

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Revision Appln. No. S-43 of 2023

Applicant : Shafi Muhammad Tunio
Through Mr. Sardar Akbar F. Ujjan, Advocate

Respondents : Mr. Abdul Baqi Jan Kakar, for respondents No.1
to 4 & 8.

State : Mr. Muhammad Raza Katohar, DPG.

Date of hearing : 18.08.2025

Date of Judgment : 29.08.2025

ORDER

KHALID HUSSAIN SHAHANI, J—This criminal revision application, filed under the aegis of Sections 435 & 439 read with Section 561-A of the Code of Criminal Procedure, 1898, has been preferred against the order dated 11.04.2023, whereby the learned Additional Sessions Judge, Gambat, dismissed Criminal Complaint No. 69 of 2022 for offence under Sections 3(2) of the Illegal Dispossession Act, 2005. The applicant, feeling aggrieved by the dismissal, has impugned the said order on multiple legal and factual grounds, contending that it suffers from manifest errors of law and fact, and seeks its setting aside with a direction for remand to decide the complaint on merits after due adjudication.

2. The factual backdrop of this controversy presents a labyrinthine web of legal proceedings that have emanated from a single property dispute, creating a complex mosaic of litigation that spans multiple forums and extends over several years. The applicant claims ownership of agricultural land measuring (2-16) acres situated in Survey No. 653, Deh Siyal Pathan, Taluka Gambat, District Khairpur, which he acquired from Muhammad Siddique Siyal through registered sale deed No. 1548 dated 27.12.2007 for total consideration of Rs. 750,000. However, the transaction was allegedly incomplete as the entire consideration amount was admittedly not paid, a fact that would later assume significant legal relevance in the subsequent proceedings. When the respondents allegedly dispossessed the applicant from the said property, he initiated Criminal Complaint No. 36/2016 under Sections 3(2) of the Illegal Dispossession Act, 2005. This complaint traversed the usual course of criminal proceedings and culminated in the conviction of the accused vide judgment dated 28.08.2021.

Pursuant to this conviction, the court directed restoration of possession, which was effectuated through the intervention of SHO PS Agra with assistance of the Tapedar under Mashirnama dated 15.09.2021. The convicted respondents, not acquiescing to their conviction, preferred Criminal Appeal No. S-71 of 2021 before this Court and secured suspension of sentence, during the pendency whereof they allegedly dispossessed the applicant again. However, during the course of the appeal proceedings, the court restored possession to the applicant through appropriate legal process. The appellate proceedings took a decisive turn when the appellate court, through its judgment, set aside the conviction entirely and recalled the restoration of property order, thereby acquitting all the respondents. Undeterred by this adverse outcome, the applicant challenged the acquittal by filing a revision application before the Supreme Court of Pakistan, where the matter remains pending with no leave granted as yet.

3. The present complaint No. 69/2022, was instituted by the applicant alleging fresh dispossession occurring on 18.05.2022, which was dismissed by the trial court vide the impugned order dated 11.04.2023 on grounds of non-maintainability. In a development that assumes critical significance for the present adjudication, subsequent to the dismissal of the second complaint, the applicant has filed a third direct complaint under Section 3(2) of the Illegal Dispossession Act, 2005, No.123/2024, wherein the Additional Sessions Judge Gambat has already taken cognizance against the respondents, vide order dated 01.08.2025, thereby creating an overlapping legal scenario that fundamentally alters the entire complexion of these proceedings. Simultaneously, civil proceedings were initiated by the respondents seeking declaration and cancellation of the sale deed. These proceedings met with failure as the civil suit was dismissed on the ground of limitation. The subsequent civil appeal also suffered dismissal, with the learned Judge in Civil Appeal making the crucial observation that since complete amount of consideration is not paid, admittedly, therefore, transaction was not completed. A civil revision application filed by the respondents remains pending before this Court.

