

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Revision Application No.199 of 2011

[Agha Ali Raza v Abdul Khalique Panhyar & 6 others]

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1. For order on office objection.
2. For hearing of case.

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Syed Noman Zahid, Advocate for the Applicant.

Mr. Aftab Ahmed G. Nabi, Advocate for Respondents 1, 2 and 4.

Ms. Rubina Qadir, DPG.

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Date of hearing

12.05.2025

Date of order

23.05.2025

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ORDER

SHAMSUDDIN ABBASI, J:- This Criminal Revision Application under Section 438 read with Section 561-A, Cr.P.C. is directed against the order dated 02.11.2011, penned down by the learned Additional Sessions Judge-I, Karachi (South), in Criminal Misc. Application No.548 of 2011, filed by applicant Agha Ali Raza through his Attorney Shehzad ul Hassan, dismissing the same as not maintainable.

2. The applicant claims himself to be the lawful owner of property bearing Flat No.119, situated at first floor of the building known as “Marine Drive”, Plot No.FL-10, Block-2, Clifton, Karachi, [hereinafter referred to as the “said property”], by virtue of sub-lease dated 01.09.2001 registered before Sub-Registrar T-Div.II (B), Karachi. It is alleged that the applicant purchased the said property by way of booking in the project known as “Qamran Construction (Pvt) Ltd”, possession whereof was handed over to him on 04.01.1999 on payment of entire sale consideration, however, the respondents with malafide intention and ulterior motives managed forged documents and ousted the applicant from lawful possession of the said property in the first week of June, 2010, hence the applicant /complaint filed a complaint under Section 3, 4 and 7 OF the Illegal Dispossession Act, 2005 [IDA, 2005].

3. The learned trial Court, after going through the contents of the application /complaint, police report and hearing the learned counsel

for the applicant, dismissed the application /complaint as detailed in para-1 (supra), which necessitated the filing of the instant Criminal Revision Application.

4. It is, inter-alia contended on behalf of the applicant that that the applicant is lawful owner of the said property by way of registered sub-lease and he has been forcibly ousted from the said property by the respondents on the basis of forged documents, hence they are liable to be prosecuted under the provisions of IDA, 2005. It is next submitted that the applicant approached the Ex-Officio Justice for registration of FIR against respondents/ proposed accused which was declined against which the applicant approached this Court in exercise of its revisional jurisdiction which was allowed despite the police declined to lodge FIR of the applicant and finally he filed the complaint under IDA, 2005. Per learned counsel, the impugned order is erroneous, against the law and without application of conscious judicial mind, based on misreading and non-reading, hence liable to be reversed.

5. The learned counsel appearing for the respondents as well as learned DPG while controverting the submissions of learned counsel for the applicant have submitted that the complaint was filed through attorney and the learned trial Court has rightly dismissed the same as not maintainable. It is next submitted that both parties are claiming ownership rights over the said property and civil litigations are pending before the Court of competent jurisdiction, hence no case under IDA, 2005 is made out.

6. I have given my anxious consideration to the submissions of respective sides and perused the entire material available before me with their able assistance.

7. There is no denial of the fact that the applicant has filed the application/ complaint under Section 3, 4 and 7 of the Illegal Dispossession Act, 2005 (IDA, 2005) through his Attorney Shehzad ul Hassan son of Shams ul Hassan. It is a well settled that in criminal proceedings neither a complaint can be filed through attorney nor an accused can defend the charges through attorney. Guidance in this behalf may be taken from the case of *Muhammad*

Qasim v Station House Officer, Police Station Khudabad, District Dadu and 7 others (2016 MLD 1238). Relevant excerpt is reproduced below: -

“Now let's examine whether an attorney can act as a complainant or a witness in criminal matters or otherwise? The term "attorney" legally, in most general sense draws a picture of one who is not speaking for himself but for his 'principal'. As per Black's Law Dictionary (fourth addition) the term 'attorney' is defined as:-

'In the most general sense this term denotes an agent or substitute or one who is appointed and authorized to act in the place of or stead another'

Per Marriam-Webster, it is defined as:

'one who is legally appointed to transact business on another's behalf'

Since the 'Criminal administration of justice' recognizes only those as a witness for complainant who either have seen; heard or least perceived any fact towards the offence hence an 'attorney', being not speaking of his own knowledge, would not fall within meaning of 'witness/complainant'. Thus, an attorney cannot legally, under such status of attorney, file the FIR or a criminal complaint."

