

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

REV. APPLICATION NO.137/2021

Date

Order with signature of Judge

1. For order on office objection.
2. For hearing of main case.
3. For hearing of M.A. No.6941/2021.

18.10.2021

Mr. Sami Ahsan advocate for applicant.

Mr. Faheem Hussain Panhwar, DPG.

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Criminal Appeals No.642 and 648 of 2019 were decided by this court vide order dated 12.01.2021 whereby plea was taken in Criminal Appeal No.468/2019 that this is a case of de-novo trial as accused party was not allowed to cross examine the witnesses for the reason that cross examination was conducted at the time of recording of statement under section 164 CrPC. Being relevant para-5 of that order is reproduced herewith:-

“5. In this case death penalty is provided yet the accused was deprived of his right to cross-examination which, *legally*, is the only weapon to test the veracity and credibility of the **‘witness’**. Such trial, *legally*, being defective, can’t be stamped. At this juncture Ms. Sadia Khatoon further contends that though they preferred application for cross examination that was also not entertained, same is yet pending. Such addition makes the position rather *miserable*. Accordingly, this is a case of *denovo* trial, hence impugned judgment recorded by the trial court is hereby set aside. Case is remanded back at the stage of cross examination of the witnesses and thereafter trial court shall record statement under section 342 Cr.P.C., provide opportunity of defence and after hearing the parties decide the case on merits.”

After remanding the case in the above terms, learned District and Sessions Judge assigned the case to Additional Sessions Judge and learned Additional Sessions Judge intended to proceed the case from the stage of cross examination. At that juncture learned counsel for

applicant filed application for amendment of charge on the plea that since in original trial all accused were indicated; however some of them were acquitted therefore charge is to be amended.

2. Needless to mention that para-6 of above referred order provides protection to the accused persons who were acquitted, hence directions were categorical and clear that “case is remanded back at the stage of cross examination of witnesses and thereafter trial court shall record statement under section 342 CrPC, provide opportunity of defence and after hearing the parties, decided the case on merits.” Hence learned trial judge has rightly passed impugned order whereby trial court was not competent to open the case from the charge. Accordingly, impugned order is in accordance with law.

3. Besides, this issue is already decided by this court and that was impugned order therefore this court cannot sit over its earlier judgment.

This criminal rev. application alongwith listed application is dismissed.

J U D G E