

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR  
Cr. Acquittal Appeal No. S – 83 of 2018

Date	Order with Signature of Hon’ble Judge
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**For hearing of main case**

- 1. For orders on office objection at flag ‘A’
- 2. For hearing of main case  
(notice issued)

**09.12.2019**

Mr. Muhammad Qayoom Arain Advocate for appellant  
/complainant  
Mr. Nawab Ali Pitafi, Advocate along with private respondents  
Mr. Khalil Ahmed Maitlo, DPG for the State.  
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**Aftab Ahmed Gorar, J-** The appellant / complainant by way of instant Criminal Acquittal Appeal has impugned judgment dated 19.3.2018 passed by learned Additional Sessions Judge, Ubauro, whereby Criminal Appeal No.05/2018 filed by the private respondents against the conviction and sentence which was awarded to them by learned Civil Judge and Judicial Magistrate Daharki in case outcome of FIR Crime No.39/2017 of Police Station Khenju, district Ghotki was set-aside and the private respondents were acquitted of the offence.

2. At the very outset, it is stated by learned counsel for the appellant / complainant that the private respondents were sentenced under Section 143 r/w Section 149 PPC by the learned trial Court, but they were neither charged for offence punishable under Section 143 r/w Section 149 PPC nor such circumstances was put to them for their explanation u/s 342 Cr.P.C, yet they have been convicted and

sentenced for the same by the learned trial Court and acquitted by learned appellate Court, which is against the principles of nature justice. He prayed that the case may be remanded back to the trial Court for de-novo trial.

3. Learned counsel appearing for the private respondents as well as learned Deputy PG for the State were fair enough to admit the omissions which are pointed out by learned counsel for the appellant / complainant. They consented for remand of the case for de novo trial.

4. I have considered the above arguments and perused the record.

5. There is no Section 143 r/w Section 149 PPC in the charge framed against the private respondents; it should have been distinct and different containing every penal section. None of the private respondents has been charged for offence punishable u/s 143 r/w Section 149 PPC and no such circumstances has been put to them for their explanation during course of their examination u/s 342 Cr.P.C, yet they have been convicted for the above said penal Section. In such situation, the trial Court as well as the appellate Courts have not taken care while passing the impugned judgments either the aforesaid Section of Penal is mentioned in the charge or not.

6. In view of above, the judgments of learned trial and appellate Courts are set aside with direction to learned trial Court to reframe the charge against the private respondents afresh and then to proceed with the matter in accordance with law by reexamining the prosecution witnesses and then to pass fresh judgment.

7. The private respondents if were on bail at trial shall remain on same bail before learned trial Court on furnishing fresh bail bonds.

8. The instant Criminal Acquittal Appeal is disposed of accordingly.

**Judge**

ARBROHI