

**ORDER SHEET**  
IN THE HIGH COURT OF SINDH KARACHI  
C.P. No. D-5804 of 2018

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**DATE**

**ORDER WITH SIGNATURE OF JUDGES**

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**Present**

**Mr. Justice Muhammad Ali Mazhar.**

**Mr. Adnan Iqbal Chaudhry.**

1. For hearing on CMA No. 25153/2018
2. For hearing of main case.

**28.08.2018**

Mr. Nasir Ahmed, advocate for the Petitioner

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**Muhammad Ali Mazhar, J:** Mr. Irshad Ali, advocate has filed his vakalatnama on behalf of Respondent No. 6, which is taken on record.

Learned Counsel for the petitioner argued that the petitioner contested the General Election-2018 as a candidate of PS-128 and obtained 27771 votes and the winning candidate i.e. Respondent No. 6 obtained 29480 votes, whereas the difference of votes is only 1709. Learned Counsel has further argued that the petitioner had filed an application for recounting to the Returning Officer, which was dismissed thereafter petitioner moved an appeal to Respondent No. 1 under Section 125 of Election Act, 2017. Perusal of Chapter VII of Election Act, 2017 reveals that Section 125 of the Election Act, 2017 is only applicable for the Senate Elections. In the General Elections, 2018, according to tenor of law, two provisions were available under Section 95 of Election Act, 2017 through which the Returning Officer may conduct the exercise of recount before commencement of consolidation proceedings under sub-section (5) whereas under sub-Section 6, the commission before conclusion of consolidation proceedings could have direct the Returning Officer to conduct the

recount. Now, both the stages are over. Neither the powers of recount are available to the Returning Officer nor the Election Commission; however, the best remedy is to file election petition before the Election Tribunal constituted under Election Act, 2017 only with an application for recounting.

After arguing the matter at some length, learned counsel for the petitioner agrees to file election petition with an application for recounting. The petition is disposed of alongwith pending applications accordingly. The learned Tribunal may decide the Election Petition and application for recounting in accordance with law.

**JUDGE**

**JUDGE**

*Faisal Mumtaz/PS*