4. Mr. Sardar Akbar F. Ujjan, learned counsel representing the applicant, has advanced elaborate submissions challenging the impugned order on multiple legal and constitutional grounds. Counsel submits with considerable

force that the incident of 18.05.2022 constitutes a fresh, independent, and legally distinct offence, both temporally and factually differentiated from the matter adjudicated in Criminal Complaint No. 36/2016. He contends that the legal maxim "Bis de eadem re ne sit actio" applies exclusively to actions arising from identical factual circumstances, which is manifestly not the case here. Learned counsel has placed extensive reliance upon several judicial pronouncements to buttress his arguments, including the case reported at 2012 SCMR 229 in *Mst. Inayat Khan and others v. Muhammad Ramzan and others*, wherein the Supreme Court established fundamental principles regarding the maintainability of criminal complaints under special enactments when civil litigation is pending. In that landmark judgment, the apex court observed that the pendency of civil litigation does not operate as a bar to criminal proceedings under specific statutory provisions designed to address particular forms of criminal conduct, provided the essential ingredients of the offence are established. The Supreme Court categorically held that where a statute creates a specific offence with its own procedural framework, such proceedings remain independent of parallel civil litigation between the same parties concerning the same property. Counsel further relied upon PLD 2005 Sindh 12, a High Court judgment that dealt with the question that a positive report of investigation officer referring the accused to a trial, the Magistrate has no jurisdiction to disagree with him by disposing of the case or deleting a particular section. The case reported at 2005 MLD 633 was also cited by learned counsel to support the proposition that fresh criminal acts occurring after the conclusion of previous criminal proceedings create independent causes of action that cannot be barred by principles of res judicata or double jeopardy. In that judgment, the court distinguished between concluded criminal matters and subsequent independent violations, holding that each criminal act must be adjudicated on its own merits and factual matrix, regardless of previous proceedings involving the same parties and property. Reliance was also placed on 2023 YLR Islamabad 502, a judgment that specifically addressed the maintainability of complaints under the Illegal Dispossession Act, 2005, in circumstances where multiple proceedings were pending between the same parties. The court in that case emphasized that the Illegal Dispossession Act creates a special remedy for a specific type of criminal conduct, and such proceedings remain maintainable even when civil litigation is pending, provided

the complainant can establish the essential elements of illegal dispossession as defined under Section 3 of the Act. The judgment further clarified that the legislative intent behind the Act was to provide immediate relief to victims of illegal dispossession without requiring them to exhaust lengthy civil remedies. Finally, counsel cited PLD 2009 Karachi 65 in Maqsood Ahmed Qureshi vs. Muhammad Azam Ali Siddiqui and 8 others, where the Sindh High Court dealt with the interplay between civil and criminal remedies in property disputes. The court held that the availability of civil remedies does not preclude the pursuit of criminal remedies under special statutes, and a complainant is entitled to pursue both remedies simultaneously provided the legal requirements for each are satisfied. The judgment emphasized that criminal law operates independently of civil law principles, and the pendency of civil litigation cannot be used to defeat legitimate criminal complaints.

5. Learned counsel for the respondents, has raised substantial objections to the maintainability of both the present revision and the underlying complaint. Counsel submits that the matter has been conclusively determined through multiple judicial pronouncements, and entertaining repeated complaints regarding identical property between same parties constitutes harassment and abuse of judicial process. He argues that the principle of finality of litigation demands that concluded matters not be reopened through successive criminal complaints. Counsel contends that the applicant has engaged in impermissible forum shopping by filing multiple criminal complaints, three in total, creating overlapping proceedings that burden the judicial system and undermine the coherence of judicial process. He argues that the subsequent filing and cognizance of the third criminal complaint renders the present revision application infructuous and demonstrates the applicant's strategy of overwhelming the judicial system. Counsel distinguished the case laws relied upon by the applicant on the ground that none of those judgments dealt with a situation where three successive criminal complaints had been filed by the same complainant seeking identical relief based on substantially similar allegations.

6. This Court, having carefully examined the submissions advanced by learned counsel for both parties, perused the voluminous record, and considered the applicable legal principles, finds itself confronted with a unique

legal scenario that requires careful judicial navigation through multiple overlapping proceedings and complex factual matrices. While the case laws cited by learned counsel for the applicant establish important principles regarding the maintainability of criminal complaints under special statutes, they must be distinguished from the present factual scenario which presents a pattern of successive and overlapping criminal proceedings that goes beyond the scope of those precedents.

7. The case of *Mst. Inayatan Khatoon and others v. Muhammad Ramzan and others* (2012 SCMR 229) dealt with the maintainability of a single criminal complaint when civil litigation was pending, not with the situation where multiple successive criminal complaints are filed seeking identical relief. The Supreme Court's observations in that case regarding the independence of criminal and civil proceedings cannot be extended to justify unlimited successive criminal complaints by the same complainant against the same accused based on substantially similar allegations.

