

IN THE HIGH COURT OF SINDH, KARACHI
Crl. Revision Application Nos. 218 & 219 of 2022

Present

Mr. Justice Muhammad Jaffer Raza.

Date of hearing : 26.06.2025

Date of announcement of judgment : 04.09.2025

Applicant : Shoaib Ahmed Siddiqui
through Mr. Bilal Khawaja &
Barrister Abdul Khaliq.

Versus

Respondent No.1 in Crl. Rev. : Syed Saqib Hussain, through
Application No.218/2022 Khawaja Rauf Ahmed, Advocate.

Respondent Nos.2 to 6 in Crl. Rev. : Abdul Mateen Shaikh, Nadeem,
Application No.219 of 2022 Ishrat and Ali, through M/s.
Liaquat Ali Khan & Shafiq Ahmed,
Advocates.

The State : Through Ms. Deeba Ali Jafri,
AAG

J U D G M E N T

Muhammad Jaffer Raza J.- Instant Crl. Revision Applications have been filed under Section 435 and 439 Cr.P.C. impugning the orders dated 03.09.2022 passed by the learned IV-Additional Sessions Judge, Karachi East, in Crl. Complaint Nos.135/2022 and 136/2022. The said complaints noted above, were filed under Section 3 of the Illegal Dispossession Act, 2005 (**“Act”**), wherein, the learned Additional Sessions Court declined to take cognizance vide Impugned Orders dated 03.09.2022.

2. It has been contended by the Applicant that the finding of the learned Additional Sessions Judge is erroneous and beyond the scope of the Act. He has further stated that cognizance ought to have been taken under the Act and the learned Additional Sessions Judge has failed to appreciate the scheme of

the relevant legislation. He has further argued that an attorney is competent to file a complaint under the Act and in this regard the finding of the learned Additional Sessions Judge is liable to be set-aside on this ground alone. He has further argued that mere pendency of the civil suit does not debar an individual to file a complaint under the Act as both the remedies can be simultaneously availed. He has stated that the only test to be satisfied by the complainant is that he is either the owner or the occupier who has been dispossessed. He lastly argued that the learned Additional Sessions Judge has misapplied the test laid down in the Act and at this stage only cognizance was to be taken without deeper appreciation of merits.

3. Conversely, learned counsel for the Respondent has argued that the Impugned Orders do not suffer from any infirmity and the instant Revision Application ought to be dismissed with exemplary cost to be paid to the Respondent. He has further argued that the Applicant was in illegal possession of the property and the documents annexed were fake and fabricated. He has further argued that total number of four suits are pending pertaining to the subject properties and the Applicant is a “land grabber”.

4. Ms. Deebe Ali Jafri, learned Assistant Advocate General Sindh has argued that the Impugned Orders warrant no interference by this Court and in this regard she has supported the arguments advanced by the learned counsel for the Respondents.

5. Perusal of the Impugned Orders reveals that the subject complaints were dismissed primarily on two grounds, both of which shall be adjudicated separately.

6. The first ground pertains to the dismissal of the complaint on the ground that the complaint was preferred through an attorney. The argument advanced by the learned counsels for the Respondents in this regard, was repelled by a learned single judge of this court in the case of **Atta Rasool and**

3 others vs. Haji Muhammad Rafiq and 2 others¹ relying on the judgment rendered by the Hon'ble Supreme Court in the case of **Abdul Hafee vs. Usman Farooqui through his daughter Sharmila Farooqui and another²**.

It will be imperative to note that both the cited judgments emanated from proceedings under the Act and are squarely applicable to the case at hand. It is therefore held that the learned Additional Sessions Judge erred in this respect and incorrectly held that the complaint was incompetently filed. The reliance of the learned judge on the case of **Muhammad Qasim versus Station House Officer, Police Station Khudabad, District Dadu and 7 others³** is misplaced for the reason that the learned single judge in the noted case dismissed the criminal revision application holding that the alleged offence does not constitute an offence under the Act.

7. Prior to adjudicating the second ground of dismissal it will be expedient to elaborate upon the scheme of the Act as laid down in Section 3.

The same is reproduced below:-

“3. Prevention of illegal possession of property, etc.-(1) No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owner or occupier of such property.

(2) Whoever contravenes the provisions of the sub-section (1) shall, without prejudice to any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of section 544 A of the Code.”

8. The noted scheme was extensively deliberated upon by the Hon'ble Supreme Court in the case of **Shaikh Muhammad Naseem vs. Mst. Farida Gul⁴** wherein a larger bench of the Hon'ble Court following the dicta in the

¹ 2019 P Cr.LJ 1023

² 2008 PSC (CrL) 959

³ 2016 MLD 1238

⁴ 2016 SCMR 1931.

case of **Gulshan Bibi and others vs. Muhammad Sadiq and others**⁵ held

as under: -

“5. In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immoveable property is pending between the parties, the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in Zahoor Ahmed's case (PLD 2007 Lahore 231, reasoning of which was adopted by three member bench of this Court in Bashir Ahmed's case (PLD 2010 SC 661). We are of the view that such a finding is also not sustainable in law. Any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other. Once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossession Act, 2005 then he cannot escape punishment on the ground that some civil litigation on the same issue is pending adjudication between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceedings initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending in any Court, where an offence, as described in the Illegal Dispossession Act, 2005, has been committed, the proceedings under the said Act can be initiated as the same would be maintainable in law.” (Emphasis added)

9. It is evident from the scheme of the Act, as expounded by the Hon’ble Supreme Court in the noted judgments, that pendency of civil proceedings do not operate as a bar to institute proceedings under the Act. Further, the FIRs referred to in the Impugned Orders, as correctly pointed out by the learned counsel appearing for the Applicant, do not pertain to the subject dispute. Additionally, the finding of the learned Additional Sessions Judge pertaining to the absence of the “NOC/building plan” is erroneous and it is held that the same is alien to the scheme of the Act. Moreover, the said issue was never raised by the contesting parties. It is evident that the learned Additional Sessions Judge dismissed the complaint of the Applicant without appreciating

⁵ PLD 2016 Supreme Court 769.

Both of the noted judgments were followed by Muhammad Saleem Jessar J. in the case of Shahzaib Hussain versus Muhammad Ahsan reported at 2020 YLR 1317.

the settled law on the subject, as enumerated above. In this regard I have deliberately withheld any deliberation on the merits of the complaint and the threshold required to be satisfied by the present Applicant. The same may influence the finding of the learned Additional Sessions Judge.

11. In consequence of what has been held above, the instant Criminal Revision Applications are allowed and Impugned Orders are set aside. The matter is remanded back to the Learned Additional Sessions Judge for adjudication afresh, within the parameters of the Act, as expounded by the superior courts, preferably within a period of 30 days.

JUDGE