

ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.82 of 2025

Applicant : Niaz Ahmed Khan son of Ijaz Ahmed Khan,
Through Mr. Yasir Saddozai, advocate

Respondents : Mst. Rozina [respondent No.1]
The Station House Officer [respondent No.2]
The State [respondent No.3]

Date of hearing : 18.04.2025

Date of order : 28.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J:- The applicant/accused Niaz Ahmed Khan has invoked the revisional jurisdiction of this Court, calling in question the legality and propriety of the order dated 07.03.2025, passed by the learned Additional Sessions Judge-VII, Malir at Karachi, dismissing the application under Section 265-K Cr.P.C. in a complaint No.17 of 2024 titled *Mst. Rozina Begum v. Niaz Ahmed Khan* for offence under Sections 3(2) of the Illegal Dispossession Act, 2005.

2. Learned counsel for the applicant submits, inter alia, that the learned trial court failed to consider the documentary material relied upon by the applicant, who claims to be the owner or *benamdar* of the property in question, stated to have been in his continuous possession since 2009. It is contended that, due to certain familial considerations, the property was initially retained in the name of the applicant's mother-in-law, and was subsequently transferred via gift in favour of the applicant's now-deceased wife. Learned counsel further asserts that following the death of his wife in 2023, the original title documents pertaining to the said property were misplaced, whereupon he lodged a report with the local police station regarding the loss. Learned counsel next contends that respondent No.1, being the real sister of the deceased wife of the applicant, had been making frequent visits to the applicant's residence, during which she allegedly misappropriated the said documents. It is further stated that the applicant, in order to safeguard his rights, has instituted Civil Suit No.568 of 2023 before the learned VIth Senior Civil Judge, Malir, Karachi, seeking cancellation of the allegedly fraudulent documentation, which suit remains pending adjudication. Learned counsel thus submits that the property has remained in the actual and peaceful possession of the applicant and that the claim of respondent No.1 is fictitious, motivated by malice, and legally untenable. On these grounds, it is urged that the application under Section 265-K Cr.P.C. seeking acquittal at the preliminary stage ought to have been allowed by the learned trial court, but was dismissed summarily and without proper judicial consideration.

3. Conversely, the learned DPG representing the State has opposed the revision petition, submitting that the impugned order does not suffer from legal infirmity, and is based upon sound reasoning and appreciation of material available on record. The learned law officer has supported the findings recorded by the trial court.

4. A perusal of the record reveals that the proceedings were initiated on an application filed by Mst. Rozina under Sections 3 and 4 of the Illegal Dispossession Act, 2005, alleging illegal occupation of immovable property. Upon receiving the police inquiry report, the learned trial court took cognizance and directed that evidence be recorded. The matter presently stands fixed for continuation of cross-examination of the complainant, who has already been partially examined.

5. As to the applicant's claim of ownership, it appears from the record that he currently holds no documentary proof of title in his own name. The justification offered is that the original documents were lost in 2023 following the demise of his wife. However, a deeper examination of the record reveals that the very Gift Deed relied upon by the applicant, purportedly executed in 2023, names respondent No.1 as the *donee*, while the applicant himself, along with his son Maaz Ahmed Khan, are shown as attesting witnesses. This apparent contradiction raises significant doubts regarding the applicant's claim to ownership and possession, especially when considered in conjunction with the civil litigation simultaneously pending between the same parties in respect of the same property.

6. In these circumstances, where disputed questions of fact exist and the veracity of the parties' claims is directly linked to the evaluation of evidence, both oral and documentary, it would not be appropriate for the trial court to short-circuit the proceedings by recording an acquittal at this stage under Section 265-K Cr.P.C., which provision is reserved for cases where there is no probability of conviction even if the prosecution evidence is accepted at its face value. The learned trial court has correctly exercised its jurisdiction in deferring final determination until after full trial. It is a settled principle of law, as reiterated in numerous pronouncements of the superior courts, that where factual controversies are deeply embedded and evidence is yet to be led by both parties, the jurisdiction under Section 265-K Cr.P.C. should be exercised sparingly and only in the clearest of cases where continuation of trial would serve no useful purpose.

7. Given the above, I am of the considered opinion that the impugned order dated 07.03.2025 passed by the learned trial court does not suffer from any material illegality, irregularity, or jurisdictional error warranting interference in the revisional jurisdiction of this Court. The revision petition, being devoid of merit, stands dismissed in *limine*. However, considering that the matter involves issues affecting possession and ownership of immovable property and that parallel

civil and criminal proceedings are pending, it is imperative in the interest of justice and expeditious disposal that the trial court ensures the conclusion of trial within a period of **forty-five (45) days** from the date of receipt of this order. The learned trial court shall ensure that no unnecessary adjournments are granted to either party and that the proceedings are carried to their logical conclusion in accordance with law.

J U D G E