8. Similarly, the judgment reported at PLD 2005 Sindh 12 addressed the maintainability of criminal proceedings when title was disputed in civil courts, but did not contemplate a scenario where a complainant files three separate criminal complaints in different forums seeking the same relief. The principle established in that case regarding *prima facie* possession being sufficient for maintainability cannot be invoked to justify forum shopping and abuse of judicial process.

9. The case at 2005 MLD 633, while supporting the proposition that fresh criminal acts create independent causes of action, must be distinguished on the ground that it dealt with genuinely fresh criminal conduct occurring after the conclusion of previous proceedings. In the present case, the multiplicity of complaints and the overlapping nature of proceedings create a different legal dynamic that falls outside the scope of that precedent. The judgment at 2023 YLR Islamabad 502, though supporting the maintainability of complaints under the Illegal Dispossession Act despite pending civil litigation, cannot be applied to validate a pattern of filing successive criminal complaints when previous ones have been dismissed or are overlapping with subsequent proceedings. The

legislative intent behind providing immediate relief through the Act cannot be interpreted as authorizing unlimited successive complaints that burden the judicial system. Finally, the case reported at PLD 2009 Karachi 65, while establishing that civil and criminal remedies can be pursued simultaneously, did not address the specific issue of multiple criminal complaints being filed successively by the same complainant. The principle of independent pursuit of remedies cannot be extended to justify the filing of multiple complaints seeking identical relief, which constitutes abuse of process rather than legitimate exercise of legal rights.

10. This Court's revisional jurisdiction under Sections 435, 439 and 561-A of the Code of Criminal Procedure extends to examining the correctness, legality or propriety of orders passed by subordinate criminal courts. The supervisory power encompasses the authority to set aside orders that are perverse, illegal, or contrary to established legal principles, particularly when such orders result in miscarriage of justice. However, this jurisdictional power must be exercised with circumspection and judicial restraint, particularly in cases where subsequent developments may have rendered the original proceedings academic or infructuous.

11. The Supreme Court established fundamental principles governing multiplicity of proceedings, holding that when multiple proceedings concerning the same subject matter are pending simultaneously, courts must prevent conflicting adjudications and forum shopping, as the law abhors multiplicity of proceedings since it defeats the orderly administration of justice. The Peshawar High Court in a recent judgment has emphasized that forum shopping undermines the coherence of judicial proceedings and serves to maintain judicial discipline by requiring a litigant to abide by the consequences of the remedy initially chosen.

12. The factual matrix reveals that the applicant has instituted no fewer than three separate criminal complaints under the Illegal Dispossession Act: the first complaint in 2016 which resulted in conviction, later set aside on appeal; the second complaint in 2022 which forms the subject matter of present revision and was dismissed by trial court; and the third complaint No.123/2024, which was

filed subsequent to dismissal of second complaint and wherein cognizance has already been taken by the court of Additional Sessions Judge Gambat vide order dated 01.08.2025. This pattern of successive litigation clearly falls within the legal definition of forum shopping and constitutes what the Supreme Court has termed as sharp practice that undermines judicial integrity.

13. This court is mindful of the fact that when identical relief is sought through multiple forums simultaneously, subsequent proceedings become infructuous and technically defaulted. The subsequent filing of the third criminal complaint, wherein the Additional Sessions Judge has already taken cognizance as stated supra, creates a fundamental legal impediment to the present revision application. This court while deciding criminal Appeal No.S-71 of 2021 filed by the respondents as well as a Cr.Rev.Application No.S-87 of 2021 filed by the applicant with single order dated 19.03.2024, observed in para No.11 as under,

“The complainant himself admitted during the examination-in-chief that sale deed was executed on 27.12.20207, but he not paid the entire amount of disputed land to the accused persons being the sale consideration and issued a cheque of Rs.55000/- for a date 07.03.2008 of National Bank Agra Branch but on approach he paid entire amount to Muhammad Siddique, under such circumstances the sale deed is in clouds as to whether it was lawful or otherwise, however such aspect of the case would be decided by the civil court. The complainant during cross-examination admitted that he had given in writing to Muhammad Siddique that in case the cheque was dishonored he would return back khata of the land to him. The complainant further admitted in cross-examination that the sale deed was executed prior to due date of cheque. All these facts/admission apparently disclosed about a happening of a civil dispute in between the parties.”

