

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Crl. Revision Application No.95 of 2024**  
*[Farha Neelofar v Jawadullah Khan & others]*

1. For orders on office objection.
2. For hearing of main case.
3. For hearing of MA No.6923/2024.

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Mr. Faheem Ali Memon, Advocate for the Applicant.  
Respondent No.2 Muhammad Ali & Respondent No.3 Muhammad Aneel  
in person.  
Mr. Neel Parkash, DPG.

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Date of hearing **28.04.2025**

Date of order **13.05.2025**

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**ORDER**

**SHAMSUDDIN ABBASI, J:-** By means of this Criminal Revision Application filed under Section 439, Cr.P.C. the applicant has prayed for following reliefs:-

*“1. To set-aside the order of the learned ADJ-II, Karachi-South dated 26<sup>th</sup> April 2024 and direct the DIG (Respondent No.6 to put applicant into the possession of the subject property;*

*2. Direct the Respondent No.6 to file an FIR against Respondent No.2 and 3 as per his own recommendation into his report;*

*3. Direct the Respondent No.6 to initiate through investigation into burglary and theft of various items belonging to the Applicant with immediate effect;*

*4. Any other relief that this Hon’ble Court deems appropriate after hearing the parties”.*

2. The applicant is complainant in IDA Complaint No.119 of 2023, filed under Section 3 & 4 of the Illegal Dispossession Act, 2005 (“IDA 2005”), claiming herself to be lawful owner of House No.N-43, measuring 60 square yards, situated at Block-13, KDA Scheme No.36, Gulistan-e-Jauhar, Karachi (hereinafter referred to as the “said house), having purchased the same from Jawadullah Khan and Hamadullah Khan through their Attorney Muhammad Ali vide Agreement to Sell dated 07.02.2023. Per her case, she alongwith her

children went to Saudi Arabia for performance of Hajj while her husband Khan Zegham E Yazdan was alone in the house. It was on 20.06.2023 when her husband went to offer Isha prayer, the respondents/ accused occupied the said house, illegally and unlawfully, and possessed all household articles including 20 tolas gold, 5000 Riyal, Rs.50,00,000/- as well as original documents. Her husband informed the incident to police, but to no avail, hence after return from Hajj, she filed a complaint under Section 3 & 4 of Illegal Dispossession Act, 2005.

3. A charge in respect of offences under Section 3 & 4 of Illegal Dispossession Act, 2005, was framed against accused Muhammad Ali, Nabeel and Mst. Naureen. They pleaded not guilty to the charged offence and claimed to be tried.

4. At trial, the complainant examined herself and also produced her husband Khan Zegham Yazdan and Muhammad Shakir Hameed as her witnesses and then closed her side. The respondents /accused were examined under Section 342, Cr.P.C. They have denied the commission of offence, professed their innocence and stated their false implication by the complainant. They opted not to make a statement on Oath under Section 340(2), Cr.P.C. nor adduce any evidence in their defence.

5. Upon completion of the trial, the learned trial Court, while observing that the complainant has failed to prove her case against the respondents/ accused persons acquit them from the charge and directed the Nazir to put Respondent No.4 Mst. Naureen into possession of the said house. The judgment was delivered on 26.04.2024 and aggrieved of by the same, the complainant/applicant has filed this Criminal Revision Application.

6. It is contented on behalf of the applicant that the respondents/ accused have committed breach of the terms and conditions of the sale agreement and failed to perform their part of contract, they became dishonest and failed to transfer the said house despite receiving handsome amount per terms of sale agreement. It is next submitted that the complainant while appearing before the learned

trial Court has supported the contents of her complaint and her witnesses too have supported her and deposed in the same line as that of the complainant, they have exhibited certain documents in their evidence, which fully established the case of the applicant. It is also submitted that the applicant has placed on record sufficient evidence to establish her entitlement over the house in question as well as her illegal and unlawful dispossession at the hands of the accused persons. The impugned judgment is bad in law and facts, based on assumptions and presumptions, without recording any valid and cogent reason. The learned trial Court also did not appreciate the evidence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in acquitting the respondents/ accused merely on assumptions and presumptions. Per learned counsel, the impugned judgment is the result of misreading and non-reading of evidence and without application of a conscious judicial mind, hence the same is bad in law and facts and liable to be set-aside.