8. The above conclusion is undoubtedly rested upon the fact that agitating or defending the criminal proceedings is always a personal act of the complainant or accused. The criminal proceedings in the Court, thus, cannot be initiated through attorney as the criminal administration of justice recognizes only those as a witness or complainant who either have seen, heard or least perceived any fact towards the offence. An attorney being not uttering of his/her own knowledge rather deposing the voice of his/her master would not fall within the meaning of witness/complainant. An attorney, thus, is precluded to get register first information report or a criminal complaint. There is no concept or even legal provision allowing initiation of proceedings or recording of evidence through attorney in the criminal law. The concept of representation through attorney either by the complainant or the accused is alien to the criminal jurisprudence so far. To this effect, reference can also be made to the case of *Khalid Mehmood and 3 others v. Safdar Iqbal and another* (2017 PCr.LJ 1104), *Usman Saleem v. Additional District and Sessions Judge III, Karachi East*

and 7 others (2021 PCr.LJ Note 66) and *Ghazanfar Ali v. M. Zahid Hussain and others* (PLD 2011 Lahore 179).

9. The crux of the foregoing discussion is that the applicant was precluded to file a complaint through attorney, which was rightly dismissed by the trial Court as not maintainable and the applicant petitioner has failed to point out any perversity or material irregularity, calling for interference by this Court.

10. Turning to the merits of the case, suffice to observe that Illegal Dispossession Act, 2005 [IDA, 2005] is a unique statute to safeguard the legitimate owners and occupants of immovable properties from being unlawfully or forcefully deprived of their possessions by illegal occupants. This Act specifies any person who being lawful owner or lawful occupier of the property, if dispossessed illegally or unauthorizedly, can bring a complaint under the provisions of IDA, 2005, whereby the complainant must prove the presence of an unlawful act, accompanied by criminal intent, and if he fails to disclose such essential elements, the Court is not obligated to mechanically register the complaint and initiate proceedings. The main purpose of IDA, 2005 is to curb the activities of the property grabbers and to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by property grabbers. In like cases, the actions cannot be categorized as constituting an offense under the definition provided in IDA, 2005. This distinction requires the Court to carefully examine the material presented on record at the initial stage and then make an order, based on application of conscious judicial mind.

11. Here in this case both parties are claiming ownership rights over the said property and filed their respective suits, based on documents, which are pending adjudication before the Court of competent jurisdiction. The record is also suggestive of the fact that before filing of the complaint, the applicant through his friend Muzaffar Ali has filed an application under Section 22-A, Cr.P.C. which was dismissed by Ex-Officio Justice of Peace vide order 26.07.2010 against which the said friend of the applicant preferred Criminal Revision Application No.117 of 2010 before this Court, which was allowed vide order dated 18.10.2010 and subsequent thereto

none has approached the police for registration of FIR instead the applicant has filed the complainant under IDA, 2005. In like cases where both parties are claiming ownership rights and their respective suits are pending before the competent Court of law, utilizing the provisions of IDA, 2005, would be an abuse of the process of law. Reliance in this behalf may well be made to the case of *Zahoor Ahmed v The State and 03 others* (PLD 2007 Lahore 231), wherein it has been held as under:-

“(i) The Illegal Dispossession Act, 2005 applied to dispossession from immovable property only by property grabbers/Qabza Group / land mafia. A complaint under the Illegal Dispossession Act, 2005 can be entertained by a Court of Session only if some material exists showing involvement of the persons complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an organized or calculated effort by some persons operating individually or in groups to grab by force or deceit property to which they have no lawful, ostensible or justifiable claim. In the case of an individual it must be the 4 W.P. No.1384 of 2008 manner of execution of his design which may expose him as a property grabber.

(ii) The Illegal Dispossession Act, 2005 does not apply to run of the mill cases of alleged dispossession from immoveable properties by ordinary persons having no credentials or antecedents of being property grabbers/Qabza Group/land mafia, i.e. cases of disputes over possession of immovable properties between co-owners or co-sharers, between landlords and tenants, between persons claiming possession on the basis of inheritance, between persons vying for possession on the basis of competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property.

(iii) A complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the relevant property is being regulated by a civil or revenue Court.”

12. After careful examination of the record, this Court has reached to a conclusion that the matter pertains to factual controversy, which could only be resolved after thorough inquiry

and recording of evidence by a Civil Court. Reliance in this behalf may well be made to the case of *Secretary to the Government of Punjab v Ghulam Nabi* (PLD 2001 SC 415), wherein it has been held as follows:-

"It hardly needs any elaboration that "the superior Courts should not involve themselves into investigations of disputed question of fact which, necessitate taking of evidence. This can more appropriately be done in the ordinary Civil Procedure for litigation by a suit. This extraordinary jurisdiction is intended primarily, for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts".

13. For what has been discussed above, I am of the considered view that no case attracting the provisions of IDA, 2005 has been made out. The learned counsel for the applicant has not raised any question of law that may require consideration by this Court in exercise of its Revisional Jurisdiction, scope of which is limited and confined to correction of jurisdictional defect, patent illegality or irregularity affecting the merit of the case. This Criminal Revision Application No.199 of 2011 is, therefore, bereft of any merit stands dismissed.

JUDGE

Naeem /PA