14. Therefore, this Court’s categorical finding that complete amount of consideration is not paid, admittedly, therefore, transaction was not completed raises fundamental questions about the applicant's legal standing to maintain criminal proceedings. Under the Illegal Dispossession Act, a complainant must

establish lawful ownership or legal possession as a prerequisite for criminal proceedings. If the underlying transaction is incomplete due to non-payment of consideration, as judicially determined, it affects the very foundation of the criminal complaint.

15. The pattern of litigation adopted by the applicant has resulted in three criminal complaints in different courts, civil litigation extending to revision level, criminal appeals and revisions at multiple levels, and Supreme Court proceedings for leave to appeal. This multiplicity places an unjustifiable burden on the judicial system and represents what the Supreme Court has termed as abuse of process. The succession of proceedings has already resulted in conflicting judicial outcomes: trial court conviction in first complaint, appellate acquittal setting aside conviction, dismissal of second complaint by trial court, and cognizance in third complaint by different judge. Such conflicting pronouncements undermine public confidence in the judicial system and defeat the orderly administration of justice.

16. While Article 4 of the Constitution guarantees the right to be dealt with in accordance with law, this right must be balanced against the state's interest in preventing abuse of judicial process. The multiplicity of proceedings, while ostensibly seeking justice, paradoxically undermines the due process rights of the respondents who face repeated prosecution for substantially similar allegations, creating a form of legal harassment.

17. After exhaustive consideration of the legal arguments, examination of precedents, and analysis of the factual matrix, this Court arrives at several definitive conclusions. The subsequent filing and cognizance of the third criminal complaint has rendered the present revision application technically defaulted and infructuous. The pattern of filing three successive criminal complaints constitutes impermissible forum shopping and abuse of judicial process. The simultaneous pendency of multiple criminal complaints seeking identical relief creates an overlapping situation that undermines judicial coherence. The civil court's finding regarding incomplete transaction raises fundamental questions about the applicant's standing to maintain criminal proceedings. The multiplicity of proceedings burdens the judicial system and defeats the orderly administration

of justice. While the case laws cited by learned counsel for the applicant establish important principles regarding the maintainability of criminal complaints under special statutes, they must be distinguished from the present case which involves a pattern of successive and overlapping proceedings that goes beyond the scope of those precedents and constitutes abuse of judicial process.

18. Having meticulously examined the submissions, analyzed the applicable legal principles, and considered the subsequent developments that have fundamentally altered the legal landscape, this Court finds that the Criminal Revision Application No. 176 of 2023 must be dismissed as having become infructuous and technically defaulted. The subsequent filing of the third criminal complaint under Section 3(2) of the Illegal Dispossession Act, 2005, wherein the Additional Sessions Judge has already taken cognizance, has created a situation of technical default that renders the present revision application moot and academic.

19. The applicant's pattern of filing three successive criminal complaints seeking substantially identical relief constitutes impermissible forum shopping and represents an abuse of judicial process that cannot be countenanced by this Court. By pursuing multiple criminal remedies simultaneously, the applicant has violated the fundamental doctrine of election, which requires a litigant to abide by the consequences of the remedy initially chosen. The multiplicity of proceedings instituted by the applicant places an unjustifiable burden on the judicial system and undermines the orderly administration of justice, contrary to established principles of judicial economy.

20. With cognizance already taken in the third criminal complaint, any relief granted in this revision application would be purely academic and serve no practical legal purpose. This dismissal shall not prejudice the applicant's rights in the third criminal complaint where cognizance has been taken, nor shall it affect the pending Supreme Court proceedings or civil revision application.

21. While this Court remains ever vigilant to protect the genuine rights of litigants, it is equally committed to preventing abuse of judicial process. The pattern of litigation in this case serves as a reminder that access to justice must

be exercised responsibly and not as a tool for harassment or forum shopping. The dismissal of this revision application should not be construed as a commentary on the merits of any genuine grievance the applicant may have, but rather as a necessary judicial intervention to maintain the integrity and efficiency of the legal system.

22. In view of the above discussion and for the reasons stated hereinabove, the Criminal Revision Application No. S-43 of 2023 stands dismissed.

JUDGE