

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

**Cr. Rev. Appln. No.69 of 2023**

Date	Order with signature of Judges
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1. For hearing of M.A. No.11960/2024 (U/A)
2. For hearing of main case

**13.09.2024**

Mr. Shamraiz Khan Tanoli, Advocate for the Appellant.  
Mr. Muhammad Iqbal Awan & Mumtaz Ali Shah,  
A.P.G. Sindh.

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MUHAMMAD KARIM KHAN AGHA.J., The back ground of this case is that the applicant was convicted and sentenced by IVth Addl. Sessions Judge Model Criminal Trial Court, Ext: Karachi South vide judgment dated 02.12.2017. The applicant filed an appeal against conviction before this Court. This Court vide judgment dated 16.8.2022 noticed certain legal infirmity in the impugned judgment and therefore remanded back case to the trial Court for the following purpose.

“In view of the above, the impugned judgment only to the extent of the appellants is set aside with direction to learned trial Court to rewrite the same independently without being influenced by earlier finding, after providing fair chance of hearing to all the concerned, such exercise to be completed preferably within two months after receipt of copy of this judgment.”

2. As a result of this remand IVth Addl. Sessions Judge Model Criminal Trial Court, Ext: Karachi South is following the judgment of this Court dated 16.8.2022 mentioned above as per para-5 which is also mentioned above.
3. The IVth Addl. Sessions Judge Model Criminal Trial Court, Ext: Karachi South vide order dated 28.2.2023 had ordered that applicant/appellant re-record section 342 Cr.P.C statement since it appears that there were certain faults in the statement.

4. Hence the above aforesaid order has been challenged by the learned counsel for the applicant/appellant.

5. I have heard the parties and perused the record.

6. As mentioned above it is abundantly clear that within the context of judgment dated 16.8.2022 passed by this Court, the trial Court's obligation was not to record any fresh evidence or rerecord any section 324 Cr.P.C statement. The evidence as well as section 342 Cr.P.C statement is already on record and the obligation of the concerned trial Court pursuant to judgment of this Court dated 16.8.2022 was only to the extent of rewriting the judgment after hearing the parties based on the existing record.

7. It is well settled by now that this Court should not remand the appeal based on question not being asked in section 342 Cr.P.C statement since this is the opportunity of the prosecution to fill lacuna in its case, which is to the prejudice of the defense which is not in line with Article-9 of the Constitution. Accordingly the order dated 28.2.2023 is set aside and the trial Court is directed to comply with para-5 of judgment dated 16.8.2022 in its letter and spirit. Copy of this order shall be sent to IVth Addl. Sessions Judge Model Criminal Trial Court, Ext: Karachi South for compliance with judgment dated 16.8.2022 at para-5 above.

8. The above revision application is disposed of accordingly.

JUDGE

SM