

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

Cr. Misc. A. No.S-124 of 2013.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For katcha peshi.
3. For hearing of M.A. No.1086 of 2013.

25.10.2016.

Mr. Muhammad Sachal R. Awan, Advocate for applicant.
Mr. Shahid Ahmed Shaikh, A.P.G.

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Learned A.P.G. files statement of DIGP Hyderabad, which is taken on record.

Through instant criminal miscellaneous application, applicant has challenged the observation/direction given by the Sessions Judge/Special Judge (N) Jamshoro at Kotri. Such direction is that:

“Before parting with the judgment, it may be observed that despite the recommendation of SP that stern action be initiated against Inspector Javed Jalbani unfortunately no action so far has been taken against him. Let copy of this Judgment be sent to Inspector General of Police Sindh and Deputy Inspector General of Police Hyderabad for initiating a deterrent action against the criminal conduct of a Police officer who is suppose to be custodian of law.”

2. Learned counsel for applicant, *inter alia*, contends that trial Court was not competent to issue such direction; inquiry report, placed during trial, and recommendation made in that inquiry by the SSP were based on ulterior motive and result of personal grudge against the applicant. In contra, learned A.P.G. contends that inquiry was conducted whereby SSP concerned recommended departmental action against the applicant.

3. At the very outset, I would add that a *Criminal Court* is competent not only to record acquittal but is also competent to penalize the one, *guilty* of false, frivolous or vexatious accusation, as shall stand evident from Section 250 Cr.P.C. Needless to add that specific provision to deal with one, *guilty* of vexatious entry, search, seizure or arrest, is also provided in *Control of Narcotics Substances Act, 1997*. Therefore, it is quite *safe* to conclude the

Court was always competent not only to examine the *attitude* of a complainant or witness but can pass appropriate order specifically addressing the same. In the instant matter *however* no such order is passed but an '*observation*' of the trial Court is challenged.

The '*observation*' of the Court(s), likely to cause any prejudice to *any body*, can well be challenged but same must be shown to have been '*illegal*' and '*having no legal justification*'.

Keeping the above touch-stone in my mind, the perusal of judgment shows that it was not an *independent* observation or *direction* but the learned trial Court had *marked* its concern that in spite of recommendation "**no action so far has been taken against him**" which *concern* cannot be termed to be an '*independent view*' but since the recommendation of an *Inquiry Officer* was/is *otherwise* is either to be followed by *Competent Authority* or to be disagreed but with reasons in *writing* therefore, such concern of the learned trial Court was quite *natural*. Apart from this observation, concerned authority was bound to initiate action and complete inquiry within their domain. Record reflects that there is an order of IGP Sindh, whereby DIGP Hyderabad was directed to conduct inquiry in the matter. Thus, observation, *in question*, cannot be said to be '*illegal*' and '*having no legal justification*'. Even otherwise, trial Court cannot restrain any department from taking departmental action against its employee/officer particularly when it is settled law that departmental proceeding is an *entirely* independent and different field. However, that opportunity of hearing is right of every person.

Accordingly, this criminal miscellaneous application is disposed of. DIGP Hyderabad shall proceed with the departmental inquiry/proceedings *independently* on the basis of inquiry report without being influenced of fact that (*judgment*) is sent by trial Court. Office shall communicate this order to quarter concerned for compliance.

M.A. No.1086 of 2013, listed at serial No.3, is also disposed of.

JUDGE