7. The Respondents 2 and 3 as well as learned Deputy Prosecutor General while controverting the submissions of learned counsel for the applicant have supported the impugned judgment and submitted that the findings recorded by the learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought on record and no illegality or infirmity has been pointed out by the learned counsel for the applicant calling for any interference.

8. I have heard the respective sides and perused the entire material available before me with their able assistance.

9. The applicant claimed herself to be the owner in respect of House No.N-43, measuring 60 square yards, situated at Block-13, KDA Scheme No.36, Gulistan-e-Jauhar, Karachi, on the basis of a sale agreement, signed and executed between the parties on 07.02.2023. The respondents/ accused, on the other hand, have denied the claim of the applicant and submitted that she has failed to perform her part of contract and did not pay the balance same

consideration despite repeated requests and demands. Per report of the police the respondent /accused Muhammad Ali sold out the said house to complainant for a total sale consideration of Rs.1,25,00,000/-, out of which she paid an amount of Rs.45,00,000/- only, she has and committed breach of the terms and conditions of the sale agreement and also failed to pay the balance sale consideration within 45 days as per agreed term.

10. 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 that if a person is 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 /she fail 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 the case in hand, there is a dispute over payment of balance sale consideration and both parties are claiming ownership rights. Neither any one of them belong to a group of land grabbers nor land mafia or a Qabza group. In such a backdrop, the dispute between the parties is purely of a civil nature and utilizing the provisions of IDA, 2005 in like cases 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) .....

*(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.”*

11. After careful examination of the record, I am of the view that the learned trial Court has rightly observed that the controversy relating to title of ownership can only be decided by a Civil Court and dismissed the complaint in the following terms:-

*“Admittedly there is dispute between the complainant and accused persons over the payment of sale and purchased of the disputed house and in this respect both the parties failed to file suit for specific performance of contract act. The title documents of the disputed house are not in the name of complainant. It is admitted fact that both the parties claimed ownership over the disputed house while the title of the suit property will be decided by the civil court.*

*In these circumstances, I am of the humble view that this Court cannot decide the title of ownership between the parties in the proceeding under Section 3 and 4 of Illegal Dispossession Act, 2005 regarding ownership of the suit plot in this regard I have taken guidelines from the case law reported in 2018 P.Cr.L.J. 1341 [Sindh (Sukkur Bench)] wherein it has been held that .....*

*Admittedly both the accused are not belongs to land grabber / Qabza group. I have also taken guidance from the case law reported in the case of Zahoor Ahmed reported in PLD 2007 Lahore Page 231 the full Bench of Lahore High Court has observed as under.....*

*In view of the above circumstances I am of the humble view that complainant has failed to prove its case against the accused persons under section 3 & 4 of Illegal Dispossession Act, therefore, this point is not proved and answered as negative. There is no allegation against the accused Mst. Naureen d/o Muhammad Hafeez. However, she herself implicated in this case as accused No.3. Moreover, the*

*complainant is at liberty to proceed with the case against the accused persons before the civil court having jurisdiction”.*

12. For what has been discussed above, I am of the considered view that no case attracting the provisions of Illegal Dispossession Act, 2005 has been made out. The claim regarding ownership and possession over the disputed area can only be sifted by adducing evidence in a suit before Civil Court. 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. The scope of revisional jurisdiction of High Court is limited and confined to correction of jurisdictional defect, patent illegality or irregularity affecting the merit of the case and not for substantiating its own finding. I find that the learned trial Court has passed the impugned judgment after due application of mind and careful appreciation of available material, hence the applicant has no case on merits calling for interference.

13. Apart from the above, it is an undisputed fact that impugned judgment has been passed in a complaint filed under Section 3 and 4 of IDA, 2005. In like cases the aggrieved party has to present an application under Section 417(2) and (3), Cr.P.C. for special leave within 60 days and subject to its grant, the High Court may proceed against the order of acquittal. Here it would be conducive to reproduce Section 417(2) and (3), Cr.P.C. which read as under:-

*"(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.*

*(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order".*

*"Where the plain language of a statute admits of no other interpretation then the intention of the legislature conveyed through such language is to be given its full effect."*

14. Reviewing the above Section, it is noted that for assailing a judgment, arising out of a complaint, the complainant has to file an application seeking special leave to appeal within 60 days of the

judgment, which is mandatory requirement and lacking in this case. In such a scenario, this Criminal Revision Application impugning acquittal order in a complaint is not maintainable.

15. This Criminal Revision Application No.95 of 2024 stands dismissed in the foregoing terms.

JUDGE

*Naeem / PA*