

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Revision Appln. No.S- 09 of 2017

Date

Order with Signature of Hon'ble Judge

For hearing of main case

21.10.2019

Mr. Hadi Bux Bhatt Advocate for the applicant
Mr. Shafqat Raheem Rajput Advocate for private respondent
Mr. Shafi Muhammad Mahar, DPG for the State

>>>>>>...<<<<<<<

Aftab Ahmed Gorar, J; The applicant by way of instant Criminal Revision Application has impugned order dated 16.12.2016 passed by learned 2nd Additional Sessions Judge Sukkur, whereby her direct complaint for prosecution of the private respondent under Sections 3 and 4 of the Illegal Dispossession Act, 2005, was dismissed.

2. It is contended by the learned counsel for the applicant that learned trial Court has dismissed the direct complaint of the applicant without lawful justification as the applicant is the lawful and registered owner of the property in question and she has been dispossessed by the private respondent from her property on 21.10.2015; that there was some dispute between the applicant and her ex-husband the private respondent, as such she has been maltreated and dispossessed from her property. He contended that a cognizable case has been made out, but the learned trial Court did not consider the same and dismissed the direct complaint. He prayed that the impugned order may be set-aside and direct complaint may be brought on regular file and proceeded against the private respondent. In support of his contentions, learned counsel for the applicant has relied upon the cases of ***Mst. Gulshan Bibi and others vs. Muhammad Sadiq and others (P L D 2016 Supreme Court 769) and Shaikh Muhammad Naseem vs. Mst. Farida Gul (2016 P L D SCMR 1931).***

3. Conversely, learned counsel for private respondent submitted that the private respondent has not dispossessed the applicant from the property in question, whereas, the applicant at her own left the house of private respondent and went to the house of her brother who did not give her shelter, thus she was compelled to stay in Darul Aman Sukkur and filed Suit for dissolution of marriage from Darul Aman which was decreed during her stay in Darul Aman Sukkur; that the private respondent had filed F.C Suit No.364/2015, whereas, applicant/complainant had also filed F.C Suit No.252/2016. He lastly prayed that though the civil litigation is pending between the parties, therefore, the learned trial Court has rightly dismissed the complaint of the applicant/complainant, therefore, the impugned order does not call for any interference. In support of his contentions, he has relied upon the cases of ***Abid vs. Additional Sessions Judge and 17 others (2007 M L D 808), Muhammad Ihsan and others vs. Muhammad Yousuf and others (2007 M L D 1034) and Muhammad Fareed vs. The State and another (2013 Y L R 133).***

4. Learned DPG appearing for the State adopted the arguments advanced by learned counsel for private respondent by stating that the applicant and private respondent being husband and wife were residing in the said house along with their children, whereas, the civil dispute is pending between the parties, hence supported the impugned order.

5. I have considered the arguments of the advocates for the respective parties and perused the record. Admittedly, the relation between the applicant and private respondent was of husband and wife, whereas, they were residing in the property in question along with their children / family, although as per the documents, that the applicant is owner of the property in question, but she has not been dispossessed by the private respondent but she has left the house of private respondent at her own and went to her brother but he did not give her shelter, thereafter, she was lodged in Darul Aman Sukkur, she filed

Suit for dissolution of marriage against the private respondent ultimately the said Suit was decreed. The private respondent and the applicant have filed Civil Suits against each other, which are pending adjudication before the Court of learned 1st Senior Civil Judge Sukkur. The order passed by learned trial Court does not call for any interference. In view of the above, the instant Criminal Revision Application is dismissed and the order passed by learned trial Court is maintained. The case-law relied upon by learned counsel for the applicant is on different facts as compared to the facts and circumstances of the present case.

Judge

ARBROHI