any evidentiary value. Trial Court, in circumstances had committed material illegality by refusing to summon said Police Officer as defence witness. [PLJ 2007 Cr.C. (Lah.) 158].