

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

Cr.Misc.Appl.No.S- 659 of 2014

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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07.11.2016.

Mr. Parvez Tarique Tagar, Advocate for applicant.  
Mr. Mian Taj Muhammad Keerio, Advocate for respondent  
No.2.  
Mr. Shahid Shaikh, A.P.G. for the State.

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Precisely relevant facts are that by order dated 25.08.2014, learned Civil Judge and Judicial Magistrate-X, Hyderabad while examining the report u/s 173 Cr.P.C. took cognizance as per sections in the report as well u/s 302 PPC and forwarded the case to the learned District & Sessions Judge. Per counsel for respondents, learned trial Court has framed the charge u/s 302 PPC which order has not been assailed.

2. It needs no reiteration that opinion of the police (investigation agency) is not of binding effect upon the Courts therefore, the Magistrate can *competently* agree or disagree with opinion of the police (investigation agency) while exercising *administrative jurisdiction* on a report submitted before him within meaning of Section 170/173 Cr.P.C.

3. The moment the Magistrate sends the case to Court of Sessions within meaning of Section 190(2) of the Code he becomes *functus Officio* and then it shall be the Court of Sessions either to

take *cognizance* (Section 193 Cr.PC) onto the matter or *otherwise*. However, there can be no denial to the legal position that once a charge is framed within meaning of Section 242 or section 265-D of the Code of Criminal Procedure, the value of order, passed on a police report, shall stand superseded wherein the Courts, after examining all material, find the case to be tried further. To make things clear a reference to Section 265-D is made which reads as:

**‘265-D. When charge is to be framed.** If, after perusing the police report or, as the case may be, the complaint, and all other documents and statements filed by the prosecution, the Court is of opinion that there is ground for proceeding with the trial of the accused it shall frame in writing a charge against the accused.’

4. From above, it is quite obvious that the framing of charge shall require the Court (of Sessions) *only* after perusing all material after providing opportunity to accused persons, therefore, is a *judicial* order whereby the Court commenced the trial. It is also well settled legal position that ***framing of Charge is meant commencement of trial***. An act of *framing charge* is not an *administrative* order but is a judicial while order passed by a Magistrate on a police report is *administrative* in nature. The judicial order shall prevail over an *administrative*. In such eventuality, it shall result in making the petition (application U/s 561-A Cr.P.C), challenging the order of Magistrate, taking cognizance on police report, infructuous. If the aggrieved (accused) continues claiming the *innocence* he may

competently resort to course provided by Section 265-K Cr.P.C for the case, having *groundless* charge.

5. Since, in the instant matter, it is a matter of record that the learned Sessions Court (trial Court) has framed the charge against the accused persons (petitioners) hence the instant petition, sticking to legality or *otherwise* of order passed by Magistrate, has become infructuous. Any comments on merits or demerits of order of Magistrate may prejudice the case of prosecution or defence hence needs not be discussed which *otherwise* should always be avoided where a matter has become infructuous. Accordingly, instant Criminal Miscellaneous Application is dismissed, being infructuous.

6. While parting office shall examine all miscellaneous applications wherein order passed on 173 Cr.P.C. is impugned and no interim order passed by this Court is existing; report shall seek comments from trial Court, whether charge has been framed by trial Court or otherwise. In case charge is framed then all such matters shall be fixed together with separate cause list for orders on maintainability. This exercise shall be completed within fifteen days.

JUDGE

Tufail