

THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.265 of 2022

Applicants : Muhammad Ali Unar and Syed Madad Ali Shah Shukarillahi through Mr. Salahuddin Chandio, Advocate

For State : Ms. Amna Ansari, Additional Prosecutor General, Sindh and Syed Arshad Hussain Naqvi, Additional Advocate General, Sindh

Date of hearing : 02.04.2026

Date of Order : 15.04.2026

ORDER

Jan Ali Junejo, J.- Through this Criminal Revision Application under Sections 435 and 439 Cr.P.C., the Applicants have assailed the legality and propriety of the order dated 08.11.2022 (hereinafter referred to as the “*Impugned Order*”) passed by the learned IInd Additional Sessions Judge, Thatta (hereinafter referred to as the “*Trial Court*”), in Private Complaint No.23 of 2022 “*Re: Muhammad Aslam Arain v. Muhammad Aslam Jakhro & another*”, whereby directions were issued for suspension of the Applicants and initiation of departmental as well as anti-corruption proceedings against them.

2. The Respondent No.1/Complainant instituted a private complaint under Sections 3, 4 read with Section 8 of the Illegal Dispossession Act, 2005, alleging unlawful dispossession from forest land measuring 05 acres in Thatta. During proceedings, the learned trial Court called for reports from the SHO and the Divisional Forest Officer. While the SHO submitted a report supporting the complainant, the learned trial Court, on the premise that the Forest Officer failed to submit report, proceeded to pass the impugned order dated 08.11.2022, directing suspension of the Applicants, initiation of departmental proceedings, and inquiry by Anti-Corruption Establishment, along with various adverse observations, without affording opportunity of hearing to the Applicants.

3. Learned counsel for the Applicants contended that the impugned order is without jurisdiction, arbitrary and in sheer violation of the principles of natural justice. It was argued that the Applicants were neither arrayed as accused nor any allegation was attributed to them in the complaint, yet coercive directions have been issued against them. It was further contended that the learned trial Court travelled beyond its jurisdiction by directing suspension and disciplinary proceedings, which fall exclusively within the domain of the competent authority under service law. It was further argued that the Applicants had sought time to file report which was granted, however, the impugned order was passed prematurely on the same date, thereby depriving them of fair opportunity. It was lastly submitted that the lease in favour of the complainant stood cancelled in view of policy decisions and judicial pronouncements; hence the complaint itself was not maintainable.

4. On the other hand, learned Addl. P.G. supported the impugned order and contended that the learned trial Court acted within its jurisdiction to protect public property and ensure accountability. It was argued that the failure of the Applicants to submit report justified adverse inference and directions for inquiry. It was further submitted that the Court is empowered under the Illegal Dispossession Act, 2005 to pass appropriate orders in the interest of justice.

5. I have heard learned counsel for the parties and examined the record. It is an admitted position that the Applicants were not impleaded as accused in the private complaint nor any direct allegation was levelled against them. However, the learned trial Court proceeded to issue directions adversely affecting their service rights. The impugned order further reflects that the Applicants were not issued show cause notice, nor afforded an opportunity of hearing before passing such adverse directions. This is in clear violation of the settled principle of *audi alteram partem*, rendering the order legally infirm. Moreover, the impugned order was passed on the same date i.e., 08.11.2022, without awaiting the adjourned date. Such action amounts to procedural impropriety and denial of fair opportunity.

6. The most significant legal infirmity, however, pertains to the jurisdiction assumed by the learned trial Court in directing the suspension of the Applicants and initiation of departmental proceedings against them. It is settled law that the authority to suspend a civil servant vests exclusively in the competent authority under the relevant service laws. Neither the learned trial Court, while exercising criminal jurisdiction, is

vested with the power to order suspension of a civil servant in collateral proceedings. At best, the Court may recommend the initiation of an inquiry; however, it cannot usurp the functions of the competent authority. Moreover, matters relating to the terms and conditions of service of civil servants fall within the exclusive domain of the Service Tribunal, and the jurisdiction of civil and other courts in this regard is expressly barred under Article 212(3) of the Constitution of the Islamic Republic of Pakistan. In this context, reliance is placed upon the judgment of the Honourable Supreme Court of Pakistan in the case of ***Imdad Ali Khawaja v. The State and others (2016 SCMR 2057)***, wherein it has been categorically held that: *“Therefore, the perception that an officer who is facing enquiry must be placed under suspension is against the spirit of service rules. Even otherwise, it is never encouraged that the High Court in collateral proceedings can step in the shoes of the competent Authority by ordering suspension of 'civil servant' while directing initiating of departmental inquiry. The discretion in regard to placing an officer under 'suspension' falls within the domain of competent authority under the service law, and in case the competent Authority considers and or anticipates that during enquiry, the officer may tamper with the evidence or influence the witnesses or act in a manner to prejudice the outcome of the enquiry, the competent authority may suspend such officer. The learned Judge of the High Court lost sight of the fact that jurisdiction of the High Court is barred under Article 212(3) of the Constitution in relation to the terms and conditions of a civil servant besides the fact that while hearing a criminal appeal, High Court cannot pass order of suspension of police officer in a collateral issue but can always recommend for enquiry against him if his conduct during the course of hearing appears to be unbecoming of a police officer”.*

7. Applying the above principles to the present case, it is evident that the learned trial Court, which is subordinate to the High Court, had no lawful authority to direct suspension of the Applicants or to mandate disciplinary proceedings. Such directions are patently without jurisdiction and constitute judicial overreach. Furthermore, the observation of the learned trial Court that non-submission of report implies collusion is premature and not based on any proper inquiry. Such findings, recorded without evidence and without hearing the concerned officials, cannot be sustained. Additionally, the question of locus standi of the complainant, in view of the admitted cancellation/expiry of lease of forest land pursuant to policy decisions and judicial pronouncements, was a material aspect requiring consideration, which has been ignored by the learned trial Court.

8. In totality, the impugned order suffers from jurisdictional defect, violation of due process, misapplication of law, and is contrary to the settled principles laid down by the Honourable Supreme Court.

9. For the foregoing reasons, this Criminal Revision Application is allowed. The impugned order dated 08.11.2022 passed by the learned IInd Additional Sessions Judge, Thatta (Trial Court), is hereby set aside to the extent of directions regarding suspension of the Applicants and initiation of departmental/anti-corruption proceedings. However, it is observed that if the competent authority deems it appropriate, it may proceed in accordance with law independently, without being influenced by any observations made by the learned trial Court. The learned trial Court shall proceed with the complaint strictly in accordance with law, after affording opportunity of hearing to all concerned. The listed Miscellaneous Applications stand disposed of accordingly.

JUDGE

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