

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Rev. A. No.S-135 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For katcha peshi.

24.10.2016.

Mr. Nisar Ahmed Durrani, Advocate for applicant.

Mr. Shahid Ahmed Shaikh, A.P.G.

Mr. Muhammad Hanif Shaikh, Advocate for respondent No.2.

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At the outset, learned counsels for the respective parties, are agreed that impugned order is unwarranted in law. Learned trial Judge while relying upon police report, whereby respondent No.2 was let off, has given verdict that application under section 193 Cr.P.C can be repeated after recording the evidence. Learned counsel for applicant relied upon case of Safdar Ali v. Zafar Iqbal and others 2002 S C M R 63 wherein principle of law was enunciated that for summoning an accused, placed in Column No.2 of challan, it is not necessary that at first instance evidence should be recorded but the Court should examine from available material whether prima facie case is made out against accused or otherwise. The learned counsel also relied upon case of Ali Ghulam v. Muhammad Murad 2014 P Cr. L J 84 wherein not only said principle was followed but it was reaffirmed that trial Court while deciding such application has to apply its judicial mind. Further in case of **Sher Muhammad Unar (P L D 2012 SC 179)**, which is very splendid judgment, wherein it is held that trial Court has to examine all the material available on record to form his own *independent* judicial view and should not influence from *ipsi dixit* of police which otherwise is not binding upon Magistrate as well trial Court.

The perusal of the impugned order reflects that IVth Additional Sessions Judge, Hyderabad, has passed the impugned order in a slipshod

manner and has not considered the basic parameters of settled criminal administration of justice and principles of law, enunciated by Superior Court(s) which *otherwise* are of binding effect upon lower Courts as *Constitutional obligation*. Thus, impugned order is hereby set aside and the case is remanded back. Trial Court shall pass fresh order after hearing the parties and while keeping in mind the basic principle of law as enunciated in above-referred judgment with note of caution that it is not expected from an Additional Sessions Judge to pass order in such manner while holding the scale of *justice*.

Criminal Revision Application stands disposed of.

JUDGE

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